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

APPEAL No. C/50881/2015-CU[DB]

(Arising out of Order-in-Original No.19/CUS/COMMR./NOIDA/2014-15 dated 27/11/2014 passed by Commissioner of Customs, Noida)

M/s Ramesh & Company **Appellant**

Vs.

Commissioner of Customs, Noida **Respondent**

Appearance:

Shri Mohd. Faraz Anees (Advocate) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 03/08/2018
Date of Decision : 03/08/2018

FINAL ORDER NO. - **72068/2018**

Per: Archana Wadhwa

After hearing both the sides, we find that the appellant imported Heavy Melting Scrap and filed two Bill of Entries at the declared value as per the purchase invoice. On examination Revenue found that the consignment contained re-rollable scrap also which is to the extent of around 30%. Further out of the total weight of around 35.635 MT.

2. Based upon the above fact that the consignment was partially found to contain re-rollable material, Revenue proceeded to enhance the value of the same by adopting the NIDB data for re-rollable scrap. The proceedings were initiated against them resulting in passing of the present impugned order, enhancing the value, confirming the differential duty, confiscating goods as also imposing penalties.

3. After hearing both the sides, we find that allegations and findings that the consignment partially consisted re-rollable scrap are based upon the visual examination of the goods by the Customs Officer himself and there is virtually no evidence of any expert person to establish it beyond doubt that the goods were not Heavy Melting Scrap but re-rollable scrap. The appellant have explained that so called re-rollable scrap was old used and defective materials which were imported for the purposes of utilization in furnace, as Heavy Melting Scrap. We, further note that the value was enhanced by referring to NIDB data on which has been held to be not in accordance with law, by umpteen number of decisions of the Tribunal. As such, we find no justification for enhancement of the value of the goods.

4. Further we find that there was mis-declaration as regards the quantity of the material. The excess quantum is almost one third (1/3) of the total weight of the goods declared by the assessee, thus calling for their confiscation and imposition of penalty upon the appellant. We make it clear that the said excess goods would be cleared by the appellant on payment of duty leviable thereon by adopting the declared value.

5. As regards the redemption fine and penalty imposed upon the appellant, we find that Commissioner has confiscated the entire consignment on the findings of under valuation with an option to the appellant to redeem the same on payment of redemption fine of Rs.4 lakhs as has imposed penalty of Rs.2 lakhs. Inasmuch as we have extended the benefit of valuation and has upheld confiscation of only the excess found goods, we reduce the redemption fine to Rs.1 lakh and penalty to Rs.50,000/-. Appeal is partially allowed in above terms.

(Dictated & Pronounced in Court)

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

Lks