CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 2728 of 2012

[Arising out of the Order-in-Appeal No.177/2012 dated 03.08.2012 passed by the Commissioner of Customs (Appeals), Cochin.]

M/s. Minar Alloys and Forgings Pvt. Ltd. **....Appellant**
C-B, 224, Aruvi, Chandranagar,
Palakkad.

Vs.

The Commissioner of Customs (Appeals) **....Respondent**
Customs House,
Cochin - 9

Appearance:

Mr. M. Balagopal, Advocate **....For Appellant**

Mr. K. Vishwanath, AR **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 21.09.2023

Date of Decision: 12.03.2024

INTERIM ORDER NO. 3 OF 2024

FINAL ORDER No. 20608 of 2024 Dated 31.07.2024

Per: P. A. AUGUSTIAN

This appeal is filed by the appellant M/s. Minar Alloys and Forgings Pvt Ltd. They imported 212.13 MTs of "Heavy Melting Steel (HMS) scrap claiming classification under Customs Tariff Heading 7204 4900 vide Bill of Entry No.243717 dated 15.04.2009. On examination, it is found that the goods are of assorted size and cannot considered as HMS scrap. The Appellant submitted that the goods were imported as per the Policy condition prevailed at the time of import and to support the declaration, they have produced certificate from accredited agency. However, the Original Authority rejected their appeal vide Order-in-Original dated 11.06.2009, adopted contemporaneous value and enhanced the assessable value and demanded differential duty of Rs.1,34,405/-. The Original Authority allowed Appellant to redeem the goods on payment of Rs.3,00,000/- as fine and Rs.1,00,000/- as penalty. Aggrieved by said Order, appeal was filed before the Commissioner (Appeals) and after considering the findings of the Original Authority, Appeal was rejected. Aggrieved by said Order, present appeal is filed.

2. When the appeal was taken up for hearing, learned Counsel for the Appellant draws our attention to the documents including sale contract dated 06.04.2009, invoice issued by overseas supplier dated 06.04.2009, relevant pages of the Hand Book of Procedure related to import of metallic waste, Scarp, etc., Appendix file showing the list of inspection and Certificate of Origin issued by M/s. Atlas Metals Trading Co., LLC, and Pre shipment certificate, etc., showing that the goods imported by the Appellant are Heavy Melting Scrap and it was subject to 100% visual inspection during loading process.

3. The learned counsel further submits that due to the heavy pressure from the department and as the goods were incurring huge amounts as demurrage and container detention charges and also the appellant was highly in need of the goods for the continuous production in their factory, they had to accept the enhanced value for the purpose of assessment as proposed by the department vide their letter dated 30.04.2009. In their letter dated 30.04.2009, the appellant had stated that they are manufacturers of steel ingots out of HMS scrap and it is for the first time that the alleged kind of goods are seen in their consignment and that they had placed order for HMS srap only; that the import documents and pre-shipment certificates shows that the ordered item and the imported item are HMS scrap only; that the pre-inspection certificate from the port of exports has also certified that there was 100% inspection of the goods under the import; that the agency was the one authorized and registered with DGFT, India to issue such certificates; that the appellant had no intention to mis-declare the goods. The appellant also state that they are manufacturers and not traders and that there is no need for them to mis-declare the goods. They also pleaded for a lenient view before the lower authority on the issue.

4. Even as per the order of the Adjudication Authority, the Appellant had submitted that the goods were imported based on the pre-inspection certificate from the port of export and the agency is registered under DGFT, India. Learned Counsel also

draws our attention to the finding of this Tribunal in the matter of **M/s Mangalam Alloys: (2020 (374) E.L.T 810 (Tri. Mumbai):**

> "4. Heard both sides and perused the records of the case. Brief point to be decided in this case is as to whether heavy melting scrap HMS imported by the appellants can be classified as serviceable parts and thus, exemption availed needs to be denied. On the basis of the examination conducted at the time of clearance, department opined that the impugned goods were secondary/defective/rejected stock, comprising of stainless-steel U and C channels of grade 410 (magnetic) and HR coils/strips of grade 410 (magnetic). The appellants submit that the examination report was not given to them. Learned AR submits that as the show cause notice was waived by the appellants, the examination report could not be given to them. The appellants further submitted that no examination by a Chartered Engineer was conducted; pre-shipment inspection certificate and certificate issued by M/s. Alloys and Metal Test Services, Mumbai were ignored. Also, the request of the appellants for mutilating the goods before clearance was also not allowed. It is the contention of the appellants that by nature steel melting scrap is likely to have some defective secondary parts or articles. However, the supplier treated the same as scrap only. It is a matter of fact that the said scrap was utilised in their factory for melting only. Therefore, denying the classification and the exemption are bad in law.
>
> 5. We find that the appellants have a point in their favour. We find that the adjudicating authority has not explained as to why various certificates submitted by the appellants were not accepted. It is not known as to why the department has not allowed the request for mutilation of the goods before clearance. Chartered Engineer's examination was also not ordered. This being the factual milieu, we find that department cannot reclassify the goods unilaterally on the basis of the examination report of officers alone. Technical opinion given by the pre-inspection certificate and by M/s. Alloys and Metal Test Services, cannot be disregarded. Also the fact that all the shipping documents describe the goods as steel melting scrap only cannot be denied. Under such circumstances, denying the classification and the benefit of exemption are not tenable. For the same reason, the department has not made its case for redetermination of the value of the impugned goods for the purpose of assessment. We find that declared classification and valuation cannot be

> rejected only on the basis of examination report of the officers, more so, when technical reports were not in favour of the view taken by the Revenue, Therefore, taking recourse to LME prices is also not acceptable. It is not the case of the department that to value over and above the price declared in the invoice was paid to the overseas supplier. It is also not the case of the department that the said scrap was not utilised as scrap. Therefore, we find that department has not given forth any evidence to support the allegation. We find that the impugned order is not maintainable.

5. Learned Counsel also draws our attention to the finding of this Tribunal in the matter of **Content steel (369 ELT 126) CC Chennai Vs Kamathi Sponge (2016 (337) E.L.T 73**. Similarly in the matter of **Prince Fortified Vs CC Tuticorin: 2019 (369) E.L.T 1228 (Tri.-Chennai)** it is held that ;-

> "**5.** Keeping aside this controversy which is of technical nature, we proceed to consider the merits of the case. The facts reveal that appellant is a regular importer of HMS. The Purchase Order was for supply of HMS for use in their factory. The proforma invoices described the goods as HMS. Again the invoices issued by supplier described the goods as HMS/Re-Rollable scrap. The pre-shipment test reports by the internationally accepted agency M/s. Worldwide Inspection Services - SARL certified that the imported goods are metallic scrap as per internationally accepted parameter for such classification. The said agency is approved by DGFT. The appellant had filed Bill of Entry based on these documents. On examination, the Chartered Engineer has opined that out of 232.85 MTs, only 34.91 MTs of twisted rods were having less than 5 ft. Length and balance quantity of 197.915 MTs was cut/end pieces of TMT rods. Thus quantity of 34.91 MTs having less than 5 ft. alone was treated as HMS by department and the balance quantity was reclassified as CTH 7214 99 90 and thereby denied the benefit of notification. The basis for the Chartered Engineer to arrive at such conclusion is that in common parlance the length of TMT rods in the market is from 11 to 12 mtrs (33 to 36 ft.) and the length of the rods imported range from 3 ft. to 15 ft. and are cut end pieces of assorted sizes. Since the cut ends do not have proportionate size they have very limited usage. When we fail to understand how this can be the basis for concluding that the goods are not HMS, we are not able to find any cogent reason for discarding the pre-inspection certificate *in toto.* The jurisdictional High Court in the case of *CC, Chennai* v. *Kamatchi Sponge &*

Power Corpn. Ltd. - 2016 (337) E.L.T. 73 (Tri.-Chennai) in similar set of facts had upheld the order passed by Tribunal, which set aside confiscation and penalty. The relevant portion is reproduced as under :

"We also find that the Revenue preferred CMA against the Tribunal's order before the Hon'ble High Court of Madras and the High Court of Madras in their order reported in 2014 (305) E.L.T. 377 (Mad.) upheld the above Tribunal's order and dismissed the CMA filed by Revenue. The relevant paragraphs of the Hon'ble High Court of Madras order are reproduced as under :

> 12. The Appellate Tribunal, after considering the available materials on record, has rightly found that the things in question are nothing but scrap materials. Under the said circumstances, the respondent has been directed to pay duty on the basis of scrap materials and in view of the discussions made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.

13. In fine, this Civil Miscellaneous Appeal deserves dismissal and accordingly is dismissed without costs."

The ratio of the High Court decision and this Tribunal's decision (supra) is clearly applicable to the present case as the issues are identical and also considering the fact that there is no misdeclaration by appellant as seen from the purchase order/sales contract and sales confirmation report and pre-shipment inspection certificate, wherein appellants have placed orders for supply of 1000 MTs of HMSS, and imported the said goods and cleared in terms of purchase order. The Commissioner (Appeals) has discussed the issue and given detailed findings. We also find that the test report relied by Revenue in a private laboratory is not the competent authority approved by CRCL or Customs. Further, even as per the test report, the goods were found to be 'secondary pipes' which clearly confirms that they are 'scrap'. We find that Commissioner (Appeals) taking into consideration of the goods clearly directed the department to mutilate and allow clearance as scrap. Therefore, Revenue's relying on Punjab and Haryana High Court decision in *Aman Alloys Ltd.* (supra) is distinguishable and not applicable for the reason that this jurisdictional High Court of Madras order which upheld the decision of this Bench of the Tribunal is binding on the Tribunal and prevails over. We also find that the appellants are registered Central Excise assessee having foundry for manufacture of billets, TMT bars as evident from the Central Excise registration and paying Central Excise duties on the final products. It is confirmed that appellant is not a trader of imported goods in the guise of scrap for trading purpose. Therefore, *bona fide* of the appellant is justified being actual user. We also find that pre-shipment inspection certificate clearly indicates that HMSS supplied was 'unshredded'.

Therefore, by respectfully following the ratio of the Hon'ble Madras High Court decision and this Tribunal decision (supra), we uphold that the goods imported are "Heavy Melting Steel Scrap" and we do not find any infirmity in the order of LAA. Accordingly, the impugned order is upheld and we direct the Customs to allow clearance after mutilating the goods under Customs supervision as per LAA's order. Accordingly, the Revenue's appeal is rejected.

6. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities and relied upon the following case laws:

(i) Prime Steel Processors vs. CC, Ludhiana: 2022 (380) ELT 203 (Tri.-Chan.)

(ii) Assistant Commissioner of Customs, Ludhiana vs. Aman Alloys Ltd.: 2011 (271) ELT 200 (P & H)

(iii) Veer Enterprise vs. CC, Kandla in Customs Appeal No.10601 of 2013 vide Final Order No. A/10410/2023 dated 7.3.2023.

7. Heard both sides. It is an admitted fact that as per the Import Policy import of scrap is permissible by complying with certain conditions and the Appellant had complied with the conditions as prescribed. We also find that pre-shipment inspection certificate issued by accredited agency under para 2.32(i) of Handbook of procedure clearly indicates that they have conducted visual inspection of 100% of the cargo and declared that the import consignment is actually metallic scrap /seconds/defective as per the internationally accepted parameters for such a classification. Further description of the

pre-shipment inspection certificate shows the goods as heavy metallic scrap. The allegation regarding presence of assorted size of scrap were brought to the notice of the Appellant only when it was subject to inspection by proper officer. There is no allegation that Appellant had knowledge regarding presence of assorted size of panel having length between 1.5 m to 5.5 m. Immediately when the above fact was brought to the notice of the Department, considering the appellant as manufacturer and considering the goods imported as raw material, if respondent have recently believe that the imported goods can be used for more than one purpose, to render the goods unfit for such purpose, an opportunity for mutilation of goods as per Section 24 of the Customs Act, 1964 as done in similar cases ought to have extended and only if appellant refuse to agree for mutilation, duty can be demanded for goods as iron rods under CTH 7215 9090 or Channels under CTH 7308 9010 as held by the adjudicating authority.

8. Regarding valuation, in the present case, there is no evidence to allege that the importer had knowledge regarding presence of assorted size in the goods imported by them and there is no allegation that the appellant had paid excess amount to overseas supplier. While importing from overseas sources, Appellant can only verify the conditions in the Import Policy and there is no opportunity for the Appellant to verify the content of the goods before its shipment. Moreover there is no proceeding initiated against accredited agency who had certified that goods as scrap after 100% inspection.

9. Hence, appeal is allowed and Respondent is directed to assess the Bill of Entry as per the declaration made by the Appellant with consequential relief if any in accordance with law.

(Order pronounced in open court on …………………..)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

-separate order-

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

PER: R. BHAGYA DEVI

8. This appeal is filed by the appellant M/s. Minar Alloys and Forgings Pvt Ltd. They imported 212.13 MTs of "Heavy Melting Steel (HMS) scrap claiming classification under Customs Tariff Heading 7204 4900 vide Bill of Entry No.243717 dated 15.04.2009. On examination, it is found that 22.920 MTs were of channels and 47.200 MTs of iron rods of assorted size and cannot be considered as HMS scrap. The Appellant submitted that the goods were imported as per the Policy condition prevailed at the time of import and to support the declaration, they have produced certificate from accredited agency and they were not aware of the fact that it contained iron rods and channels. The Original Authority vide Order-in-Original dated 11.06.2009 rejected the value adopted for scrap and adopted contemporaneous value to the rods and channels and demanded differential duty of Rs.1,34,405/-. The Original Authority also held that the goods were liable for confiscation and accordingly allowed the Appellant to redeem the goods on payment of Rs.3,00,000/- as fine and Rs.1,00,000/- as penalty. Aggrieved by the said Order, the appellant filed an appeal and the Commissioner (Appeals) in the impugned order held that since the enhanced value was accepted at the time of assessment appeal against the valuation cannot be filed as there was no grievance in relation to valuation. However, he set aside confiscation of goods, consequently penalty is also set aside. The appellant has filed an appeal against this order.

9. When the appeal was taken up for hearing, the Learned Counsel for the Appellant draws our attention to the documents including sale contract dated 06.04.2009, invoice issued by overseas supplier dated 06.04.2009, relevant pages of the Hand Book of Procedure related to import of metallic waste, Scarp, etc., Appendix file showing the list of inspection and Certificate of Origin issued by M/s. Atlas Metals Trading Co., LLC, and Pre shipment certificate, etc., showing that the goods imported by the Appellant are Heavy Melting Scrap and it was subject to 100% visual inspection during loading process.

10. The Learned counsel further submits that due to the heavy pressure from the department and as the goods were incurring huge amounts as demurrage, container detention charges and also the appellant was highly in need of the goods for the continuous production in their factory, they had to accept the enhanced value for the purpose of assessment as proposed by the department vide their letter dated 30.04.2009. In their letter dated 30.04.2009, the appellant had stated that they are manufacturers of steel ingots out of HMS scrap and it is for the first time that the alleged kind of goods are seen in their consignment and that they had placed order for HMS scrap only. He also submitted that the import documents and pre-shipment certificates shows that the ordered item and the imported item are HMS scrap only, that the pre-inspection certificate from the port of exports has also certified that there was 100% inspection of the goods under the import; that the agency was the one

authorized and registered with DGFT, India to issue such certificates; that the appellant had no intention to mis-declare the goods. The appellant also state that they are manufacturers and not traders and that there is no need for them to mis-declare the goods. They also pleaded for a lenient view before the lower authority on the issue.

11. It is further claimed that even as per the order of the original Authority, the Appellant had submitted that the goods were imported based on the pre-inspection certificate from the port of export and the agency is registered under DGFT, India. Learned Counsel also draws our attention to the finding of this Tribunal in the matter of **M/s Mangalam Alloys: 2020 (374) E.L.T 810 (Tri. Mumbai):**

> "4. Heard both sides and perused the records of the case. Brief point to be decided in this case is as to whether heavy melting scrap HMS imported by the appellants can be classified as serviceable parts and thus, exemption availed needs to be denied. On the basis of the examination conducted at the time of clearance, department opined that the impugned goods were secondary/defective/rejected stock, comprising of stainless-steel U and C channels of grade 410 (magnetic) and HR coils/strips of grade 410 (magnetic). The appellants submit that the examination report was not given to them. Learned AR submits that as the show cause notice was waived by the appellants, the examination report could not be given to them. The appellants further submitted that no examination by a Chartered Engineer was conducted; pre-shipment inspection certificate and certificate issued by M/s. Alloys and Metal Test Services, Mumbai were ignored. Also, the request of the appellants for mutilating the goods before clearance was also not allowed. It is the contention of the appellants that by nature steel melting scrap is likely to have some defective secondary parts or articles. However, the supplier treated the same as scrap only. It is a matter of fact that the said scrap was utilised in their factory for melting only. Therefore,

denying the classification and the exemption are bad in law.

5. We find that the appellants have a point in their favour. We find that the adjudicating authority has not explained as to why various certificates submitted by the appellants were not accepted. It is not known as to why the department has not allowed the request for mutilation of the goods before clearance. Chartered Engineer's examination was also not ordered. This being the factual milieu, we find that department cannot reclassify the goods unilaterally on the basis of the examination report of officers alone. Technical opinion given by the pre-inspection certificate and by M/s. Alloys and Metal Test Services, cannot be disregarded. Also the fact that all the shipping documents describe the goods as steel melting scrap only cannot be denied. Under such circumstances, denying the classification and the benefit of exemption are not tenable. For the same reason, the department has not made its case for redetermination of the value of the impugned goods for the purpose of assessment. We find that declared classification and valuation cannot be rejected only on the basis of examination report of the officers, more so, when technical reports were not in favour of the view taken by the Revenue, Therefore, taking recourse to LME prices is also not acceptable. It is not the case of the department that to value over and above the price declared in the invoice was paid to the overseas supplier. It is also not the case of the department that the said scrap was not utilised as scrap. Therefore, we find that department has not given forth any evidence to support the allegation. We find that the impugned order is not maintainable.

12. Learned Counsel also draws our attention to the finding of this Tribunal in the matter of **Content steel (369 ELT 126) CC Chennai Vs Kamathi Sponge (2016 (337) E.L.T 73**. Similarly in the matter of **Prince Fortified Vs CC Tuticorin: 2019 (369) E.L.T 1228 (Tri.-Chennai)** it is held that ;-

"5. Keeping aside this controversy which is of technical nature, we proceed to consider the merits of the case. The facts reveal that appellant is a regular importer of HMS. The Purchase Order was for supply of HMS for use in their factory. The proforma invoices described the goods as HMS. Again the invoices issued by supplier described the goods as HMS/Re-Rollable scrap. The pre-shipment test reports by the internationally accepted agency M/s. Worldwide

Inspection Services - SARL certified that the imported goods are metallic scrap as per internationally accepted parameter for such classification. The said agency is approved by DGFT. The appellant had filed Bill of Entry based on these documents. On examination, the Chartered Engineer has opined that out of 232.85 MTs, only 34.91 MTs of twisted rods were having less than 5 ft. Length and balance quantity of 197.915 MTs was cut/end pieces of TMT rods. Thus quantity of 34.91 MTs having less than 5 ft. alone was treated as HMS by department and the balance quantity was reclassified as CTH 7214 99 90 and thereby denied the benefit of notification. The basis for the Chartered Engineer to arrive at such conclusion is that in common parlance the length of TMT rods in the market is from 11 to 12 mtrs (33 to 36 ft.) and the length of the rods imported range from 3 ft. to 15 ft. and are cut end pieces of assorted sizes. Since the cut ends do not have proportionate size they have very limited usage. When we fail to understand how this can be the basis for concluding that the goods are not HMS, we are not able to find any cogent reason for discarding the pre-inspection certificate *in toto.* The jurisdictional High Court in the case of *CC, Chennai* v. *Kamatchi Sponge & Power Corpn. Ltd.* - 2016 (337) E.L.T. 73 (Tri.-Chennai) in similar set of facts had upheld the order passed by Tribunal, which set aside confiscation and penalty. The relevant portion is reproduced as under :

> "We also find that the Revenue preferred CMA against the Tribunal's order before the Hon'ble High Court of Madras and the High Court of Madras in their order reported in 2014 (305) E.L.T. 377 (Mad.) upheld the above Tribunal's order and dismissed the CMA filed by Revenue. The relevant paragraphs of the Hon'ble High Court of Madras order are reproduced as under :
>
> > 7. As pointed out earlier, the only point that has to be decided in the present Civil Miscellaneous Appeal is as to whether the respondent is liable to pay duty on the basis of scrap materials or on the basis of usable things.
> >
> > 8. The entire argument put forth on the side of the appellant hinges upon the report filed by the Commissioner as well as the statement alleged to have been given by one of the partners of the respondent.
> >
> > 9. It has been conceded on the part of the appellant that the Commissioner has not noted down the features of the things which are in question. Of course, it is true that one of the partners of the respondent has given a statement, wherein, he has admitted about the existence of some wires, etc.
> >
> > 10. At this juncture, the Learned Counsel appearing for the respondent has contended that those wires are not in cable forms and it is nothing but small wires. Under the

> said circumstances, the authority has permitted the respondent, to get the goods in mutilated form and therefore, the contention put forth on the side of the appellant cannot be accepted.
>
> 11. Even in the statement alleged to have been given by one of the partners of the respondent, complete description as well as length and breadth of the things which are in question have not been mentioned. In fact, in the statement alleged to have been given by one of the partners of the respondent, only small quantity as well as length of wires have been mentioned. Under the said circumstances, the Court can come to a conclusion that the things which are in question cannot be couched as usable things.
>
> 12. The Appellate Tribunal, after considering the available materials on record, has rightly found that the things in question are nothing but scrap materials. Under the said circumstances, the respondent has been directed to pay duty on the basis of scrap materials and in view of the discussions made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.
>
> 13. In fine, this Civil Miscellaneous Appeal deserves dismissal and accordingly is dismissed without costs."

The ratio of the High Court decision and this Tribunal's decision (supra) is clearly applicable to the present case as the issues are identical and also considering the fact that there is no misdeclaration by appellant as seen from the purchase order/sales contract and sales confirmation report and pre-shipment inspection certificate, wherein appellants have placed orders for supply of 1000 MTs of HMSS, and imported the said goods and cleared in terms of purchase order. The Commissioner (Appeals) has discussed the issue and given detailed findings. We also find that the test report relied by Revenue in a private laboratory is not the competent authority approved by CRCL or Customs. Further, even as per the test report, the goods were found to be 'secondary pipes' which clearly confirms that they are 'scrap'. We find that Commissioner (Appeals) taking into consideration of the goods clearly directed the department to mutilate and allow clearance as scrap. Therefore, Revenue's relying on Punjab and Haryana High Court decision in *Aman Alloys Ltd.* (supra) is distinguishable and not applicable for the reason that this jurisdictional High Court of Madras order which upheld the decision of this Bench of the Tribunal is binding on the Tribunal and prevails over. We also find that the appellants are registered Central Excise assessee having foundry for manufacture of billets, TMT bars as evident from the Central Excise registration and paying Central Excise duties on the final products. It is confirmed that appellant is not a trader of imported goods in the guise of scrap for trading

> purpose. Therefore, *bona fide* of the appellant is justified being actual user. We also find that pre-shipment inspection certificate clearly indicates that HMSS supplied was 'unshredded'.
>
> Therefore, by respectfully following the ratio of the Hon'ble Madras High Court decision and this Tribunal decision (supra), we uphold that the goods imported are "Heavy Melting Steel Scrap" and we do not find any infirmity in the order of LAA. Accordingly, the impugned order is upheld and we direct the Customs to allow clearance after mutilating the goods under Customs supervision as per LAA's order. Accordingly, the Revenue's appeal is rejected."

13. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities and relied upon the following case laws:

(i) Prime Steel Processors vs. CC, Ludhiana: 2022 (380) ELT 203 (Tri.-Chan.)

(ii) Assistant Commissioner of Customs, Ludhiana vs. Aman Alloys Ltd.: 2011 (271) ELT 200 (P & H)

(iii) Veer Enterprise vs. CC, Kandla in Customs Appeal No.10601 of 2013 vide Final Order No. A/10410/2023 dated 7.3.2023.

14. Heard both sides. The fact that the consignment which was declared as HMS scrap for 212.13 MTS contained 22.920 MTS of channels of approximately 3 meters length and 47.200 MTS of iron rods of assorted length is not under dispute. Therefore, out of 212.13 MTS declared as HMS scrap 70.120 was rods/channels and balance was scrap. The value declared for scrap obviously cannot be the value for Iron rods and Channels and hence contemporaneous price had to be adopted. The original authority reclassified the goods and has adopted the lowest value of Rs. 20 per kg. which was accepted by the appellant vide his letter dated 30.4.2009. The fact that the import documents all

suggested it is metal scrap will not in any way disprove the examination report where the goods were physically examined and inspected.

15. The Commissioner based on the observations of the original authority that they are actual users and for the first time this kind of misdeclaration was noticed set aside confiscation and penalty but the classification was upheld based on the Chapter headings of Chapter 72 read with note 8 of section XV of first schedule of the Customs Tariff Act. The appellant has not disputed the fact that some of the declared items were rods and channels and now they cannot claim that they are nothing but scrap. Note 8 of Section XV which reads as:

> "8. In this Section, the following expressions have the meanings hereby assigned to them : (a) waste and scrap: (i) all metal waste and scrap; (ii) metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons. (b) Powders: products of which 90% or more by weight passes through a sieve having a mesh aperture of 1 mm".

16. The above note clearly establishes that scrap is different from rods and channels and therefore there is a distinct heading for each one of these items. The chapter headings reproduced below clearly distinguish the scrap from iron rods and channels and therefore the question of treating iron rods /channels as scrap does not arise. Therefore, classification of the impugned goods is upheld.

Section-XV Chapter-72

- Other waste and scrap :

7204 41 00 -- Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles

7204 49 00 -- Other 15% -
7204 50 00 - Remelting scrap ingots 15%
7215 Other Bars and **Rods** of Iron or Non-Alloy Steel
7215 90 90 --- Other
73089010--- Beams, **channels,** pillars and girders prepared for use in structures.

17. The Commissioner rejected the appeal on valuation only on the ground that an appeal could not have been filed as there was no grievance in as much as the appellant had accepted the enhanced value. This observation of the Commissioner no more holds in view of the observations by the Supreme Court in the case **ITC Ltd. Versus Commissioner of Central Excise Kolkata-IV 2019 (368) E.L.T. 216 (S.C.)** decided on 18-9-2019 where the apex court observed that:

> *"**43.** As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts".* Since it is an appealable order even though the appellant has accepted the value and paid duty one could file an appeal."

18. In view of the above discussions supra since the goods are found to be rods and channels the classification of the goods is

upheld under CTH 7215 for rods and CTH 7308 for Channels. Once the classification changes the question of assessing at the scrap value does not arise and accordingly the value of the rods and channels are to be re-determined. The appellant is also aggrieved that the adjudicating authority has taken Rs.20 per kg as contemporaneous import price instead of Rs.19 per kg. the value suggested by the appellant is for the period 3.1.2009 to 10.2.2009 but the import happened on 15.4.2009 and hence the adjudicating authority observation that he considered the lowest contemporaneous value of that period is justifiable and therefore we do not find any reason to disregard the value which has resulted in differential duty of only Rs.1,34,405/-. In view of the above no purpose will be served in remanding the matter to the Commissioner (Appeals) and therefore, based on our discussions supra the classification and valuation of rods and channels is upheld. The Appeal is dismissed.

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

DIFFERENCE OF OPINION

On going through the order signed by the learned Member (Technical), it is seen that following differences of opinion emerge:-

(i) Whether the goods imported by the appellant can be classified under Customs Tariff Heading 7204 4900 as claimed by the importer-appellant or under Customs Tariff Heading 7215 9090 for Iron Rods and under Customs Tariff Heading 7308 9010 for Channels as held by the adjudicating authority.

(ii) Whether the value declared by the appellant should be accepted as assessable value in the absence of any documentary evidence as urged in the grounds of appeal.

The above Differences of Opinion are referred to the Hon'ble President for referring the same to Third Member to be appointed by him.

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

Date of Hearing: 25/06/2024
Date of Decision: 27/06/2024

Interim Order No.5/2024

PER: DR. D.M. MISRA

19. Heard both sides and perused the records. The Points of Difference referred are as follows:-

POINTS OF DIFFERENCE

(i) Whether the goods imported by the appellant can be classified under Customs Tariff Heading 7204 4900 as claimed by the importer-appellant or under Customs Tariff Heading 7215 9090 for Iron Rods and under Customs Tariff Heading 7308 9010 for Channels as held by the adjudicating authority?

(ii) Whether the value declared by the appellant should be accepted as assessable value in the absence of any documentary evidence as urged in the grounds of appeal?

20. Even though the facts are narrated in the order passed by the learned Members, to appreciate the Points of Difference, it is relevant to restate the facts, in brief.

21. The appellant are actual user and imported 212.13 MTs of "Heavy Melting Steel Scrap" by filing Bill of Entry No.243717 dated 15.04.2009 declaring its classification under Customs Tariff heading 72044900 valued at Rs.36,01,729/-. On physical examination of the consignment, it was noticed that it contains 22.920 MTs of channels approximately of 3 meter length and 47.200 MTs of iron rods of assorted length which could not be considered as scrap. Consequently, the iron rods were classified under CTH 72159090 and channels classified under CTH 73089010 and appropriate differential duty was demanded. In calculating the duty, contemporaneous import prices of iron rods and channels taken was @ Rs.20 per kg. and the total consignment value was recalculated Rs.38,09,600/-, in which the value of iron rods and channels calculated was Rs. 14,02,400/-.

The differential duty worked out at Rs.1,34,405/-. The appellant discharged the differential duty, waived issuance of show-cause notice requesting that a lenient view to be taken in the matter. Consequently, the adjudicating authority confirmed the assessable value of 47.200 MTs of iron rods and 22.920 MTs of channels as Rs.14,02,400/- ; directed confiscation of the said goods under Section 111(m) of the Customs Act, 1962 with an option to redeem the same on payment of fine of Rs.3.00 lakhs and imposed penalty of Rs.1.00 lakh under Section 112(a) of the Customs Act, 1962. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner(Appeals) who confirmed the classification and differential duty. but set aside the confiscation and imposition of penalty. Not satisfied with the order of learned Commissioner(Appeals), appellant approached this Tribunal.

22. The learned Member(Judicial) has observed that the presence of assorted sizes of iron rods and channels between 1.5 meter to 5.5 meter in the imported consignment was not within the knowledge of the appellant and to render the goods unfit for making it as a scrap, opportunity for mutilation of the same as per Section 24 of the Customs Act, 1964 ought to have been extended to the appellant and in the event the appellant refused to accept the condition of mutilation, then duty could have been demanded for goods as iron rods under CTH 7215 9090 and channels under CTH 7308 9010. In other words, as argued by the learned AR for the Revenue, neither the Commissioner(Appeals) nor the learned Member(Judicial) has either discussed or disputed the issue of classification of the iron rods and channels found in the imported scrap which held to be classifiable under CTH 7215 9090 and CTH 7308 9010 respectively by the adjudicating authority. It is submitted that the learned Member(Technical) referring to Chapter 72 read with Note 8 of Section XV of Customs Tariff Act, 1962 held that the imported iron rods of assorted length having 3 meter length are

classifiable under specific headings of Chapter 72 i.e. 7215 9090 and channels under CTH 7308 9010.

23. On careful analysis of the observation of the learned Member(Judicial) as well as that of learned Member(Technical), I find that there is no difference in finding on the issue of classification of the iron rods and channels to be under CTH 7215 9090 and CTH 7308 9010 of the Customs Tariff Act respectively. Learned Member(Judicial) has laid emphasis that the mutilation as per Section 24 of the Customs Act, 1962 should have been allowed for conversion of said iron rods and channels into scrap in the event if such option is not availed / exercised by the appellant, duty can be demanded for goods as iron rods under CTH 7215 9090 or channels under CTH 7308 9010. In the present circumstances, since no such request for mutilation was advanced nor any direction for such mutilation was issued initially, the classification of the iron rods and channels would be under CTH 7215 9090 and CTH 7308 9010, respectively.

24. On the issue of determination of value of the goods is concerned, it is noticed that initially for the entire 212.13 MTs of “Heavy Melting Steel scrap” imported, the value was declared as Rs.36,01,729/-. After change in the classification, the adjudicating authority has applied contemporaneous import price of Rs.20/- per kg. for 22.920 MTs of channels and 47.200 MTs of iron rods against the imported scrap price of Rs.16.97 per kg. The appellant claimed that the contemporaneous import value should be adopted as Rs.19/- per kg. However, no evidence has been placed by the appellant in support of their claim. On going through the records, I do not find any discrepancy in the said enhancement of value of the iron rods and channels based on contemporaneous import, once the classification of the scrap has been changed with regard to total quantity of 70.12 MTs. of channels and iron rods. Therefore, I agree with the findings of the learned Member(Technical) on the issue of determination of

value based on the contemporaneous import price of iron rods and channels.

25. In the result, in my opinion,

(i) the imported iron rods and channels are classifiable under CTH 9215 9090 and CTH 7308 9010, respectively.

(ii) On the issue of valuation of iron rods and channels, I agree with the view of the learned Member(Technical).

26. The matter may be placed before the regular Bench for appropriate action/order.

(Pronounced on 27/06/2024)

(D.M. MISRA)
MEMBER(JUDICIAL)

Raja…

DATE OF HEARING: 31.07.2024
DATE OF DECISION: 31.07.2024

MAJORITY ORDER

As per the majority opinion, the impugned order is upheld. Appeal filed by the assessee is dismissed.

(D.M. MISRA)
MEMBER(JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER(TECHNICAL)

Raja…