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

Dated: 06/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/71302/2017-CU[DB] dated 11/04/2017

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/502/2010	C.C.E, GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
		Name and Address of Respondent
2		R.K.G. INTERNATIONAL, Z-262, NARAINA, W.H.S, NEW DELHI. ,,

Copy To

3Advocate(s) / Consultant(s):

MS. STUTI SAGGI.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE
(ADJ. INCOME TAX OFFICE),
STANLEY ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy ~~17 Guard File~~

Asstt. Registrar

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH: ALLAHABAD

DIVISION BENCH

Appeal No. C/502/2010

Dated of Hearing/decision: 11.4.2017

[Arising out of Order-in-Appeal No. 77-Cus/ZB/2010 dated 21/5/2010 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad]

C.C.E.-Ghaziabad — Appellant

Vs.

R.K.G. International — Respondent

Appearance:
Present for the Appellant: Shri Pawan Kumar Singh (Supdt.) AR
Present for the Respondent: Ms. Stuti Saggi (Advocate)

Coram: Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order No. 71302/2017

Per: Anil Choudhary

Revenue is in appeal against the Order-in-Appeal No. 77-CUS/ZB/2010 dated 21/05/2010 which is set aside the order-in-original dated 02.2.2010.

2. The respondents had filed Bill of Entry No. 004661 dated 29.12.2009 declaring the goods as (i) 103.108 MT Heavy Melting Steel Scrap (ii) 155.910 MT Steel Slabs (Stock Lot Non Alloys). The main issues in the present appeal is

> "whether (i) the goods i.e. HMS Scrap as mentioned in the Bill of Entry was mis-declared and liable to be confiscated
>
> (ii) The other goods i.e. Steel Slabs were used for concealing the so called offending goods
>
> (iii) there was mis-declaration with regard to value of the good (imported goods)
>
> (iv) there was mis-declaration with regard to the weight of the goods, which was allegedly shown as less than the actual weight."

3. The Commissioner (Appeals) observed that the relevant invoices of the foreign supplier as well as the pre-shipment inspection certificate described the impugned goods as HMS and so do the high sea sale contract and the bill of lading. She noted that the respondents even requested for mutilation of goods, if the Revenue considered them to be usable as re-rolling scrap and that their request was rejected. She thus found no basis to sustain the impugned order with regard to allegation of mis-declaration of description. She also noted that value had been enhanced from Rs.39,44,446/- to Rs.45,77,361/- without giving any basis for doing so and found that too unsustainable. The first appellate authority thus set aside the order in original.

4. Revenue has contended that the examination of goods was conducted by the Inspector (Shed), Supdt. (Shed) and Deputy Commissioner (Shed) who clearly opined the goods declared as HMS to be re-rolling scrap as so-called HMS was found to be in the form of steel sheets 10 to 15 feet in length and such sheets can be clearly re-rolled and for such conclusion, no expert opinion was required.

Regarding enhancement of value, Revenue contended that they had used NIDB data for valuation. Revenue also stated that the respondents suggested manner of mutilation (by cutting the long pieces into smaller pieces) which shows that they knew that even after such mutilation, the goods could be re-rolled.

5. The respondents have stated that the Commissioner (Appeals) had discussed each and every argument in her order and the case is covered in their favour by the judgements in the case of **Vardhaman Tradelink Pvt. Ltd. Vs. CC. Jamnagar** - 2009 (236) ELT 72 (Tri.-Ahmd.) and **Dewan Steel Industries Vs. CC, Amritsar** - 2008 (226) ELT 722 (Tri.-Del.). They also cited the judgement in the case of **Midwest Granite Pvt. Ltd. Vs. CCE Hyderabad-I** - 2009 (233) ELT 133 (Tri.-Bang) and **Shriram Metals & Alloys Pvt. Ltd. Vs. CC. Chennai** - 2006 (200) ELT 274 (Tr.-Chennai), to support their contention that enhancement of value had no legal basis.

6. We have considered the submissions of both sides. We find that the original adjudicating authority held the goods to be re-rollable scrap based only on the opinion of custom authorities who examined the goods. No expert opinion was obtained. As against that, the Commissioner (Appeals) has based her findings on several documentary evidences as mentioned earlier, including the pre-shipment inspection certificate which clearly certified the goods to be heavy melting steel scrap. In a dispute involving Custom, the Revenue's argument that examination report by Customs officers should be accepted without any other supporting evidence, defies

even the most basic jurisprudential principles. It is also seen that in the discussion and finding portion of the primary order, there is not even a word about enhancing the value, leave alone basis for doing so. Thus enhancement of value is devoid of sustainability. In the case of Vardhman Tradelink Pvt. Ltd. (supra), CESTAT observed as under :

> **6.** The appellant have placed reliance upon the Tribunal's decision in the case of M/s. Antartic Industries Ltd. v. CC, Kandla [l999 (108) E.L.T. 496 (Tri.)] laying down that the contention of the importer that such goods may be serviceable in India but for the purposes of exporting countries they have to be regarded as scrap and the same should have been cleared on mutilation of the goods. We note that in the present case also if the Revenue authorities were entertaing any doubt about the part of the consignment being re-rollable scrap, they could have ordered clearance after mutilation. We further note that surprisingly after holding a part of the goods as re-rollable scrap, Commissioner has not enhanced the value, though he has observed in the same impugned order that value of the re-rollable scrap is higher. Similarly in the case of M/s. Global Shiptrade (P) Ltd. v. CC, Kandla [2002 (142) E.L.T. 152 (Tri.-Del.)], it was held that in the absence of any evidence produced by the Department to prove that a part of the goods being pipes were of serviceable nature, the same have to be treated as melting scrap only.
>
> **7.** The appellants have also relied upon the following evidences to show that the goods were contracted as heavy melting scrap and were actually supplied by the supplier as heavy melting scrap.
>
> (i) Bill of lading which shows the goods as HMS.
>
> (ii) Invoice of the foreign supplier, which shows the goods as HMS.

(iii) Pre-shipment inspection certificate which also shows the HMS.

(iv) High sea sale contract which also shows the HMS.

(v) Letters of Hardware Trading Corp. which whom the High Sea contract was executed, which also shows the HMS.

(vi) Invoice of M/s. Hardware Trading Corp., Mumbai.

As is clear from the above, the entire documentary evidences on record reflect upon the fact that the imported goods were nothing but heavy melting scrap and there being no expert opinion to conclude against the appellant, we extend the benefit to them and set aside the impugned order. Appeal is allowed with consequential relief to the appellant.

In the case of Dewan Steel Industries (supra) the denial of mutilation was held to be unsustainable.

7. In the light of the foregoing, we do not find any merit in Revenue's appeal and the same is therefore dismissed.

(Dictated and pronounced in the open Court).

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

(K. Gupta)

प्रमाणित प्रति/Certified True Copy
27/11/17
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