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

APPEAL No. C/3268/2012-CU[DB]

(Arising out of Order-in-Appeal No. 192/CUS/APPL/NOIDA/2012 dated 25/07/2012 passed by Commissioner, Customs & Central Excise (Appeals), Noida)

M/s Swarup Castings Pvt. Ltd. **Appellant**

Vs.

Commissioner, Customs & Central Excise, Noida **Respondent**

Appearance:

Shri Alok Arora (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 28/06/2018
Date of Decision : 28/06/2018

FINAL ORDER NO **71303 / 2018**

Per: Archana Wadhwa

After hearing both the sides we find that the appellant imported heavy melting scrap and filed bill of entry for clearance of the same at the declared value. Out of the total quantity of 105 MT, Revenue, on physical examination, found 24 MT as old and used ingots. As such by entertaining a view that the appellant has partially imported ingots which are classifiable under a different heading and attract higher rate of duty, proceedings were initiated against them resulting in passing of an order by the Original Adjudicating Authority confirming the demand to the tune of Rs.27,646/-, confiscating the material with an option to redeem the same on redemption fine of Rs.80,000/-. In addition penalty of Rs.40,000/- was imposed upon the appellant. On appeal the said order was upheld by Commissioner (Appeals), hence the present appeal.

2. We find that the appellant admittedly purchased heavy melting scrap from another importer on high sea sale basis. The invoice of the supplier described the goods to be heavy melting scrap. Appellant have also taken a stand that the said scrap was purchased by them for actual use in their furnace and the entire consignment cleared by them has been subsequently captively used in the furnace as scrap. As per the pre-shipment certificate also, the goods were nothing but heavy melting scrap.

3. We find that in the absence of any dispute to all the above facts, no charge of mis-declaration can be upheld against the appellant. Tribunal, in the case of K.L. Concast Pvt. Ltd. vs. Commissioner of Customs, C. EX & ST, Noida, reported at 2018 (359) E.L.T. 396 (Tri.-All.) has taken note of the fact that old and used items in the consignment of scrap cannot be held classifiable as primary goods. To the same effect is another decision of the Tribunal in the case of Commissioner of Customs, Tuticorin vs. Harihar Alloy

Castings Ltd. reported at 2012 (275) ELT 102 (Tri. Chennai). We find no merit in the Revenue's stands and accordingly set aside the impugned order and allow the appeal with consequential relief.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit