CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal No. 70201 of 2016-[DB]

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-0149-15-16 dated 16/11/2015 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Jainik Enterprises Pvt. Ltd. **.....Appellant**

(39/101-A, Bhagwati Building,

Community Centre, Wazirpur Delhi-110052)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Noida-II)

APPEARANCE:

Absent on call, for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71570 / 2019

DATE OF HEARING : 26 June, 2019
DATE OF PRONOUNCEMENT : 20 August, 2019

PER: ARCHANA WADHWA

Nobody appeared for the appellant. Accordingly, we have heard learned Authorised Representative appearing for revenue and have gone through the impugned orders.

2. As per facts on record the appellant filed a Bill of Entry dated 26.07.2011 for clearance of the goods declared as

Aluminium Scrap 'Throb'. Based upon an intelligence that the appellant was trying to import 'Aluminium Alloy Ingots' in the garb of 'Aluminium Scrap 'Throb'', Revenue conducted searches at the appellant's premises and resumed various documents. On 100% physical examination of the goods conducted by DRI officers, Revenue entertained a view that the goods were 'Aluminium Alloy Ingots' and not 'Aluminium Scrap'. Accordingly, representative samples were drawn and sent for analysis to the Central Revenue Control Laboratory, who vide their report indicated that the samples were in the form of Aluminium Metallic Ingots with the dominance of aluminium.

3. Based upon the above, proceedings were initiated against the appellant for confirmation of demand of duty of Rs.1,40,728/- along with confirmation of interest and imposition of penalties. The same resulted in passing of present impugned order by the Original Adjudicating Authority and the same is upheld by Commissioner (Appeals). Hence the present appeal.

4. The appellant have taken a categorical stand that the goods were in the question, declared as Aluminium Scrap- "Throb" as defined by ISRI guidelines. Reliance upon the test reports is not indicative of the fact that the same were Aluminium Alloy Ingots, inasmuch as the said report only reflects on the high percentage of Aluminium. We note that the goods stands described in the export invoice as aluminium scrap and as per the definition of aluminium scrap, the goods should be remelted into some shapes for the convenience of shippings.

Merely because the high aluminium contents have been found in the goods, the same will not convert the scrap into the aluminium ingots. We find no reasons to uphold the impugned orders in view of the facts that the goods stands described in the various import documents as “Aluminium Scrap ‘Throb’” and there is no evidence to rebut the said description given by the exporter.

4. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in open court on- 20 August, 2019)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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