IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

C/519/2011-CU[DB]

(Arising out of Order-in-Appeal No.108-CUS/APPL/NOIDA/11 dated 31.05.2011 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Noida.)

M/s. R.K.G. International Pvt.Ltd.
…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida
RESPONDENT (S)

APPEARANCE

To Decide on Merits for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING : 12.11.2018
DATE OF DECISION : 20.11.2018

<u>FINAL ORDER NO.72660/2018</u>

Per Mrs.Archana Wadhwa :

The appellants have made a request to decide the appeal on merits. Accordingly we have gone through the impugned order and have heard the ld.A.R. for the Revenue.

2. As per facts on record, the appellants filed a Bill of Entry declaring the consignment as consisting of heavy melting steel scrap falling under chapter heading 72044900. The said consignment was imported by them from Dubai under the cover of an invoice. The appellants produced all the documents i.e. the invoices issued by the

foreign supplier as also Bill of Lading and the pre-shipment inspection certificate describing the goods as heavy melting steel scrap. The said goods are taken up for examination by the Customs officers and it was found that inasmuch as the scrap in question consisted steel strips/plates of more than 5 ft. length, the description given by the importer cannot be accepted. As per the examination report of the Asstt.Commissioner(Shed), the consignment was in the form of used strips of varying length and thickness in the form of 'cut pieces', 'cutting of breakage' and 'bearing' of the used strip and was not having melting steel scrap. As such Revenue entertained a view that inasmuch as the goods were mis-declared, the value of the same cannot be accepted.

Accordingly proceedings were initiated against them by way of issuance of a show cause notice proposing to confiscate the same, to enhance the value and to impose penalty upon the importer. The said proceedings resulted in an order passed by the Additional Commissioner confirming the allegations against the appellant and enhancing the value of the consignment by referring to NIDB data. The goods were also confiscated with redemption fine of Rs.3.00 Lakhs and penalty of Rs.1.00 Lakh was imposed upon the appellant in terms of 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. We find that the goods stands described in all the import documents including the invoice of the foreign supplier as heavy

melting scrap. The appellants have also produced inspection agency certificate indicating that the declarations made by the exporter were true and correct. The entire case of the Revenue is based upon the visual examination of the goods by the Customs officers themselves and not on the basis of any expert's opinion. It is also seen that during the course of adjudication, the appellants referred to the Hon'ble Supreme Court's decision in the case of M/s.Tata Iron & Steel Co. Ltd. v. C.C.E. [1994 (1) SCC 323], wherein it was observed that ISRI has issued guidelines for Ferro Scrap F.S. 2007 which set out the specification for heavy melting steel scrap into different grades, sizes mentioned in different grades, sizes mentioned in these guidelines for different grades are not sacrosanct. It expressly provides that any deviation from the general classification of iron scrap may be consummated by mutual agreement between buyer and seller. The original adjudicating authority observed that "I agree with the same and give benefit to the inspection agency and accept their submission that the goods though are outside the sizes prescribed for HMS in ISRI, but since the goods were agreed between buyer and supplier as HMS, the inspection agency confirmed the same as per the international standard. As the goods were otherwise scrap, but for the sizes prescribed for HMS, the assessment of goods deviation from grading specified in ISRI, but if the melting scrap cannot be used for any other purpose and can be charged into furnace for melting should be classified as melting scrap. However, the said decision has not been accepted by the adjudicating authority on the ground that the importer has not established that the goods in question cannot be used for any other purposes.

4. We note that the goods imported have been agreed upon between the appellant and the seller as that of being melting scrap. All the requisite documents reveal the goods as that of being melting scrap. An identical question was considered by this Bench in the case of Vardhman Sales Agency and vide final order No.70439-70440/2018 dated 10.01.2018 it was observed that as long as the goods stand described in the import documents as scrap, there can be no charge for the mis-declaration based upon the visual examination of the goods and the findings of under-valuation arrived on the said ground itself cannot be upheld. For arriving at the above finding, the Tribunal referred to the earlier decision in the case of Sanjibani Non-Ferrous Trading Pvt.Ltd. v. Commissioner of Central Excise & Service Tax, Noida[2017 (7) GSTL 82 (Tri.-All.)]. Inasmuch as there is no evidence of any excess payment to foreign suppliers we find no merits in the above stand of the Revenue. Accordingly the impugned orders are set aside and appeal is allowed with consequential relief.

(Pronounced in the open Court on 20.11.2018.)

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

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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