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

Dated: 11/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70876/2017-SM[BR] dated 01/09/2017

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/70736/2016	**Vardhman Sales Agency** 14/1,mathura Road FARIDABAD HARYANA 121003
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3 Advocate(s) / Consultant(s):

MOHIT SINGH
D-291,IIIrd
FLOOR,SARVODAYA
ENCLAVE,NEW DELHI-
110017

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, 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 Guard File

Asstt. Registrar

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

APPEAL No. C/70736/2016-CU[SM]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0355-15-16 dated 10/03/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II at Noida)

M/s Vardhaman Sales Agency	**Appellant**
Vs.	
Commissioner of Customs & Central Excise, Noida	**Respondent**

Appearance:

Shri Mohit Singh (Advocate)	for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR	for Respondent

CORAM:

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

Date of Hearing : 01/09/2017
Date of Decision : 01/09/2017

FINAL ORDER NO.- 70876/2017

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Appeal No. NOI-CUSTM-000-APP-0355-15-16 dated 10.03.2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut II at Noida.

2. Brief facts of the case are that appellant filed Bill of Entry No. 9623026 dated 19.06.2015 for import of Aluminium Scrap. The examination revealed that the imported consignment consisted Zinc Scrap and there was no

Aluminium Scrap in the consignment imported. The Original Authority confiscated the goods valued at Rs. 29,28,086.37/- for violation of Section 111(f), 111(l) and 111(m) of Customs Act, 1962 and gave option to redeem the goods on payment of redemption fine of Rs. 5 lacs and also imposed personal penalty of Rs. 1,50,000/- on the importer. Aggrieved by the said Order-in-Original dated 20.07.2015 appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) disposed the said appeal through impugned Order-in-Appeal dated 10.03.2016. Learned Commissioner (Appeals) has held that the appellant had submitted before him that the goods were mistakenly loaded by the supplier of the goods in foreign country and also learned Commissioner (Appeals) has held that the said goods have contravened provisions of Clause (l) and (m) of Section 111 of Customs Act, 1962 and, therefore upheld imposition of redemption fine and also upheld imposition of personal penalty of Rs. 1,50,000/-. Aggrieved by the said order the appellant preferred appeal before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted a copy of the sales contract a copy of which is available at page 23 of appeal paper book which indicates that the contract was for purchase of Aluminium Scrap. He has further submitted that a copy of invoice was available at page 25 of the appeal paper

book which indicates that the invoice dated 29.04.2015 described the goods as Aluminium Scrap and these details have been noted by the Original Authority. He also submitted that a copy of Pre-shipment inspection certificate is available at page 24 of the appeal paper book which also reveals that during the Pre-shipment inspection the goods were found to be Aluminium Scrap and, therefore, they filed Bill of Entry describing the goods as Aluminium Scrap. Further the Bill of Lading, a copy of which is available at page 27 of appeal paper book also indicated the description of goods as Aluminium Scrap. He has submitted that they have submitted a copy of certificate issued by GDB International Inc. dated 14 July, 2015 wherein it was certificated that GDB International Inc shipped container No. TGHU 2475065 to the appellant and due to similar appearance of Zinc Scrap by mistake in place of Aluminium Scrap Zinc Scrap might have been dispatched by their staff. He further submitted that they had no mala-fide intention of mis-declaring the goods, therefore, there is no case for imposition of penalty. He further submitted that since there was no mala-fide intention, goods should not be confiscated.

4. Heard the learned AR who has submitted that the goods have contravened Clause (l) and Clause (m) of Section 111 of Customs Act, 1962 and, therefore, appeal may be rejected.

5. Having considered the rival and on perusal of record I find that the appellant filed Bill of Entry on the basis of documents available with them such as contract, invoice, Bill of Lading and Pre-shipment inspection certificate and description of the goods in all the said document was Aluminium Scrap therefore, I hold that the appellant did not have any mala-fide intention to mis-declare the goods. I, therefore, set aside penalty of Rs. 1,50,000/- imposed on the appellant. Further I find that the goods have contravened the provisions of Clause (m) and Clause (l) of Section 111 of Customs Act, 1962 and I reduce the redemption fine from Rs. 5 lacs to Rs. 50,000/-. In above terms appeal is allowed partially. The impugned Order-in-Appeal is modified to that extent.

(Dictated and pronounced in Court)

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

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प्रमाणित प्रति/Certified True Copy
20/03/17

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