FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 25/10/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71276/2017-SM[BR] dated 23/10/2017

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/51972/2015	**Commissioner CUSTOMS Central EXCISE and SERVICE TAX-Noida** C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH 201307
		Name and Address of Respondent
2		Prateek Traders R-8/67, Raj Nagar,, GHAZIABAD ,U.P

Copy To
3Advocate(s) / Consultant(s):

STUTI SAGGI ,ADV. (AMICUS-CURIAE)
102,MAHALAXMI ENCLAVE,STANLEY ROAD,CIVIL LINE,ALLAHABAD,UTTAR PRADESH

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/51972/2015-CU[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APP/285/2014-15 dated 23/12/2014 passed by Commissioner of Customs, Central Excise & Service Tax, (Appeals), Meerut-II at Noida)

Commissioner of Customs, Noida Customs Commissionerate **Appellant**

Vs.

M/s Prateek Traders **Respondent**

Appearance:

Shri Sandeep Kumar Singh, Deputy Commissioner (AR) for Appellant
Mrs. Stuti Saggi, Advocate as Amicus-curiae, for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/10/2017
Date of Decision : 23/10/2017

FINAL ORDER NO. 71276/2017..........

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. NOI/EXCUS/000/APP/285/2014-15 dated 23/12/2014 passed by Commissioner of Customs, Central Excise & Service Tax, (Appeals), Meerut-II at Noida. The appeal is filed by Revenue.

2. Brief facts of the case are that the respondent filed bill of Entry bearing No.6914966 dated 24.05.2012 for

204.030 MT of Heavy Melting Scrap (HMS) classifying the imported goods under Chapter Heading No.72044900. The duty was assessed at Rs.8,55,923/- on 24.05.2012 and consignment was ordered for second check. The goods were physically examined by the Shed officers on 12.07.2012 in the presence of the CHA's representative. The containers were found stuffed with the declared goods in the front side of all the eight containers while in the rest of all the eight containers, the goods were not matching with the description as was indicated on the import documents and found stuffed with slag/black ore type material. Hench, representative samples were drawn in the presence of CHA's representative on 12.07.2012 for determining the nature and composition of the goods. The samples were sent to M/s Shri Ram Institute Industrial Research for testing. On the basis of composition, as per test certificate issued by M/s Shri ram Institute for Industrial Research, the percentage of Iron was found to be 6.26% only. Thus, the goods could not be categorized as per description mentioned in the B/E and were further classified as slag falling under Chapter 26 of the Customs Tariff Act, 1975. Further, the respondent, vide their letter dated 07.08.2012 submitted that personal hearing may be fixed at the earliest without issuing show cause notice as they had accepted oral show cause notice. Respondent was granted opportunity of personal hearing on 09.08.2012. Shri Sanjay Garg, Proprietor of M/s Prateek Traders & Shri Ankur Kumar, Director of M/s DVS Steel & Alloys (who sold the goods on high seas) appeared for hearing. They submitted that they had been cheated by the overseas supplier and requested for refund of duty already paid. They also expressed their inability for re-export of the goods which virtually had no commercial value. The respondent vide their letter dated 08.08.2012 submitted that order was for import of 204.03MT of HMS, however, on examination only 4 MT of the goods were found as HMS and the balance quantity was found to be slag. They further stated that the goods were supplied at the rate of USD 455/MT CIF and the value of the goods as per invoice of overseas supplier worked out to be Rs.50,78,336.70/- whereas, the value of the slag was nominal and the value could be around USD 10 per MT only, which was less than the freight involved. The importer requested for reduction in the value of the imported goods on the basis of data as they had received the goods having nominal value. Commissioner of Customs and Central Excise, Noida vide Order-in-Original No.06/Commr/Cus/2012 dated 14.08.2012 ordered for confiscation of the goods imported vide the said Bill of Entry dated 24.25.2012 under Section 111(d) and 111(m) of the Customs Act, 1962 and gave an option to redeem the goods on payment of redemption fine of Rs.10,00,000/- for re-export of the imported slag. The confiscated goods were however, allowed for home consumption on payment of redemption fine provided approval of MOEF for import of slag was produced and in such a situation goods found as per examination report i.e. 199.790 MT of slag from the manufacture of Iron & Steel was to be assessed at appropriate rate of dutty under Chaper Heading No.26190090. A penalty of Rs.1,00,000/- was also imposed on the respondent, which was deposited by the importer vide TR-6 Challan No.275 dated 29.08.2012. However, the respondent instead of exercising either of the option given by the adjudicating authority preferred to file a refund claim before the Assistant Commissioner (Customs), ICD, Dadri who while adjudicating the claim observed that the importer had not exercised any of the option given by the adjudicating authority. The Assistant Commissioner rejected the refund claim. Being aggrieved with the above said Order-in-Original dated 14.08.2012, respondent preferred appeal before the Commissioner

(Appeals). The learned Commissioner (Appeals) in his order dated 23.12.2014 observed that the claim of the appellant cannot be rejected treating it as premature simply of the ground that they did not exercise any of the option given by the Commissioner. Accordingly, Commissioner (Appeals) allowed the appeal with consequential relief subject to verification of the documents and compliance of the conditions as laid down under Section 23 and Section 26A of the Customs Act, 1962. Aggrieved by the said order passed by the learned Commissioner (Appeals), Revenue is before this Tribunal.

3. The grounds of Revenue appeal are as follows:-

"Order-in-Appeal No.NOI/EXCUS/000/APP/285/2014-15 dated 23.12.2014 does not appear to be proper and legal, on the law point. Refund claim of the party, in the instant case is subject to relinquishment of the title of imported goods. M/s Prateek Traders, Ghaziabad would be entitled to to refund of duty paid by them, if the same had been done by them as per relevant provisions of the Customs Act, 1962. This point had however, not been discussed in the impugned Order-In-Appeal.

Section 23(2) of the Customs Act, 1962 dealing with the relinquishment of the imported goods provides as under:-

"The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his

title to the goods and thereupon he shall not be liable to pay the duty thereon.

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

Thus, in terms of the above provision, the owner of imported goods may relinquish their title to the goods imported at any time before an order for clearance of goods for home consumption under Section 47 of the Act is made. It is further subject to conditions mentioned in proviso to this sub section. In the instant case, it appears that M/s Prateek Traders exercised the option to relinquish their title to the goods vide their letter dated 02.09.2012, i.e. well after the passing of the Order-in-Original dated 14.08.2012. It is further hit by the condition of the proviso of this sub section as an offence of mis-declaration in respect of the imported goods appears to have been committed by the party. The appellate authority had not discussed these facts in the impugned Order-in-Appeal."

4. Heard the learned A.R. who has presented the above stated grounds of appeal and also submitted a copy of report dated 28.09.2017 through which copy of the letter dated 02.09.2012 submitted by the respondent relinquishing the title of the goods, was claimed by the respondent.

5. Heard the learned Advocate Mrs. Stuti Saggi, Amicus-curie who has supported the impugned Order-in-Appeal.

6. Having considered the rival contentions and on perusal of the said letter dated 02.09.2012 filed by

respondent before the Customs Authorities, I am satisfied that as provided under Sub-section 2 of Section 23 of the Customs Act, 1962, the law did not allow respondent to relinquish his title to said goods since the said goods were found to be mis-declared. Further, the goods brought into were prohibited, since they did not have environmental clearance for importation of the same and, therefore, the goods had violated the provisions of Section 11 of Customs Act, 1962. Therefore, I accept the grounds of appeal submitted by Revenue. In view of 2nd proviso to Sub-section (1) of Section 26-A of the Customs Act, 1962, the said refund was not admissible to the respondent. Therefore, I do not find impugned Order-in-Appeal to be sustainable in law.

7. I, therefore, set aside the impugned Order-in-Appeal and allow the appeal filed by Revenue. I also appreciate the assistance provided by Mrs. Stuti Saggi, learned Advocate appointed as Amicus-curie.

(Dictated in Court)

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

प्रमाणित प्रति/Certified True Copy
07/11/17

akp

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