REGISTERED / AD

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD**

Dated: 01/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70075/2015 dated 29/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

**Asstt. Registrar**

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| | C/55660/2014 | BINDAL ENTERPRISES<br>14, ANSAL PLAZA C.S.C<br>BLOCK-AL, SHALIMAR BAGH<br>DELHI-110088 |

| | |
|---|---|
| Name and Address of Respondent | CCE NOIDA<br>C-56/42, SECTOR-62<br>NOIDA(UP) |

Other Appellants and Respondents as per Annexure

**Copy To**

3Advocate(s) / Consultant(s): SH A.K.MISHRA,ADV
B-261, NORTH EX MALL
SECTOR-9, ROHINI
DELHI-110085

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

**Asstt. Registrar**
**Regional Bench, Allahabad**

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**REGIONAL BENCH : ALLAHABAD**

**Cus. Appeal No.55660/14**

Arising out of OIO No.03-Commissioner/Cus/2014 dated 15.09.2014 passed by Commr. of Customs, Noida.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes.
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes.

M/s Bindal Enterprises ...APPELLANT(S)

VERSUS

Commissioner of Customs, Noida RESPONDENT (S)

APPEARANCE

Shri Abhas Mishra, Adv. for the Appellant (s)
Shri Vikram Kaushik, A.C. (A.R.) for the Department

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 29. 10. 2015

Final ORDER NO. 70075/2015

**Per Mr. Anil Choudhary :**

The Appellant, M/s Bindal Enterprises, is in Appeal against Order-in-Original No.03-Commissioner/Cus/2014 dated 15.09.2014 passed by Commr. of Customs, Noida.

2. Brief facts are that the appellant filed bill of entry No.6359944 dated 6/8/14 declaring the goods contained in 5 containers as C.R. Coils (non-alloy) having weight of 130.80 MTS. The goods were examined on first check basis and as per the examination report dated 20/8/14 it was found that the coils have been pasted with paper slips declaring the goods as galvanised coils and the same are classifiable under CETH 7210 4900 instead of the classification declared for CR coils - 720 99000. The total weight of the goods in 5 containers was found that 130.025 MTS, that is, short by 775 kgs.. The appellant accepted the examination report and stated that although they had placed order for CR coils (non-alloys) but it appears the shipper have wrongly dispatched galvanised coils. They also produced a letter dated 21/8/14 issued by the shipper-Indicca Group Limited stating that although the appellant had placed order for CR coils at the rate of 564 USD PMT but as they were out of stock of CR coils, they dispatched galvanized coils mentioning in the invoices as CR coils. Thus further certified that the rate of both the materials are similar. The revenue got the goods under import valued by chartered engineer who vide report dated 12/9/14 certified that the goods in question are galvanised coils and the present market value in India is approximately Rs. 50,00o MT.. It appeared to revenue that it is the case of misdeclaration. Further as the goods are prime and

manufactured goods, hence, NIDB data in respect of contemporaneous imports being available was adopted with reference to rule 4 and 5 of Customs Valuation Rules, 2007. The value on the basis of CIF on the date of bill of lading that is 4/7/14 at Rs. 655 USD/PMT as per NIDB was adopted and the value was worked out at Rs. ~~52, 00, 41~~ 52,00,410/- to against declared value of Rs. 46,58,457/-

2. Vide order dated 15/9/14 it was held that the transaction value as declared is not acceptable and valuation was adopted as per contemporaneous import data that is, NIDB data and accordingly the goods were revalued at Rs. 52,00,410/ and where held liable for confiscation under section 111 ~~M~~ (m) of the Customs act and also redeemable by paying redemption fine of Rs. 10.00 lakhs and further penalty of Rs.1.00 lakh was imposed under section 112 of the Act.

3. Being aggrieved the appellant is in appeal before this Tribunal. The ld. Counsel argues that the importer have given cogent explanation as regards the goods ordered to be imported and that were actually found on inspection. The variation is fully attributable to the shipper, as ~~are~~ has been admitted by the shipper in the clarificatory letter dated 21/8/14 which have not been found to be untrue. Moreover there is hardly any incentive for the importer to resort to misdeclaration as the differential duty, as finally assessed is only about 10%. Further the appellant have admitted the valuation and in this view of the matter there being no case of contumacious conduct, the redemption fine and penalty be set aside.

4. The ld.DR relies on the impugned order. He further states that it is normal trade practice and importers resort to such practices to save on the Customs duty. In this view of the matter the impugned order be upheld and appeal dismissed.

5. Having considered the rival contentions I find that the appellant have filed the bill of entry as per the documents, that is bill of lading, packing list, etc.. Further, the stand taken by the appellant that they had ordered for CR coils whereas the shipper, as the ordered goods were not available dispatched galvanised coils, have not been found to be untrue. Further in case there was some mischief or consensus between the shipper ~~in~~ and the importer, the paper slips found on the imported goods that the goods are galvanised coils would not ~~inform~~ be found. In this view of the matter I hold that th~~at~~ere is no case of deliberate misdeclaration in the facts and circumstances. Accordingly the appeal is allowed and the redemption fine and penalty are set aside. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

mm

प्रमाणित प्रति / Certified True Copy
Asstt. Registrar
38, M.G.