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

APPEAL Nos.C/56677 & 57564/2013-CU[DB]

(Arising out of Order-in-Original No.02/Comm./Cus/2013 dated 03/01/2013 passed by Commissioner of Central Excise & Customs, Noida)

[IN APPEAL No.C/56677/2013]

M/s Mega Steels Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, C.E. & S.T., Noida **Respondent**

[IN APPEAL No.C/57564/2013]

Commissioner of Customs, C.E. & S.T., Noida **Appellant**

Vs.

M/s Mega Steels Pvt. Ltd. **Respondent**

Appearance:

Shri Jatin Mahajan, Advocate for Assessee
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Revenue

CORAM:

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

Date of Hearing : 25/07/2018
Date of Decision : 25/07/2018

FINAL ORDER NOs-**72120-72121 / 2018**

Per: Anil G. Shakkarwar

The above stated two appeals are taken up together for decision since they are arising out of a common impugned Order-in-Original No.02/Comm./Cus/2013 dated 03/01/2013 passed by Commissioner of Central

Excise & Customs, Noida. Appeal No.C/56677/2013 is filed by the importer M/s Mega Steels Pvt. Ltd. & Appeal No.C/57564/2013 is filed by revenue.

2. The brief facts of the case are that the importer imported Heavy Melting Scrap and filed Bill of Entry No.8653120 dated 03.12.2012 for clearance of said goods weighing 268.18MT. The importer submitted Bill of Leading and Pre-shipment Inspection Certificate along with the said Bill of Entry. On the physical examination it appeared to the officer that the imported consignment was also having goods in the form of Sheets, Plates and Strips of various sizes with each items edge cut with electric welding machine and some of them were also partially rusted. It appeared to revenue that the goods were of prime quality and therefore, through the impugned order the imported goods were confiscated with an option to redeem the same on payment of redemption fine of Rs.4 lakhs and the classification was changed to Chapter Sub-heading No.7208 and 7209 and self assist duty of Rs.11,12,291/- was revised to Rs.20,94,741/-. Further, fine of Rs. One lakh was imposed. Aggrieved by the said order importer is before this Tribunal through Appeal No.C/56677/2013. Aggrieved by the said order revenue is also before this Tribunal. The contention of revenue is that the order

passed by the original authority is cryptic in respect of valuation and therefore the mater needs to be remanded to the original authority for re-determination of value. The argument forwarded by revenue is that since the classification was changed the value should have been enhanced.

3. Head the learned Counsel for importer. He has submitted that there was no mis-declaration since the goods imported were Heavy Melting Scrap and revenue did not obtain any expert opinion in respect of such part of the consignment which was described by revenue as prime material. He has further submitted that it was submitted before the original authority that imported goods would be consumed as such for melting and manufacture of various items and such contention was categorically accepted by the original authority through the impugned order. He has submitted that when it was accepted that the goods were to be consumed for melting there was no reason that the part of consignment was not treated as heavy welding scrap. He has further submitted that the said goods were treated as heavy melting scrap in the country of export and it was certified to be heavy melting scrap through the pre-shipment inspection certificate. He has further submitted that the Original authority's decision to change the

classification of consignment from 72044900 to 7208 and 7209 is without any basis and reason, therefore the impugned order is not sustainable.

4. Heard the learned A.R. for revenue who has submitted that revenue has contested the valuation aspect and prayed for remanding the matter to the Original authority for redetermination of value.

5. Having considered the rival contentions and on perusal of records, we find that the goods imported were referred to as Heavy Melting Scrap in the country of export. Further, the Pre-shipment Inspection Certificate also was to the same effect. We have also noted that the learned Original authority has accepted that the imported goods were for the purpose of melting and therefore, we do not find his decision to alter the classification claimed by the appellant to be sustainable. Once it is held that classification was not to be altered then the question of redetermination of value did not arise. We therefore, reject the appeal filed by revenue. Further, we do not find any merit in change in the classification and as a result change in the rate of duty. We, therefore, restore the classification, rate of duty and duty payable as per the self assessment and set aside the impugned order.

6. In above terms, the appeal filed by the importer is allowed and appeal filed by revenue is dismissed.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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