

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

C/51758/2015-CU[DB]

(Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/286-287/14-15 dated 23.12.2014 passed by Commissioner(Appeals) of Customs, Central Excise & Service Tax, Meerut-II, Noida.)

M/s. Vardhaman Sales Agency

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Jitin Singhal (Advocate) & Shri Pravesh Bahuguna (Advocate) for the Appellant (s)

Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 03.08.2018

FINAL ORDER NO.71920/3028

Per Mrs.Archana Wadhwa :

After hearing both sides we find that the appellant imported a consignment of Zinc scrap classified as "Scope" as per ISRI and filed a Bill of Entry dated 18.09.2013 declaring the goods as scrap and the value of the same as USD 1527 per MT based upon the documents

issued by the foreign supplier. Pre-shipment inspection certificate as also Bill of Lading were also filed.

2. Revenue undertook the physical examination of the consignment by the Chartered Engineer and found that the same contained assorted belt buckles having spoiled polish due to saline/contaminated water. Accordingly a view was entertained that the appellants have imported goods which can be sold for metal attracting higher value as also the higher rate of duty. Accordingly proceedings were initiated against them proposing to enhance the value of the goods. The same was enhanced by the adjudicating authority to USD 2040 PER M.T. Further the goods were also confiscated with an option to the appellant to redeem the same on payment of redemption fine of Rs.3.00 Lakhs and penalty of Rs.60,000/- was imposed under section 112 of the Customs Act. The said order of the original adjudicating authority was upheld by Commissioner(Appeals) and hence the present appeal.

3. The appellant's contention is that the buckles found by the officers were not of prime quality and the same were in the nature of scrap. The belt buckles were imported for the zinc content and as such were classified under heading 79020010 which includes "Zinc scrap ISRI code scope". The same were described as scrap based upon the invoice issued by the foreign supplier and the value was declared on the basis of import documents. The entire allegation is based upon the visual examination of chartered engineer, who cannot be held to be experts in the field. They had also made a request to mutilate the goods if the customs officers are not satisfied about the same being

scrap. The enhancement of the value were also held as not justifiable inasmuch as there was no evidence to show that any extra payments were made to the foreign supplier.

4. Though the Id.Advocate has drawn our attention to various precedent decisions of the Tribunal, but we find that an identical case of the same assessee was dealt by the Tribunal in the case of Vardhaman Sales Agency and vide its Final Order No.70439-70440/2018 dated 10.01.1018, the charges of mis-declaration and the consequent enhancement of value were set aside by observing as under:-

"Having considered the rival contentions and perusal of records we find that the submissions made by the Id.Counsel for appellant are reflected in the Order-in-Original to the extent that the description of the goods declared in the Bills of entry were as per the documents received from the foreign supplier and therefore in so far as declarations are concerned we do not find any intention of the appellant to mis-declare the goods for the reason that the appellant under-took to mutilate the goods which were objected to be of prime nature of Revenue. We further find that this Tribunal in the case of Sanjivani Non-Ferrous Trading Pvt.Ltd. has held that it was provided under section 14 of Customs Act that the assessable value has to be arrived at on the basis of price which is actually paid and in a case the price is not sold consideration and if the buyers and sellers are related person then after establishing that the price is not sole consideration, the transaction value can be rejected and taking other evidences into consideration, the assessable value can be arrived at. We do not find any such exercise being undertaken in the present case for enhancement of value. We therefore set aside the impugned order and restore the description and value declared in the said two Bills of Entry. The appellant shall be entitled for consequential relief."

5. Inasmuch as the issue stands decided in the same assessee's case we find no merits in the impugned order and by following the above referred decision, we set aside the same and allow the appeal with consequential relief to the appellant.

(Operative part of the order was pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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