**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**ALLAHABAD**

REGIONAL BENCH – COURT NO.I

**Customs Appeal No.71347 of 2018**

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-1588-17-18 dated 29/12/2017 passed by Commissioner of Central Tax (Appeals), Noida)

**M/s Derby Overseas** **.....Appellant**

(D-1, Ist Floor, Shubham Enclave,
Paschim Vihar, New Delhi)

*VERSUS*

**The Principal Commissioner, Noida** **.....Respondent**

(C-56/42, Sector 62, Noida, U.P.)

**APPEARANCE:**

Shri Rishabh Kapoor, Advocate for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

**CORAM :**
**Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)**

DATE OF HEARING : 13 September, 2019
DATE OF DECISION : 13 September, 2019

**FINAL ORDER NO. 71801/2019**

**PER: ARCHANA WADHWA**

After hearing both the sides duly represented by learned counsel Shri Rishabh Kapoor appearing on behalf of the appellant and learned A.R. Shri Shiv Pratap Singh appearing on behalf of the respondent. I find that the appellant imported "Shredded Stainless Steel Scrap Grade 304". On examination of the same, custom officers has entertained a belief that the same case is not as per the declaration made by the appellant and there was mis-declaration to the extent that Aluminum Scrap was also found mixed in the said scrap. Accordingly, proceedings were initiated against them culminating into an order passed by the Original Adjudicating Authority upholding the charge of mis-declaration of description, quantity and classification of the goods. Accordingly, the confiscation was ordered with an option to the appellant to redeem the same on payment of redemption fine of Rs.6,05,000/-(six lakhs five thousand) only. In addition penalty of Rs.2,00,000/- (two lakhs) was imposed upon the appellant under section 112 of the Custom Act, 1962. The said order of Original Adjudicating Authority was appealed against by the appellant before Commissioner (Appeals).

2. During the pendency of the appeal before Commissioner (Appeals), the scheme called Indirect Tax Dispute Resolution Scheme, 2016 was floated by the Government of India. The appellant filed a declaration under the said scheme on 28.10.2016 depositing the entire demand of tax alongwith 25% of penalty imposed upon them. In terms of the provisions of sub-section 4 of section 214 of the Finance Act, 2016, a discharge certificate was issued by the designated authority accepting the payment from the declarant as full and final settlement of the amounts due from the declarant in terms of the Order-In-Original No.17/JC/CUS/ICD-Loni/2015-16 dated 19.02.2016. Further, immunity was granted from all proceedings under the Act. When the appeal filed before Commissioner (Appeals) came for disposal, the above facts were brought to his notice. However, the appellate authority observed that inasmuch as the appeal was filed before him on 03.03.2016, the same was not covered by the Indirect Tax Dispute Resolution Scheme inasmuch as the same was applicable only in respect of appeals pending before Commissioner (Appeals) as on 01.03.2016, in terms of Section 213 (g) of the Finance Act, 2016. Accordingly he

proceeded to decide the appeal on merits and rejected the same. Hence the present appeal.

3. After careful consideration of the submissions made by both sides I find that there is no dispute that the appellant filed a declaration before the authorized officer in terms of the Indirect Tax Dispute Resolution Scheme, 2016. In terms of the provisions of Section 214, an assessee is required to make a declaration before the designated authority. The said declaration has to be acknowledged and in terms of sub-section 4 of the said section, on receipt of proof of payment of tax interest and penalty under sub-section 3, the designated authority would pass an order of discharge of dues referred to in sub-section 3. The said sub-section 3 requires payment of penalty equivalent to 25% of penalty imposed upon in the impugned order. In terms of Section 216, upon passing of an order under sub-section 214(4), the appeal pending before Commissioner (Appeals) shall stand disposed of and the declarant shall get immunity from all proceedings under the Act.

4. Undisputedly the discharge certificate stands passed by the designated authority. The said certificate has not been accepted by Commissioner (Appeals) on the sole ground that the matter was not covered under the said scheme, inasmuch as the appeal was filed before him on 03.03.2016. However, I find that the discharge certificate having been given by the designated authority in terms of the said scheme cannot be questioned by Commissioner (Appeals) on the ground that the same stands wrongly issued. Rightly or wrongly, wherever the discharge certificate stands issued in terms of the said scheme, the same was binding on all the authorities including Commissioner (Appeals). In terms of section 216 of the

scheme, the appeal pending before Commissioner (Appeals) was to be disposed of accordingly and the Commissioner (Appeals) was not justified in finding fault with the order of the designated authority and not accepting the same and proceeding to decide the appeal on merits.

5. Having said so, I set aside the impugned order of Commissioner (Appeals) and direct the Original Adjudicating Authority to give consequential relief to the appellant in terms of the discharge certificate given by the designated authority. The appeal is disposed of in above terms.

(Dictated and Pronounced in open Court)

**Sd/-**
**(Archana Wadhwa)**
**Member (Judicial)**

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