FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 05/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70628/2016-CU[DB] dated 05/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1 C/MISC/70388/2016	C/70737/2016	**Ratan Aluminium Recycling Pvt Ltd** B-1620,shastri Nagar DELHI DELHI
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP) JANGPURA ,
NEW DELHI-110014
I.P. EXTENSION, PATPARGANJ,
DELHI

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise, I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

<u>C/MISC/70388/2016</u>
<u>APPEAL No.C/70737/2016-CU[DB]</u>

(Arising out of Order C. No. VIII(30) Noida Cus/SIIB/Ratan/13/16/480 dated 27/05/2016 passed by Commissioner of Central Excise & Customs, Noida).

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
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

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M/s Ratan Aluminium Recycling Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Customs, Noida

...RESPONDENT (S)

APPEARANCE

Shri Priyadarshi Manish & Shri Rahul Ranjan, Advocates for the Appellant (s)
Shri Rajeev Ranjan, Jt. Commissioner, (A.R.) for the Department

CORAM:

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

<u>DATE OF HEARING & PRONUNCEMENT: 05.08.2016</u>

<u>FINAL ORDER NO. 70628/2016</u>

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपील अधिकरण
CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per Mr. Anil Choudhary :

The appellant, M/s Ratan Aluminium Recycling Pvt. Ltd., is in appeal against Order dated 27.05.2016, passed by the Commissioner of Customs, Noida.

2. Brief facts of the case are that the appellant is a manufacturer of Aluminium Ingots and for this purpose, they had imported Aluminium Dross. The appellant had filed Bill of entry No.4802294 dated 05.04.2016 and Bill of Entry No.4531709 dated 10.03.2016 on first check basis. Accordingly, by the filed documents i.e. Bill of lading and commercial invoice etc., the aluminium contents declared and/or quantities recoverable stated to be about 21%. The sample was drawn and the same was tested by the CRCL and as per the report dated 04.04.2016, stated that the samples are in the form of grayish porous metallic lumps of irregular shapes and sizes having oxidized surfaces. It is composed of aluminium and its oxides with small amount of iron, lead, silicone matter and water soluble salts. The quantity of aluminium has been estimated at 77.8%. This report was in respect of Bill of Entry No.4531709 dated 10.03.2016. In respect to the other Bill of Entry, it was reported by CRCL that the same contains about 58% aluminium, which is expected to be recoverable. Further, it is based on the said report, the valuation of the goods under import is proposed to be enhanced based on the quantity of aluminium recoverable. Further, we take notice that show cause notice dated 08.07.2016 has been

issued by the Commissioner of Customs, stating in para 8, as per the test report and other parameters, the expected recovery of almunium percentage in respect of Bill of entry No.4802294, is 54%, and in respect of Dross as per Bill of Entry No.4531709 is 71% and accordingly, the valuation has been proposed at Rs.86,96,951/- against the declared value of Rs.23,13,536/-, the aggregate value of the two Bills of Entries.

3. The appellant had, vide their letter dated 26.05.2016, prayed before the Ld. Commissioner, for release of their goods provisionally pending final adjudication on appropriate terms, offering to pay the duty on the imported goods. In response thereto, vide the communication dated 27.05.2016, provisional release is granted, subject to (i) the appellant has been asked to pay differential duty in full of Rs.24,88,606/-, (ii) furnishing and execution of Bond covering 100% of the re-determined value of the goods i.e. bond amounting to Rs.1,06,27,800/-, (iii) submission of Bank Guarantee for 30% of the value of the goods involved i.e. Rs.31,89,000/- and : (iv) furnishing of an undertaking that the appellant will co-operate with the Revenue during the investigation. The appellant, being aggrieved by this order of provisional release, has filed the present appeal on the grounds that the condition(s) imposed for release are very harsh and unconscionable. The learned counsel states that no Excise Duty is leviable on Almunium Dross which have been clarified by the CBEC in circular No.1027/15/2016-CX dated 25.04.2016,

wherein following the Rulings of the Hon'ble Supreme Court in M/s DSCL Sugar Ltd. [2015-TIOL-240-SC-CX] and the Hon'ble High Court of Bombay in M/s Hindalco Industries Pvt. Ltd. Vs. Union of India, it has been said that these goods being waste products, and not manufactured products, are not excisable to Excise Duty. Accordingly, the demand of CVD on the imported Dross is, *prima facie*, unsustainable. The learned Counsel further stated that out of the differential amount of duty Rs. 24,88,606/-, more than 50% is on account of CVD. Accordingly, the learned Counsel prays for appropriate modification and relief, of the provisional release order, before us.

4. Heard the learned A.R. for Revenue, who supports the order of provisional release.

5. Having carefully considered the rival contentions, we are satisfied that no CVD is prima facie leviable when no Excise Duty is leviable on Aluminium Dross. And the same have been clarified by the CBEC in the aforementioned circular dated 25.04.2016. Further, we find that in the show cause notice issued regarding the Bills of Entries under consideration, the value of the imported goods after enforcement have been proposed at Rs.86,96,951/-Accordingly, we are inclined to allow the appeal and the Misc. application, in the interest of justice.

6. We modify the provisional release order No.VIII(30) Noida/Cus/SIIB/Ratan/13/16/480 dated 27.05.2016 as follows: (i) The differential duty to be deposited by way of Revenue

deposited pending assessment of the Bills of the Entries, is modified at Rs.15 lakhs. (ii) So for execution of bond is concerned for 100% of re-determined value, we modify the value at Rs.86,96,951/-, the re-determined value as proposed by the Revenue in the SCN dated 08.07.2016. (iii) We waive off the condition of the bank guarantee and also waive the condition of filing any undertaking, as the show cause notice is already issued and served on the appellant.

6. Subject to the aforementioned conditions being fulfilled, we direct the Respondent-(Commissioner) and/or the Customs authorities to release the goods forthwith, within a period of 7 days from the date of filing of compliance, covered by Bill of Entry No.4802294 dated 05.04.2016 and Bill of Entry No.4531709 dated 10.03.2016.

7. Both the Misc. Application and appeal are disposed off as allowed.

Order be given Dasti,

(Dictated and pronounced in the open Court)

-Sd- -Sd-

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
5.8
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001