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

Dated: 12/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70152/2018-CU[DB] dated 09/01/2018

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/53094/2014	**Naveen Impex** 2330, Bagichi Raghunath Dass, Sadar Bazar, DELHI
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

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

Naveen Sharma (rep)
7A/3B, Rajpur Road, Civil Lines
S.O. North Delhi,
DELHI-110054

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 AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

C/53094/2014-CU[DB]

Arising out of O/A No.GZB-EXCUS-000-APP-255-13-14 dated 20.03.2014 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Ghaziabad.

M/s. Naveen Impex ...APPELLANT(S)

VERSUS

CC, Ghaziabad RESPONDENT (S)

APPEARANCE

Shri Naveen Sharma (Rep.) for the Appellant (s)
Shri Mohd.Altaf (Asstt.Commr.)(A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

DATE OF HEARING : 03.01.2018
DATE OF DECISION : 09.01.2018

FINAL ORDER NO. 70152/2018

Per Mrs.Archana Wadhwa :

As per facts on record, the appellant filed Bill of Entry dated 16.05.2013 for import of the goods declared as "re-rollable scrap" falling under chapter heading 72 04 21 90, attracting basic Customs duty @ 5%. The total quantity of the scrap was declared as 126.21 MT and the total CIF value was declared as 59317.29 US $.

2. The consignment was taken by the customs officers for 100% examination. As per the said officer's report, the goods are defective iron plates of varying sizes, squares & rectangular in shape. Size is more

than 600 mm. The thickness is variable in between 3 mm to 10 mm. It is no way scrap. It appears appropriately classifiable under chapter heading 7208.

3. Based upon the above report, Revenue entertained a view that the appellant has mis-declared the goods as re-rollable scrap falling under chapter heading 7204 whereas the goods were defective iron plates falling under chapter heading 7208 and attracting duty @ 10%. It was further noticed that as the defective iron plates could be imported only through Chennai, Mumbai, Kolkata and the import consignment of the said items should be accompanied with pre-shipment certificate, there were violations in the import thus calling for confiscation of the same and imposition of penalties.

4. On being called, the appellant vide their letter dated 05.06.2013 explained that (i) the goods are iron plates, (ii) the length of plates are different i.e., some 6 feet, 8 feet, 10 feet, 7 feet etc. (iii) the width of plate are different i.e. some are 4 feet, 5 feet, 6 feet, 8 feet etc. (iv) The thickness of plates are different i.e. 3 mm, 4 mm, 6 mm, 10 mm etc. (v) the edges of plates are rough/not in proper shape and cut by gas cutting machine. (vi) The shapes of plates are different i.e. some are squares and rectangular etc. (vii) The plates are old and used.

Accordingly they contended that the goods are nothing, but re-rollable scrap and cannot be used as sheets. The above contention of the appellant was not accepted by the original adjudicating authority, who confiscated the goods with option to the appellant to redeem the same on payment of redemption fine of Rs.5.00 Lakhs. In addition penalty of Rs.2.00 Lakhs was also imposed. On appeal Commissioner(Appeals) upheld the said order. Hence the present appeal.

5. We have gone through the impugned orders as also the examination report. Admittedly the examination report has found the said goods to be defective iron plates of square or rectangular size with cut edges and of various thickness and lengthes. In such a scenario the goods cannot be held to be ~~scanty~~ prime or defective iron sheets and in the light of such variations in the sizes of the goods along with the fact that their edges were cut and worn out and the fact that they were in not serviceable for the purpose of sheets, it has to be held that the same are metal waste and scrap, which are admittedly not usable as such because of breakage, cutting up, ~~wire~~ wear-tear or other reasons. In such a scenario, we are of the view that the goods can be used only by re-melting the same and as such has to be held as being waste and scrap. We find no mis-declaration in the goods. As such the impugned orders lack merits and are set aside and appeal is allowed with consequential relief.

(Pronounced in the open court on 9/1/18)

Sd/-	Sd/-
Anil.G. Shakkarwar	**(Archana Wadhawa)**
Member(Technical)	**Member (Judicial)**

Certified True Copy 13/2/18

sm

(C.E.S.T.A.T.)
38, M.G. MARG, ALLAHABAD-211001