

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20844 of 2015

(Arising out of Order-in-Appeal No.COC-CUSTOM-000-APP-396-14-15 dated
12.01.2015 passed by the Commissioner of Customs (Appeals), Cochin).

M/s. Indian Steel

Door No. RKP 3/173,
Ramanattukkara,
Calicut - 673 633.
Kerala.

Appellant(s)

VERSUS

Commissioner of Customs,

Customs House,
Cochin - 682 009
Kerala.

Respondent(s)

APPEARANCE:

Mr. Baby M.A, Advocate, for the Appellant

Mr. K. A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20681 / 2024

DATE OF HEARING: 12.08.2024

DATE OF DECISION: 23.08.2024

PER : R BHAGYA DEVI

This appeal is filed against Order-in-Appeal No.COC-CUSTOM-000-APP-396-14-15 dated 12.01.2015.

2. The appellant, M/s. Indian Steel, imported Heavy Melting Scrap vide Bill of Entry No.8166009 dated 9.10.2012, declaring the entire consignment as heavy melting scrap. But, on examination, it was found that 25.710 MTS only was Heavy Melting Scrap and the remaining 79.470 MTS was rod cuttings of length approximately 2 to 2.5 meters. Since it was found that the entire consignment was not heavy melting scrap but consisted of iron rods, on account of misdeclaration the goods were confiscated under section 111(l) and (m) of the Customs Act, 1962 and allowed to be redeemed on payment of fine of ₹80,000/-. Penalty of Rs.10,000/- was also imposed on the appellant under section 112(a) of the Customs Act,

1962. The iron rods were classified under Chapter Heading 7215 9090 confirming duty amount of Rs.3,26,772/-.

3. The learned counsel on behalf of the appellant submitted that the sales contract with the supplier was for Heavy Melting Scrap and the same was supplied with the support of certificate issued by the International Accredited Agency M/s. Worldwide Inspection Services and the goods were meant for melting purpose only. Therefore, the question of mis-declaration by the appellant did not arise. It is also submitted that mutilation of the goods should have been allowed.

3.1 With regard to valuation, it is submitted that from the country-of-export, these goods were considered only as heavy metal scrap and all the documents accompanied with the consignment clearly mention it as scrap, therefore there is no question of treating them as rods, reclassifying the same and demanding duty on the same. It is also submitted that there is no allegation that the appellant had paid any amount excess than the amount declared in the invoice, the sales contract entered by the appellant with the overseas suppliers was only for heavy melting scrap and for a consideration of USD 42,128 and therefore, there cannot be any other value that can be taken for reclassifying the goods and demanding the duty on an imaginary value.

4. The Authorised Representative on behalf of the Revenue submitted that the appellant had filed the Bill of Entry dated 09.10.2012 declaring the goods as Heavy Melting Scrap but on examination, when the goods were found to be partly scrap and partly rods, they filed an amended Bill of Entry declaring 25.710 MTS as scrap and 79.470 MTS as iron rods and accordingly, Bill of Entry was assessed. The Revenue has also placed on record all the examination reports along with all the documents accompanied with the consignment. Letter dated 22.10.2012 is also placed on record wherein the appellant has stated the supplier must have sent the rods by mistake and lenient view to be taken and the cargo may be released without any further action and avoid show cause notice and personal hearing. Therefore, the appellant now cannot raise the issue of mutilation or of valuation which was not disputed before the

authorities below. The Original Authority has relied upon contemporaneous value and accordingly, demanded duty on iron rods. Hence, the impugned order needs to be upheld.

5. Heard both sides. The examination report placed on record clearly establishes that the goods imported were partly Heavy Melting Scrap and partly Iron Rods, this fact is not disputed. Based on this examination report, the appellant requested for reassessment and as rightly argued by the Revenue they have not asked for mutilation instead sought reassessment. At the time of reassessment, the classification and valuation undertaken by the Revenue is also not disputed. Having cleared the goods on the basis of the examination report which is not disputed, now in the grounds of appeal cannot challenge the classification of the said goods. In fact, the appellant admits that inadvertently the supplier could have sent the rods along with the scrap. Both the letters dated 09.10.2012 and 22.10.2012 of the appellant are reproduced below, wherein they have asked for reassessment admitting it could be a mistake on the part of the supplier and pleading that there was no misdeclaration on their part.



NAV BHARATH ENTERPRISES
GENEROATED CUSTOM HOUSE AGENTS
DIVISION OF AARON SHIPPING PVT. LTD.)

Collis Estate, IInd Floor, Venkitarami
Willingdon Island, Kochi - 682 003
Tel : 0484-2667888/2667665, 266967
Fax : 0091-484-2667877
E-mail : info@aaronlogistics.in
Website : www. aaronlogistics.in

To,
The Dy. Commissioner of Customs (Imports)
Customs House,
Cochin

Dear Sir,

Sub: - Amendment of BE No 8166009 dated 09.10.2012
A/c.Indian Steels.

We have destuffed 105.320 Tons of HMS at Concor Yard for conducting Customs examination. On examination we found about 79.470 MT Iron Rods in the consignment. Hence we request you to kindly permit us to amend the quantity in above mentioned BE as below.

<u>AMENDMENT IN QUANTITY</u>		
<u>Item No.1</u>	<u>From</u>	<u>To</u>
	105.320 MTs	25.710 MTs

INSERTION IN BE

<u>ITEM NO. 2</u>	
<u>Description:</u>	<u>Iron Rods</u>
<u>Quantity</u>	79.470 MTs

Thanking You.

Yours faithfully,
For Nav Bharath Enterprises.

Authorized Signatory

CMC CHENNAI

AMENDMENT NO : 0437615

DATE : 0437624

DESCRIPTION :

SUBMITTED & AMENDED BY :

SHIPPING * CLEARING * TRANSPORTATION

INDIAN STEEL Dealers in IRON STEEL & SCRAP 20/910, Kannancherry, CALICUT-3.	Phone: 2321940
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To, The Dy. Commissioner of Customs Appraising Department, Customs House, Cochin. Dear Sir, Sub: Clearance of HMS Scrap BE No.8166009 dtd. 09.10.2012 ----- Please note that we are a regular importer of scrap from various countries through Cochin Port. Recently we have imported 105.320 M.Ts of HMS scrap in 4x20ft from Dubai. While destuffing selected containers for Customs Examination, we found some steel rods having a length of above 2.3 mtrs in shipment along with the cargo. In order to assess quantity of cargo not meeting the custom specification in the shipment we have destuffed full lot of shipments ie 4x20ft containers as per customs instruction. After destuffing full lot, it is being found about 79.470 tons of steel rods having an average length of above 2 to 2.5 mtrs length in the shipment. In this connection we would like to explain you that the materials sent by the supplier are rejected materials which cannot be used at the supplier's end. Moreover these materials are sent without the knowledge of us. Hence we request you to kindly consider this cargo as scrap and assess the same accordingly. View above and supplier sent the same by mistake, we request you to take a lenient view considering us a regular importer and request you to kindly release the cargo with any further action and avoid the show cause notice and personal hearings of this case. Thanking you.	Date..... October 22, 2012 <i>[Signature]</i> 29/10/12 Yours Sincerely, For Indian Steel <i>[Signature]</i> Shoukathali.c (Partner)
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6. Considering the above admissions by the appellant and also taking into account that in similar circumstances this Tribunal in the case of **M/s. Minar Alloys and Forgings Pvt. Ltd. Vs. Commissioner of Customs vide Final Order No. 20608/ 2024 dated 31.07.2024** had upheld the classification of Iron Rods and valuation based on contemporaneous prices. Hence, we do not find any reason not to accept the classification and valuation as decided by the Commissioner in the impugned order. However, the fact that all the documents that accompanied the consignment declared the goods only as Heavy Metal Scrap; and there is no dispute that the appellant had also placed the purchase order only for Heavy Metal Scrap; and only after examination part of the goods, it was found to be Iron Rods cannot be alleged as misdeclaration on the part of the appellant. Therefore, the confiscation of goods under Section 111 (l) and (m) is set aside along with redemption fine and penalty under Section 112 (a) of the Customs Act, 1962.

7. In view of the above, we confirm the demand of duty and modify the impugned order only to the extent of setting aside redemption fine and penalty. Appeal is disposed of accordingly.

(Order pronounced in Open Court on 23.08.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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