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

APPEAL No. C/70553/2016-CU[DB]

(Arising out of Order-in-Appeal No.NOI/CUSTM/001/APP/54/2015-16 dated 31/07/2015 passed by Commissioner (Appeals-II Meerut), Customs, Central Excise & Service Tax, Noida)

M/s H K Enterprises, **Appellant**

Vs.

C E & ST – Noida-II **Respondent**

Appearance:

Shri Savrabh Kapoor for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/07/2018
Date of Decision : 23/07/2018

FINAL ORDER NO.71597/2018

Per: Ashok Jindal

The appellant is in appeal, challenging on the redemption fine and penalty imposed upon them.

2. The facts of the case are that the appellant imported one consignment of Aluminium Scrap declaring the same as Aluminium Scrap by classifying under CTH No. 76020010. The consignment was examined by the Chartered Engineer and it was found to be mixture of various types of Aluminium Scrap namely 'Tread', 'Taste',

and 'Troma/Trump'. On the basis of that Chartered Engineer's report it was held that appellant has undervalued the goods, consequently differential duty was demanded and redemption fine and penalty was imposed. Against the said order the appellant is before us.

3. The Learned counsel fairly concedes on the valuation aspects on the ground that as on the duty paid by the appellant, Cenvat Credit has been taken, therefore, they are not disputing the valuation aspect, but he submits that as they have declared the goods imported as Aluminium Scrap. In that circumstances, there is no mis-declaration of the goods, consequently, redemption fine and penalty are not imposable.

4. On the other hand Learned A.R. for Revenue reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. On careful consideration of the submissions made by both the sides we find that the department has rejected the transaction value on the basis of the Chartered Engineer's report, who admits that the goods imported by appellant are only scrap but scrap was in the kind of 'Tread', 'Taste', and 'Troma/Trump' etc. and

on that basis valuation of the goods have been arrived on the basis of contemporaneous import. As nothing has been brought on record, how the examination was done by the Chartered Engineer to find out how much is the quantity of 'Tread', 'Taste' and 'Troma/Trump' are not scrap. In that circumstances the findings of the Chartered Engineer with regard to the valuation of the goods is not acceptable in the absence of any market survey. Therefore, we hold that redemption fine and penalty is not imposable upon the appellant. As valuation aspect has not been disputed by the appellant on technical grounds, the demand of duty is confirmed.

7. With these terms, we set aside the impugned order qua imposing redemption fine and penalty on the appellant. Accordingly, the appeal is disposed off.

(Pronounced and Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Ashok Jindal)**
Member (Technical)	**Member (Judicial)**

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