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

APPEAL No. C/70425/2017-CU[SM]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1733-16-17 dated 02/03/2017 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Elin Electronics Ltd. **Appellant**

Vs.

Commissioner of Customs, Noida **Respondent**

Appearance:

Shri Parth Mullick (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 16/04/2018
Date of Decision : 16/04/2018

FINAL ORDER NO. 70773/2018

Per: Anil Choudhary

The issue in this appeal is whether the appellant have been rightly visited with confiscation of the imported "Cold Rolled Non-Grain Oriented Silicon Steel Sheet (CRNO for short)" in coil imported under bill of entry dated 12 August, 2015 valued at Rs.11,68,474/- under Section 111(d) have been rightly made alongwith redemption fine, allowing of re-export and further penalty of Rs.75,000/- under Section 112 (a)(b)(i) of the Act.

2. The brief facts of the case are that the appellant are holder of IEC as "manufacturer exporter" and also registered with the Central Excise as 'manufacturer'. The appellant had imported "Cold Rolled Non-Grain Oriented Silicon Steel Sheet" in coil and also a quantity of 3,562 Kg Electro Galvanised Steel Sheet in Coil. They filed Bill of Entry No. 2216824 dated 12 August, 2015 for allowing clearance for domestic consumption imported at CFS, ICD Dadri. They had purchased both the items from M/s Kawarin Enterprises Pvt. Ltd., Singapore. As per the commercial invoice dated 27 July, 2015, the value of goods cleared was Rs.12,59,579.72/-. The goods were examined on 14 August, 2015 by the Appraising Group-4 of ICD Dadri with examination directions as reproduced below:-

"Inspect a lot of one container. Open the container for 10% examination of the goods with respect to description, grade quantity as per invoice, P/L, B/L. Pl ensure compliance of Steel and Steel Products (Quality Control) Second (Amendment) Order, 2014 is case of CRNO and CCR instructions."

3. Inspection of the container and examination of goods therein was done by the Shed Officers in presence of SIIB Officers and Party representative on 24 August, 2015. During the course of examination it was noticed prima facie that the container contained 18 bundles of steel sheet in coils, out of

which 03 bundles were of galvanized steel sheets in coil and remaining 15 bundles were of “Cold Rolled Non-Grain Oriented Silicon Steel Sheet” in coil form. The Cold Rolled Non-Grain Oriented Silicon Steel Sheet did not bear the requisite standard marked of BIS which is mandatory for Cold Rolled Non-Grain Oriented Silicon Steel Sheet in Coil in terms of Steel and Steel Products (Quality Control) Second (Amendment) Order, 2014, dated 31 March, 2014. Further the goods did not bear stickers of supplier, i.e., M/s Kawarin Enterprises Pvt. Ltd. On enquiry the party representative replied that supplier informed them about mistake of not pasting BIS certification on the coils. However, from the website of BIS, it was found that M/s Kawarin Enterprises Pvt. Ltd. is not listed for BIS certification as foreign exporter.

4. In absence of the BIS stickers on the Cold Rolled Non-Grain Oriented Silicon Steel Sheet in Coil it appeared that goods were laible for confiscation for violation of the aforementioned Quality Control Order under Section 111 of the Customs Act, 1962, the consignment was seized vide Panchnama dated 27 August, 2015.

5. During the course of enquiry statement of Shri Budh Singh Sethia, Director of appellant was recorded. He stated that they accept that the goods under import did not bear any BIS marking/stickers. However, Shri Sethia informed that their supplier M/s Kawarin Enterprises Pvt. Ltd., is

authorized dealer of M/s China Steel Corporation Taiwan (the manufacturer) who is BIS registered foreign manufacturer and these goods have been supplied by M/s China Steel Corporation, Taiwan (in Bulk) to M/s Kawarin Enterprises Pvt. Ltd., Singapore. However, M/s Kawarin Enterprises Pvt. Ltd., Singapore, as required by the appellant, undertook slitting of the mother coils into required sizes but they missed to put the BIS marking before dispatching to the appellant. Shri Sethia also prayed that the venial breach may be condoned. Further Shri Sethia did not produce any authorization given by M/s China Steel Corporation, Taiwan to M/s Kawarin Enterprises Pvt. Ltd. Similar statement was given on interrogation of Shri Shankar Singh, Deputy Manager of appellant who further stated that the shipment was accompanied with Mill Test Report of manufacturer namely M/s China Steel Corporation, Taiwan and the coils were found to bear "50CS600C628" which indicates the specification/quality of the product. Further these goods were dispatched by M/s China Steel Corporation, Taiwan in the shape of mother coil with dimension as mentioned in 'Mill Test Report' and further these goods have gone slitting as per required size, at Singapore by M/s Kawarin Enterprises Pvt. Ltd. and further dispatched to the appellant.

6. The appellant under circumstances waived the show cause notice and further prayed for permission to re-export

20,973 Kg CRNO coils back to M/s Kawarin Enterprises Pvt. Ltd., Singapore and make separate assessment of 3,562 Kg of Electro Galvanised Steel Sheets. The appellant also produced the certificate from the Singapore trader M/s Kawarin Enterprises Pvt. Ltd., to the effect that they have imported CRNO, Singapore, in Coil, from M/s China Steel Corporation, Taiwan, quantity 200.38 ton and vide another invoice quantity 201.40 ton and out of this quantity they have exported 20,973 Kg to M/s. Elin Electronics Ltd., Ghaziabad, India, vide their Invoice No. 5070435 dated 27 July, 2015 vide Bill of Loading dated 28 July, 2015. The appellant also produced the certificate from the Vice President of M/s China Steel Corporation to the effect that they are qualifying by BIS (under BIS certification mark License No. CM/L-4030857). M/s Kawarin Enterprises Pvt. Ltd., is buying CSC-CRN – 15 CS600 from M/s China Steel Enterprises, Taiwan. The shipping to M/s Kawarin Enterprises Pvt. Ltd., for their slitting and supplying to M/s Elin Electronics Pvt. Ltd.

7. The Additional Commissioner was pleased to order confiscation of 20973 Kg Cold Rolled Non-Grain Oriented Silicon Steel Sheet in Coil, valued at Rs.11,68,473.96/- under Section 111(d) of the Act with an option to redeem of payment fine of Rs. 2 lakhs and further allowing the said goods for re-export to the country from which they have been imported. Further the penalty of Rs.75,000/- was also imposed under

Section 112(a)(b)(i) of the Customs Act, 1962. The other goods in the same bill of entry 3,562 Kg Electro Galvanized Steel Sheet in Coil, mentioned as item no. 2 in bill of entry dated 12 August, 2015 valued at Rs.2,41,230/- was allowed to be cleared for domestic consumption on payment of appropriate duty.

8. Being aggrieved the appellant preferred appeal before Commissioner (Appeals) who rejected the appellant's appeal and confirmed the order of the Additional Commissioner.

9. Being aggrieved the appellant is before this Tribunal. The learned counsel states that from the fact on record it is evident that the goods originated from Taiwan from the manufacturer M/s China Steel Enterprises, Taiwan who were registered with BIS, India. Further, they have exported the goods in mother coil form to M/s Kawarin Enterprises Pvt. Ltd., Singapore. As the appellant does not require the goods in bulk form, accordingly, M/s Kawarin Enterprises Pvt. Ltd., Singapore, supplied them, after the process of slitting and supplied them the slit coils of the required sizes. Further the Revenue has not made any enquiries, whether the manufacturer M/s China Steel Enterprises, Taiwan was registered with BIS or not as claimed. Further there is no test report to the effect that the imported goods do not match the BIS standard. At best it is only a case of venial breach as "trader-exporter" at Singapore, missed to mark the goods with BIS standard. Thus no case of confiscation is made out and accordingly, the counsel prays for appropriate relief.

10. Learned AR for Revenue have relied on the findings in the impugned order.

11. Having considered the rival contentions I find that there is no test report that the goods did not confirm to the BIS standard. It is a case of venial breach of the “Steel and Steel Products (Quality Control) Second (Amendment) Order, 2014 dated 31 March, 2014”. The goods did not bear the requisite mark or sticker. Further the bona fide of the appellant is evident on the face of the record as they offered to re-export the goods, on the clearance being object to for domestic consumption. In this view of the matter I hold, there is no deliberate breach of the quality control order and for the venial breach the provisions of confiscation and penalty are not attracted. Accordingly, I set aside the order of confiscation and penalty. The learned counsel informs that they had cleared the goods and have re-exported by paying the redemption fine and penalty. Accordingly, appellant shall be entitled to refund of the duty, redemption fine and penalty deposited by them. I further direct the authority to refund the amount refundable, within a period of 60 days from the date of receipt of the copy of this order.

(Dictated and pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ankit