Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10601 of 2013-DB

(Arising out of OIA-58/2012/CUS/COMMR/A/KDL Dated- 30/07/2012 passed by Commissioner of CUSTOMS AIR CARGO(EXPORT)-KANDLA)

Veer Enterprise **........Appellant**
D-124, Nu-10/B, Shakti Nagar,
Behind Old Shopping Centre, Gandhidham,
Kutch, Gujarat

VERSUS

C.C.-Kandla **........Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. Sanjay Kumar, Learned Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10410 /2023

DATE OF HEARING: 28.02.2023
DATE OF DECISION:07.03.2023

SOMESH ARORA

The appellant filed Bill of Entry No. 2751547 dated 10.02.2011 at Customs House, Kandala. The same was assessed to duty on second check basis. On examination the goods were initially found to be new Aluminium, Extrusion doors and panels as against the description of Aluminium Extrusion Scrap (trade) given under Bill of Entry, however, on re-examination by Dock Officers on 26 May, 2011, the same were found this time as 'old and used' aluminium structures which are serviceable in nature and therefore, classifiable under CTH 7610 9010 and not under 7602 0010 as claimed by the appellant. It appears from the record that party vide its letter dated 24.06.2011 waived the show cause notice as well as personal hearing in the matter. A redemption fine of Rs. 3,50,000/ was imposed along with penalty of Rs. 1,00,000/- by the joint Commissioner vide Order-In-Original and on appeal same was upheld rejecting party's contention of contradictory reports, request for examination by chartered Engineer by the department and acceptance of their own Chartered Engineer's certificate. The Learned Commissioner (Appeals) on examining various contentions found the Chartered Engineer Certificate produced by the party was not proper as the same was drawn at the back of the Customs department and could not be relied upon.

2. Learned Counsel while agitating the matter before us pointed out the goods stands cleared by them. As per the description assigned by the department and under the head indicated by them and pleaded that the request for mutilation was ignored and the Chartered Engineer certificates vide their letter dated 22.03.2011 was also ignored. He relied upon various case laws including the matter of PRATEEK TRADERS VS. COMMISSIONER OF CUSTOMS, AHMEDABA as reported in -2009(248) E.L.T. 462 (Tri.-Ahmd.) to emphasise the visual examinations by officer cannot be preferred over and expert opinion about serviceability or otherwise of any imported goods and that request for mutilation of goods is required to be accepted by the revenue. The learned Authorized Representative on the other hand justified confiscation fine and penalty in the facts of importation and that the Commissioner (Appeals) had rightly rejected their Engineer's certificate.

3. Considered We find that in this matter, initially mutilation request was given by the party vide letter dated 24.06.2011 and later on waiver of show cause notice and of personal hearing was also given and goods were finally cleared under a Tariff Heading proposed by the department. The appellant has also contested the imposition of redemption fine and penalty on the ground that there was no fault of theirs and department failed to mutilate the goods before clearance. At this stage we find the goods have been cleared and duty discharged as per the Tariff Heading proposed by the department. The Certificate of Chartered Engineer produced by the party is actually deficient, as it has been obtained behind the back of Customs Officials and does not show the time and date of entry at the port for examination of goods by this expert. Even the expertise in the field of Chartered Engineering is not coming forth on record, as also the language of the certificate does not indicate that the author is prepared to face legal scrutiny of its document and to get it examined as per law in case of need by the authorities. We, therefore, find the same has been correctly rejected by the Commissioner (Appeals). However, we also find the party had made a request for mutilation of the imported consignment to indicate their bona fides which does not appear to have been considered by the department view of their acceptance of the department's stand exhibited through waiver of show cause notice as well as clearance of the consignments. We, therefore find no merits in this grounds of their appeal. However, we note

that the party has already paid duty under the Tariff Heading proposed by the department and also shown its bona fides subsequent to the import as they sought mutilation of goods before clearance. We, therefore are inclined to reduce the redemption fine to Rs. 1,00,000/- and the personal penalty under Section 112 to Rs. 10,000/-.

4. Accordingly, The appeal is disposed of in the above terms.

(Pronounced in the open court on 07.03.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI