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

APPEAL No. C/50782/2015-CU[DB]

(Arising out of Order-in-Original No.20/CUS/COMMR./NOIDA/2014-15 dated 27/11/2014 passed by Commissioner of Customs, Noida)

M/s Vipan & Company — **Appellant**

Vs.

Commissioner of Customs, Noida — **Respondent**

Appearance:

Shri Mohd. Faraz Anees (Advocate) — for Appellant
Shri Pawan Kumar Singh (Supdt.) AR — for Respondent

CORAM:

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

Date of Hearing : 17/07/2018
Date of Decision : 17/07/2018

FINAL ORDER NO. - **71657/2018**

Per: Anil G. Shakkarwar

The present appeal is arising out Order-in-Original No.20/CUS/COMMR./NOIDA/2014-15 dated 27/11/2014 passed by Commissioner of Customs, Noida.

2. Brief facts of the case are that the appellant filed a Bill of Entry on 16/10/2014 with ICD, Loni and declared the goods imported as Heavy Melting Scrap. The goods were 100% examined and the examination revealed that

there was excess weight to the extent of 64.405 MT and that in the imported goods described as Heavy Melting Scrap some re-rollable material was found which was around 10% of total weight. Therefore proceedings were initiated against the appellant. The appellant had declared the assessable value of Rs.43,40,326/-. The same was re-determined in view of 10% of re-rollable scrap and other considerations to Rs.62,13,169/- and the imported scrap was confiscated and redemption fine of Rs.7 lakhs were imposed. Further penalty of Rs.2 lakhs was imposed on the appellant. The said proceedings were ordered through impugned Order-in-Original dated 27/11/2014. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the Learned counsel for the appellant. He has submitted that appellant had booked for import of Heavy Melting Scrap, the invoices also describe the goods as Heavy Melting Scrap. The same description was stated in the packing list and in the bill of lading. On examination, in the opinion of Customs Officer 10% scrap was alleged by Revenue to be as re-rollable. He further submitted that there was no expert opinion obtained by Revenue and on the basis of opinion of said officers the value was enhanced and allegations of mis-declarations were

upheld by the Original Authority. He has relied on Final Order passed by this Tribunal in the case of Vardhaman Tradelink Pvt. Ltd. Vs. Commissioner of Customs, Jamnagar reported at 2009 (236) E.L.T. 72 (Tri.-Ahmd.) and Kuber Casting Pvt. Ltd. Vs. Commissioner of Customs, Amritsar reported at 2016 (339) E.L.T. 264 (Tri.-Chan.). He has further submitted that Revenue has not rejected the transaction value and also not established that the invoices which were submitted along with the said Bill of Entry were not admissible documents. Further, Revenue also did not reach its decision on the basis of any evidence to establish that consideration in excess of the amounts stated in the said invoices was paid by the appellant to the foreign entity from whom they had purchased the scrap. He further submitted that whatever has been considered as re-rollable by the said appraisal is Heavy Melting Scrap in the country from where the goods were imported.

4. Heard the learned A.R. for Revenue who has supported the impugned order.

5. Having considered the rival contentions and on perusal of record, we find that the arguments put forth by the counsel for the appellant are sustainable.

Therefore, we find that there is no mis-declaration on the part of the appellant since declarations made by him in the Bill of Entry were as per the information available in the invoices, packing list and bill of lading. Further no expert opinion was obtained by Revenue. Therefore, relying on the above stated Final Order of this Tribunal, we hold that the impugned order is not sustainable. We, therefore, restore the declarations made by the appellant in the said Bill of Entry dated 16/10/2014. In above manner appeal is allowed.

(Dictated & Pronounced in Court)

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

Lks