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

APPEAL No.C/250/2012-CU[DB]

(Arising out of Order-in-Appeal No. 54-Cus/APPL/GZB/2012 dated 30/03/2012 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Sanjivani Non Ferrous Trading Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, Ghaziabad **Respondent**

<u>Appearance:</u>

Ms Stuti Saggi, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

<u>CORAM:</u>

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-**71665 / 2018**

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. 54-Cus/APPL/GZB/2012 dated 30/03/2012 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad.

2. The brief facts of the case are that the appellants imported "Alumunium Scrap" and filed Bill of Entry No.007111 dated 23.09.2011 at ICD, Loni. The Original

Authority held that there has been mis-declaration in the description of the goods and imported goods required specific import license and therefore, confiscated the goods and also enhanced value of the goods for the purpose of assessment of Customs duty. For better appreciation "Discussions & Findings" and "Order" recorded by the Original Authority are reproduced below:-

DISCUSSION & FINDINGS

> *I have carefully considered the facts as recorded and party's letter I find that the party has declared the imported goods for clearance of 21.898 Mts. as 'Aluminium Scrap Taint Tabor' and 'Aluminium Scrap Talk' where as on examination the 'Aluminium Scrap Taint Tabor ws found to the extent of 16.070MTs and Aluminium Radiator Scrap without copper tubing was found to the extent of 5.830 MTs. Thus, the party has mis-declared the goods imported by them and hence have violated the provision of the Customs Act, 1962. Further, it has been found that the value declared by the importer is on lower side as compared to NIDB data and the invoice value is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported Goods) Rules, 2007 and the same has been redetermined under Rule 9 method i.e. Residual method after following Rule 4 to 8 sequentially by the Appraising officer to USD 1863 PMTs. The value of Aluminium Radiator Scrap is found fair as per NIDB data by the Appraising officer. Accordingly, the assessable value collectively for both the items is enhanced to Rs.19,11,011/- by the Appraising Officer instead of Rs.18,49,553/- as declared by the importer.*

Furthermore, the importer has mis-declared the classification of goods under CTH 76020010 but the goods Aluminium Radiator Scrap without cover tubing i.e. "TALLY" is properly classifiable under CTH 76020090 and require specific import license from DGFT. The importer failed to produce the required import license. Moreover, for the remaining goods i.e. Taint Tabor there has been a misdeclaration of the quantity imported which was actually found to be 16.07 MT while it was declared as 10.73MT. I find that the party has waived the requirement of SCN and they do not want any personal hearing in the matter. Thus, I find that the importer has mis-declared the goods and are liable for confiscation under Section 111 (d), 111 (l) & 111 (m) of the Act and for doing so, the party is liable for penalty under Section 112 of the Act, ibid. Under the circumstances, I pass the following order:-

ORDER

(I) I confiscate the goods imported vide Bill of Entry No.007111 dated 23.09.2011 under Section 111 (d), 111 (l) & 111 (m) of the Customs Act, 1962. However, I give an option to pay fine of Rs.3,00,000/- in lieu of confiscation and redeem the said goods under Section 125 of the Act.

(II) I also impose a penalty of Rs.1,00,000/- (Rupees One Lac only) under Section 112 of the Act ibid."

Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals) which was decided through impugned Order-in-Appeal wherein the learned Commissioner (Appeals) did not interfere with the above stated findings of the Original Authority. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for appellant. She has submitted that in Customs Tariff, Heading 7602 deals with “Aluminium Waste and Scrap” and that Sub-heading 76020010 covers “Aluminium Scrap as per ISRI Code” whereas Sub-heading 76020090 covers “Other Waste and Scrap”. She has further submitted that as per 1997 ISRI Specification, “Aluminium Scrap Radiators” was covered by ISRI Code word “Talk” and the same is covered by Sub-heading No.76020010 of the Customs Tariff. ISRI specifications have undergone some changes in 2011. However, The Customs Tariff was not aligned with the reversed ISRI specifications. She has further submitted that all the goods imported by the appellant were classifiable under ISRI specifications of 1997 and the same were falling under Sub-heading 760020010. As a result, there has been no mis-declaration. She has further submitted that the value was enhanced by assessing officer without following the procedure laid down by Customs Act, 1962. She has further submitted that it was held by this Tribunal in assessee’s own case decided through Final Order No.70132-70137/2017 dated 17.01.2017 that before enhancing the assessable value, revenue has to first establish that the price is not the sole

consideration and such exercise was not carried out in the present case. Therefore, impugned order is not sustainable.

4. Heard the learned A.R. for revenue who has submitted that the enhancement in the value was on the basis of NIDB data.

5. Having considered the rival contentions, we find that the submissions by learned Counsel for appellant as recorded hereinabove are tenable in law. We, therefore, accept the same and set aside the impugned order and allow the appeal. Appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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