IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.C/59365 & 59862/2013-CU[DB]

(Arising out of Order-in-Original No. 8/COMMR/CUS./2013 dated 13/05/2013 passed by Commissioner of Central Excise & Customs, Noida)

M/s Century Metal Recycling Pvt. Ltd. (in C/59365/2013) &

Commissioner of Customs, C.E. & S.T., Noida (in C/59862/2013)

Appellants

Vs.

Commissioner of Customs, C.E. & S.T., Noida &

M/s Century Metal Recycling Pvt. Ltd. **Respondents**

Appearance:

Ms Stuti Saggi, Advocate for Assessee
Shri Gyanendra Kr. Tripathi, Asstt Commissioner (AR), for Revenue

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	25/06/2018
Date of Decision	:	25/06/2018

FINAL ORDER NO-**71299-71300 / 2018**

Per: Anil G. Shakkarwar

Above stated two appeals are arising out of Order-in-Original No. 8/COMMR/CUS./2013 dated 13/05/2013 passed by Commissioner of Central Excise & Customs, Noida. Appeal No.C/59365/2013 is filed by importer-assessee and Appeal No.C/59862/2013 is filed by revenue.

2. The brief facts of the case are that the appellants imported Aluminium Scrap and filed Bill of Entry No.9818082

dated 10.04.2013. The goods were imported through Invoice No.ASF/INV/13/1097 dated 01.04.2013 and the Bill of Entry was filed for 55.18 MT of Aluminium Scrap, claiming classification under Customs Tariff Sub-heading No.77602010 under which goods were freely importable under Foreign Trade Policy for the period from 2004 to 2009. The said consignment was subject of 100% examination. The 100% examination was carried out on 16.04.2013. As per examination report 30.349 MT of the goods were found in the form of block, plates of prime Aluminium and remaining were scrap. It appeared to revenue that description stated in the Bill of Entry was “Aluminum Scrap”, whereas the goods imported contained blocks, plates and slips of Prime Aluminum and the said goods were not scrap. Therefore, after appellant waived the issue of show cause notice, the matter was adjudicated by Commissioner through the impugned Order-in-Original wherein he has change classification of goods such as blocks, plats and slips to primary goods and enhanced the value of the same and also enhanced the rate of duty on the same and held that the importer had mis-declared the goods as blocks, plates etc. were classifiable under 76069190 and ordered to assess the said goods @22.853% rate of duty. He further confiscated the goods and imposed redemption fine of Rs.4 lakhs and ordered for clearance of goods after payment of redemption fine and payment of duty at decided classification and enhanced value and also imposed penalty of Rs.1 lakh under Section 112 of Customs Act, 1962. Aggrieved by the said order, importer has filed Appeal No.C/59365/2013 with a prayer to set aside the impugned order. Revenue has filed Appeal No.C/59862/2013, stating that the impugned order is cryptic and non speaking and pleaded for remanding the matter to the Original Adjudicating Authority.

3. Heard the learned Counsel for importer, the learned Counsel for importer has submitted that on the basis of information available in the documents supplied by the Overseas Supplier, Bill of Entry was filed and the description in the document and description stated in the Bill of Entry did not differ. She has further submitted that as per International accepted parameters, all the goods imported by them were Aluminium Scrap. She has submitted that the importer has ordered for Aluminium Scrap, the invoice descripted the goods as Aluminum Scrap and examination report accepted that 45% was Aluminium Scrap and in respect of 55% of the consignment, it appeared to revenue that the goods were block/sheets of primary nature. However, in the country of export they were treated as aluminum scrap and therefore there were no mis-declaration. Further, the Original Authority did not reject the transaction value before enhancing the value and relied on the decision of this Tribunal in the case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. Vs CCE & ST, Noida reported at 2017 (7) GSTL 82

(Tri.-Allahabad) and submitted that the Original Authority has not followed the requirement of Section 14 of Customs Act, 1962 and therefore, as held in the said case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. (supra) the value of the goods declared in the Bill of Entry should be accepted. She has further submitted that the actual change in the classification ordered by the Original Authority in respect of block/sheets etc. is also not sustainable because said goods were described as scrap at the country from where they were exported. She, therefore, pleaded to set aside the impugned Order-in-Original.

4. Heard the learned A.R. for revenue who has submitted that the grounds of appeal of revenue are that the impugned order is cryptic and non speaking and therefore the matter may be remanded to the Original Adjudicating Authority.

5. Having considered the submissions and on perusal of records, we find that submissions made by the learned Counsel for importer is that the description of the goods declared in the Bill of Entry were as per documents received from the foreign supplier and that due to said reason there was no mis-declaration in the present case are tenable. We also find that there was no intention of appellant to mis-declare the goods. We also accept the contention of the appellant that the said goods were described as scrap in the Country from where they were exported and therefore, we hold that classification of the goods claimed by the importer

in the Bill of Entry is correct classification for the entire consignment. In view of our such finding, the finding of change in classification and mis-declaration held by Original Authority, does not sustain. We also find that the issue of valuation is settled through the above stated decision of this Tribunal in the case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. (supra), we find that in the present case, the transaction value was not rejected by the original authority. Therefore, we restore the value as claimed by the importer in the Bill of Entry.

6. To sum up, we set aside the impugned Order-in-Original and allow the Appeal No.C/59365/2013 filed by importer. Since the Order-in-Original is set aside, Appeal No.C/59862/2013 filed by revenue is rejected, as infructuous.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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