CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017
COURT NO. I

Appeal Nos. C/60450,60452/2017-DB

Date of Hearing : 28.07.2017
Date of Decision : 26.03.2018

[Arising out of Order-in-Appeal No. OIA-CHD-EXCUS-001-63-64-17-18 dated 07.06.2017 passed by the Commissioner (Appeals) Central Excise & ST, Ludhiana]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

M/s. J.S. Steel Traders : **Appellant**

vs.

Commissioner of Customs, Ludhiana : **Respondent**

Appearance:

Shri Saurabh Kapoor, Advocate for the Appellant(s)
Shri Harvinder Singh, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Final Order No. 61965-61966/2018 Dated 26.03.2018

Per : Ashok Jindal

The appellant has filed these appeals against the following orders in the impugned orders:-

In Appeal No. C/60450/2017

List of steel products under mandatory Bureau of Indian Standards certification.

	Indian Standard number	Title	ITC (HS) Code	Date of coming into force of the product in the standard to the extent given below	
	(1)	(2)	(3)	(4)	
				((A) Product	(B) With effect from
Xx	Xx		Xx	Xx	Xx
3	IS 513	Cold reduced low carbon steel sheets and strips	720915 720916 720917 720918 720925 720926 720927 720928 72099000 721123 72119090	(a) Products confirming to grade designation CR1, CE2, CR3, CR4,CR5	18th December, 2016
				(b) For products other Than (a) above	18th March, 2016

Accordingly, the seized goods mentioned in Table 1 above i.e. CR sheets/strips/slits width less/more than 600mm, coated/ plated sheets/strips/slits which were serviceable and HMS are released on the following conditions under Section 110A of the Customs Act, 1962:-

(i) The goods shall be assessed to duty provisionally on the basis of the declared invoice value, purely for the purpose of provisional release of goods only, without any prejudice to the right of the department to issue the show cause notice on any aspect including valuation.

(ii) The goods mentioned in Table-1 excluding coated/ plated sheets/strips/slits and HMS shall be mutilated so as to render them scrap in such a manner so that they cannot be used as such except for melting in accordance with definition of scrap in

Section Note 8(a) of the Customs Tariff and subject to Para 24 of the order.

(iii) The importer shall furnish a bond equal to the seizure value i.e. 27,26,429/- of the seized goods to bind himself to pay in case of demand the differential duty, fine, penalty or interest as may be leviable on such goods, if these are held to be other than scrap, subsequently in adjudication.

(iv) The Assistant Commissioner (Shed), CFS OWPL, Ramgarh, Ludhiana shall issue a Detention Memo for the goods from the period for which they remained a detained in terms of regulation 6(1)(e) of Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009).

<u>In Appeal No. C/60452/2017</u>

(i) The goods shall be assessed to duty provisionally on the basis of the declared invoice value, without any prejudice to the right of the department to issue the show cause notice on any aspect including valuation.

(ii) The representative samples of the impugned goods mentioned in Table -1 & 2 excluding MS sheet cutting/strips/slits (VR) mix coated/ plated width more than 600mm and HSM may be taken to ascertain the nature of the goods vis-a-vis IS 513 and the goods shall be mutilated so as to render them scrap in such a manner so that they cannot be used as such except for melting in accordance with definition of scrap in Section Note 8(a) of the Customs Tariff and subject to Para 21 of the order.

(iii) The importer shall furnish a bond equal to the reassessed value to bind himself to pay in case of demand the differential duty, fine, penalty or interest as may be leviable on such goods, if these are held to be other than scrap.

(iv) The Assistant Commissioner (Shed), CFS OWPL, Ramgarh, Ludhiana shall issue a Detention Memo for the goods from the period for which they remained a detained in terms of regulation 6(1)(e) of Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009).

2. As the issue in both the appeals is identical, therefore both the appeals are dealt by this common order.

3. The brief facts of the case are that the appellant filed two bills of entry Nos. 8155288 dated 10.01.2017 and 8414179 dated 02.02.2017 for import of Heavy Melting scrap at ICD, OWPL Ludhiana declaring the grade of the scrap as ISRI 207. The said goods were examined and on detailed examination of the consignment declared as Heavy Melting scrap ISRI code 207, the imported goods were found containing CR sheets/sheet cutting cut to various sizes weighing 132.895MT and 159.575MT respectively. The same were detained and ordered to be released provisionally on the conditions mentioned in Para 1 hereinabove. Aggrieved from the said orders, the appellant is before us.

4. Ld. Counsel for the appellant submits that the appellant has declared the grade of the scrap as ISRI 207 which reads as under:-

> **"207 : Busheling**
>
> Clean steel scrap, maximum size *2 feet by 5 feet*, including new factory busheling, (for example, sheet clippings, stampings, etc.). May not include, old auto body and fender stock. Free of metal coated, limed, vitreous enameled, and electrical sheet containing over 0.5 percent silicon.**"**

He further submitted that for the purpose of classification of the material as scrap, the ld. Commissioner has issued Standing Order No. 02/Cus/2013 dated 30.05.2013 as guidelines wherein vide sub-clause (i), it is mandatory that the importer shall at the time of filing of Bill of Entry declare the ISRI grade of the scrap. The appellant has complied with the said directions as laid-down in the standing order. As per the internationally accepted code of ferrous scrap (ISRI), however, the said goods were detained, wherein examination was conducted with the help of the Chartered Engineer Shri Anil Soni. Shri Anil Soni, who is not the Metallurgical Engineer, vide report dated 17.02.2017 in respect of Bill of Entry No. 8414179 dated 02.02.2017 as per visual examination conducted by him, out of the total quantity of 132.895 MTs declared scrap, CR sheets/ Strips/ Slits of width less than 600mm (secondary and defective) weighing 60.00MTs, CR Sheets. Strips/ Slits of width more than 600mm weighing 05.00 MTs, Coated plated sheets/ Strips/ Slits (secondary and defective) weighing 02.00 MTs and the balance material weighing 65.895 MTs was reported to be Heavy Melting

Scrap. It is his submission that the said findings and conclusion was based merely on the basis of the visual examination of the Chartered Engineer. He has arrived at the said conclusion of the weight, without even segregation or weighment of the goods at the time of inspection, despite the request of the appellant to communicate the criteria of segregation. He further submits that in respect of bill of entry No. 8155288 dated 11.01.2017, the Chartered Engineer Shri Rajesh John reported that out of the total declared weight of 159.75 MTs the MS Sheet cutting/strips/slits (CR) missed coated/ plated width more than 600mm (secondary and defective) weighing 15.75 MTs were found, MS Sheets cutting/strips/slits (CR) width less than 600mm (secondary and defective) weighing 72MTs and the balance material was reported as scrap. The said report is also on the basis of eye estimation without obtaining any market opinion or even segregation and weighment of the material, despite the request made by the appellant. He further submits that on the said findings the goods imported were detained and later on seized and assessed provisionally. The appellant, aggrieved from the said reports, had requested for re-examination by another Chartered Engineer and the services of Shri Varun Chandok was obtained, who after considering the definition of secondary and defective goods as per criteria issued by Ministry of Steel, ISRI specification and definition of scrap as per Chapter Note XV 8(b) vide his report dated 01.03.2017 reported that since the material produced is in mix condition, the size of the material lying in definition of ISRI Busheling i.e. 2 feet by 5 feet may be considered as scrap. However, it was specifically mentioned in the said report that in order to ascertain the marketability of the said goods the market enquiry can be conducted and its reuse can be ascertained from National Institute of Secondary Steel (NISST), Mandi Gobindgarh. It is his submission that despite the directions of the Chartered Engineer to obtain the market opinion, no market enquiry was conducted. However, the request of the appellant for getting the goods examined by NISST Mandi Gobindgarh was accepted and after physical examination of the material, vide his report dated 14.03.2017 NISST confirmed that the material imported by the appellant is scrap as per ISRI 207, particularly Busheling Scrap. The said report has been given after considering all the factors of secondary steel, ISRI specification and explanation as per Chapter XV 8(a) of the Customs Tariff. It is his submission that the said institute (NISST) is BIS recognised laboratory. He further submits that despite the fact that the goods were examined by a Government Laboratory under the Ministry of Steels and duly approved by BIS, the goods were not released and the order directing provisional release was passed with the condition of mutilation of the same in order to render them scrap. The said orders were passed only after the intervention of the Hon'ble High Court in CWP No. 4879 of 2017 wherein the Hon'ble High Court directed the criteria of mutilation and the conditions of provisional release may be challenged before the Appellate Authority, who shall consider the same as it shall affect the trade at large. It is his contention that the appellant is aggrieved by the condition of provisional release of the goods after mutilation, as the same is bad since the goods imported by the appellant are Heavy Melting scrap as per the internationally accepted standards of ISRI, which specifically provides that the length and breadth of the material shall be 2 feet by 5 feet. The said declaration as per ISRI has been directed by the Commissioner vide standing order dated 30.05.2013 and the same has not been accepted by the adjudicating authority which is binding on them.

5. He further submitted that the report of the Chartered Engineer who reported the goods to be secondary and defective and the conclusion and ascertainment of quantity has been based on the visual examination and without segregation and weighment of the goods. It is pertinent to mention that the Chartered Engineer have reported the quantity of the material imported under various specifications merely on the basis of the visual examination and without segregation and weighment of the same. The report of the Chartered Engineers Shri Anil Soni and Shri Rajesh John cannot be relied upon as they have failed to consider the criteria laid-down under the ISRI for import of scrap. Therefore, for the failure of giving any valid reason for imported scrap not falling under the said criteria, the opinion classifying the goods under the category of secondary and defective sheets, cannot be accepted. Further, the department has not accepted the conclusion and report of the said Chartered Engineers. It is his submission that adjudicating authority has relied on the reports of the report of Chartered Engineers Shri Anil Soni and Shri Rajesh John who are not metallurgical engineers and are not competent to give such reports and to the contrary, Chartered Engineer Shri Varun Chandok has categorically held that the goods imported by the appellant are scrap as per ISRI. Moreover, the said Customs empanelled

Chartered Engineer who had jointly examined the material with the help of Metallurgical Engineer Shri Tophanwala has reported that since the material falls within the criteria specified under ISRI, the same falls under the category of Heavy Melting Scrap. The recommendation of the said chartered engineer for obtaining the market opinion has not been accepted. He further submits that adjudicating authority has erred in relying on Para 3 of the Import control order 2012 as the same is applicable only on importation of sheets/coils in standard length. The material imported by the appellant being scrap in the form of end sheet cuttings and waste of sheets, the same cannot be held to be covered under the said Import Control order of 2012. Therefore, the condition of mutilation cannot be imposed on the appellant for the purpose of release of the goods. He further submits that Chartered Engineer in its reports as well as the NISST vide its report dated 14.03.2017 have specifically held that the material imported by the appellant comprises of different sizes as per the ISRI grade. He submits that once the goods fall under the specification as laid down under ISRI, the question of reclassifying the same under the Chapter Heading of Sheets cannot be accepted, more-so scrap is always generated out of the prime, used and other material, which is waste and discard of prime material and does not have a specific name. He further submits that on the one hand the department discredit the report of the chartered engineer and on the other hand, on the basis of the said report, goods were assessed and declaration was rejected. The report of the chartered engineer cannot be accepted in part or rejected in part, therefore the order of the adjudicating authority is bad in law as the findings of the adjudicating authority is pre-mature based upon the test report which was obtained after the passing of the order-in-original holding that the goods to be prime sheets. The said fact is evident from series of the dates, wherein the order-in-original was passed on 12.04.2017 and the samples were sent for testing after passing of the said order, therefore the findings of the adjudicating authority are premature. He further submits that the findings of the adjudicating authority classifying the goods as cold rolled sheets and attracting mandatory compliance of BIS is based on the test reports obtained after passing of the order. Moreover, the said test have been conducted without following the procedure prescribed under the BIS therefore, the said test report cannot be relied on. However, to the contrary the NISST being a BIS certified laboratory has held that the Heavy Melting scrap are as per ISRI specifications. The observation of the adjudicating authority is on the basis of assumption and presumptions that the material imported in the guise of scrap can be re-used by the appellant. In view of the above, he prays the impugned orders are to be modified and the Condition No. 2 in the impugned orders are required to be deleted.

6. Ld. AR opposed the contention of the ld. Counsel and submits that before the Hon'ble High Court, the appellant themselves submitted that they may be allowed the goods after mutilation. He submits that as per Section XV 8(a) defines the waste and scrap metal waste and scrap obtained from the manufacture or mechanical working of metals and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.

Admittedly, the Chartered Engineer has given the report that the goods in question can be re-used therefore, the authorities below have rightly allowed the release of goods after mutilation.

7. Heard the parties, considered the submissions. As per the Standing Order No. 02/Cus/2013 dated 30.05.2013, the assessment of HMS Scrap mixed with re-rollable/ Serviceable Material. Relevant portion of the said Standing order is extracted below:-

> F.No. VIII-HQ/U/STEEL PIPES.2001/5848-60 DATED 30.05.2013
>
> <u>STANDING ORDER NO. 02/CUS/2013</u>
>
> Sub : Assessment of HMS Scrap Mixed with Re Rollable/ Serviceable Material .
>
> In suppression of Standing Order No. 2-Cus/2002 Dated 21.03.2002 issued in F. No. VII-48(106) T/VAL/Steel Pipes/2001, following practice is to be adopted with immediate effect for assessment of imported ferrous scrap.
>
> (i) An importer of ferrous scrap must declare, in the relevant Bill of Entry, the grade of scrap imported in terms of internationally accepted ISRI Code for ferrous scrap.
>
> (ii) The classification of ferrous scrap under various ISRI code shall be guided by ISRI Rules of "General Information" applicable to the ferrous scrap, subject to the condition that :
>
> (a) The "negligible amount" of metallic material referred to in Rule (b) of General Information shall be deemed to be upto 2% of the total weight of the imported consignment, and
>
> (b) "minor extent" of variation in size limitation applicable to any ISRI Code Grade, also referred to in Rule (b), shall mean a variation to 10%."

As per the said instructions, the importer is required to be declared the grade of scrap imported in terms of internationally accepted ISRI Code. Admittedly, the grade of scrap has been mentioned as ISRI 207 which reads as under:-

> **“**Busheling : As per ISRI
>
> 207 : Busheling
>
> Clean steel scrap, maximum size *2 feet by 5 feet*, including new factory busheling, (for example, sheet clippings, stampings, etc.). May not include, old auto body and fender stock. Free of metal coated, limed, vitreous enamelled, and electrical sheet containing over 0.5 percent silicon.**”**

8. On going through the report of Chartered Engineer, Shri Anil Soni, dated 17.02.2017, out of the total quantity of 132.895 MTs declared scrap, CR sheets/ Strips/ Slits of width less than 600mm (secondary and defective) weighing 60.00MTs, CR Sheets. Strips/ Slits of width more than 600mm weighing 05.00 MTs, Coated plated sheets/ Strips/ Slits (secondary and defective) weighing 02.00 MTs and the balance material weighing 65.895 MTs was reported to be Heavy Melting Scrap and only 7 MT can be said to be not as per ISRI Code-207. The Standing Instruction allows the variation in size upto 10% of the total quantity. Admittedly, in respect of Bill of Entry No. 8414179 dated 02.02.2017, the variation is less than 10%. Further, with respect to Bill of Entry No. 8155288 dated 11.01.2017, as per report of Shri Rajesh John, out of the total declared weight of 159.75 MTs the MS Sheet cutting/strips/slits (CR) missed coated/ plated width more than 600mm (secondary and defective) weighing 15.75 MTs were found, MS Sheets cutting/strips/slits (CR) width less than 600mm (secondary and defective)

which is also less than 10%, as per Standing Instruction dated 30.05.2013. We further find that the goods were examined by Chartered Engineer Shri Varun Chandok with the help of a Metallurgic Engineer, in the presence of Superintendent (SIIB) and after examination of the goods has given the following conclusion:-

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Definition of Sheet as per BIS:

3.1 Hot-rolled steel plates, sheets, strips and flats conforming to this standard shall be designated as under:

a) Plates shall be designated as ISPL followed by figures denoting length (mm) width (mm) x thickness (mm) of the plates.

b) Sheets shall be designated as ISSH followed by figures denoting length (mm width (mm) x thickness (mm) of the sheet.

(Copy enclosed as Annex 3 along with sizes).

Definitions as per Glossary of MOS:

PLATE: Thick flat finished product of width: +500mm & Thickness: (+)5mm whic are supplied in cut/straight length. Plates are normally produced/supplied in as hot rolled condition with or without specific heat treatments.

SHEET: Thin flat finished steel products, Width : +500MM, Thickness : (-) 5mm, Supplied in cut/straight length. Sheets are produced/ supplied in hot rolled /colc rolled/coated condition and accordingly, known as Hot Rolled (HR) Sheets or Co Rolled (CR) Sheets or Coated Sheets.

STRIPS: Hot/cold/coated Flat rolled productt, supplied in regularly wound coils o super imposed layers. Accordingly, known as HR Strips or CR Strips or Coated Strips. Depending upon width, strips are sub-classified as wide strip or narrow strip as under :

WIDE STRIPS : Strips of widths 600mm & above. Also known as Coils in India and Wide Coils in Europe etc. Accordingly, the terms HR Coils/ Wide Coils or CR Coils/ Wide Coils etc. are commonly used.

NARROW STRIPS : Strips of widths less than 600mm.

(Copy enclosed as Annexure 4 along with sizes)

In the present consignment all the goods are in mix sizes above 600mm & below 600 mm. According to visual examination no coils were found as per above said definitions of strips. Hence material contained no strips but remnants. No visual

Contd. 4/-

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physical defects on goods were noted. According to above standards, definitions, visual examination etc. these goods do not fall under criteria laid by Ministry of Steel (MOS) for second & defective products. Other characteristics for identification criteria for considering goods defective, report from NISST, Mandi Gobindgarh (Govt. of India undertaking) can be sought for and has already replied vide my mail.

3) According to Customs Tariff as submitted to me as following:
Section notes of section XV define waste and scrap as:-
8 (a) waste and scrap: metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.

In this context we wish to submit that the metal waste & scrap goods are usually generated as by-product of any heavy industry i.e. mechanical working of iron and steel (e.g. chipping, cutting, punching, side trimmings etc.). Thus generally scrap generated after mechanical working of metals is not of standard length and size in order to obtain a standard work-piece. This is specifically a left out/remnant product of prime material. Therefore first condition of section note 8(a) had been fulfilled.

Regarding usability of material as such apparently goods are no: seems as such usable for any standard industrial use due to non-standard shape because of cutting etc. However even then we could not rule out any possible use of this material as this material is available in market but with scarp dealers and not with prime goods dealer. For exact reuse and extent of usage an independent market enquiry can be conducted at your end from similar trade dealers. Further to ascertain reuse an opinion from NISST, Mandi Gobindgarh can also be sought for.

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4) Consignment was examined in presence of SIIB officials. Since the consignment produced is in mix condition, undersigned are unable to opine neither for total contents of scrap nor for any other type material. Size of material lying in definition of ISRI busheling i.e. 2 feet by 5 feet may be considered as scrap. Coated/Plated material is not covered in ISRI busheling. As this opinion is second opinion, it requires exhaustive & detailed study of material which takes time. Though we have given all definitions of serviceable prime products sold in market as per acceptable specification/standards such as BIS, MOS etc. for consideration of authorities.

5) The commercial marketability of the goods exceeding sizes 2 feet by 5 feet, if found during segregation depends upon its market demand and type of end use. Though it is not authentic to say that these goods are purposely serviceable, but this may be material sold in market subjected to market requirements & waste consuming industry.

The contents of this opinion do not release the buyer or seller from their contractual obligations. This opinion is issued for the goods as produced in condition for examination and is given in good faith without accepting any legal and financial liability. This is our personal opinion for the goods shown to us taking into consideration the physical examination, in absence of any test report, comparison with the similar goods available in market, verbal market information gathered from dealers of same trade and to the best of our knowledge and belief.

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As per the said report of Chartered Engineer, the goods were held to be scrap as per ISRI and after examining the definition of scrap as per section notes of Section XV 8(a). He also specifically mentioned that with respect to the commercially marketability of the said goods, a market enquiry can be conducted to ascertain the marketability. Admittedly, no market enquiry has been conducted but report has been obtained from NISST, Mandi Gobindgarh. As per the said report, it is concluded that the material in question is a type of melting scrap and cannot be termed as prime material or secondary defective input material for further commercial productions. The same has been recognised by BIS vide their letter dated 28.10.2016. The report is extracted as under:-

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4.0 Observations:

NISST team observed that material in question:

1. was to be stampings, end cuttings, slitted trims or remnant material of mainly cold rolled steel sheet.
2. has no regular shape
3. has no fixed sizes with respect to length & breadth.
4. do not conform to any specified standards of steel plate, sheet or strips.
5. the pieces were the remnant material of "Electro Galvanized Coil" as per markings on some of the pieces
6. is "Heavy Melting Steel scrap. (Bushling Scrap) as the invoice of the material clearly indicates.
7. pertains to ISRI code 207 as per both bill of entries of the imported material no. 8414179 & 8155288.

5.0 Discussion & Analysis:

As per the observation above it is clear that the material in question was of no regular shapes & sizes, it appears to be remnants of sheets such as end cutting or stampings etc. It apparently does not fall in the category of any of the specified standard finished good material like sheet or strip etc or secondary defected pieces of these standard products. As per Ministry of steel, the definitions of flat products are as given below (Copy of document enclosed):

- ***PLATE*** *- Thick flat finished product of width: >500mm & Thickness: (+) 5mm which are supplied in cut/straight length. Plates are normally produced/supplied in as hot rolled condition with or without specific heat treatments.*
- ***SHEET*** *- Thin flat finished steel products, Width: >500MM, Thickness: (-) 5mm, Supplied in cut/straight length. Sheets are produced/supplied in hot rolled/cold rolled/coated condition and accordingly, known as Hot Rolled (HR) Sheets or Cold Rolled (CR) Sheets or coated*

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- ***STRIPS*** *- Hot/cold/coated Flat rolled products, supplied in regularly would coils of super imposed layer. Accordingly, known as HR Strips or CR Strips or Coated Strips. Depending upon width, strips are sub-classified as wide strip or narrow strip as under:*
- ***WIDE STRIPS*** *- Strips of width 600mm & above. Also known as Coils in India and wide Coils in Europe etc. Accordingly, the terms HR Coils/Wide Coils or CR Coils/Wide Coils etc. are commonly used.*
- ***NARROW STRIPS***- *Strips of widths less than 600mm.*

As the inspected material does not fall in any of the above category, the material can be categorized as scrap material. In this regard definition given in the order of Ministry of Steel dated: 15th December'2015 is given below for reference (copy enclosed).

"The sub-standard or defective steel and steel products, which do not conform to the specified standard, shall be disposed of as scrap as per the scheme of testing and inspection of bureau of Indian Standards."

According to section XV, 8(a) of custom tariff shown to NISST team the waste and scrap is defined as;

"Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."

As the cargo material in question is clearly a waste material/remnant of some manufacturing process which has used the sheet as input material, it fulfills the above condition of section XV 8(a) of custom tariff and thus can be classified as scrap material.

As stated in the bill of entry of both the invoices, the material pertains to ISRI code 207. As per definition of this code the definition of busheling scrap is as given below:

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Clean steel scrap, maximum size 2 feet by 5 feet, including new factory busheling (for example, sheet clippings, stampings, etc.). May not include old auto body and fender stock. Free of metal coated, limed, vitreous enameled and electrical sheet containing over 0.5 percent silicon.

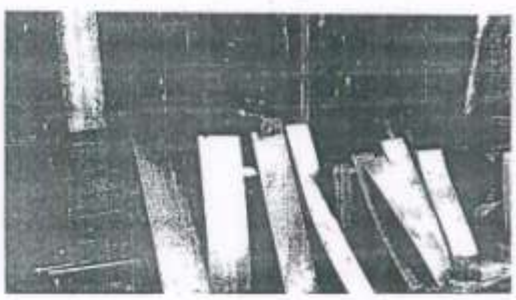
As the material in question did not contain pieces of Regular Size or Shape in the lot and contains mainly small size pieces which cannot be categorized as a sheet or coil, it is difficult to fit/use it as an input material in machines for further processing or for fast and commercial production of any products. It can also not be categorized as prime or secondary defected material for any of commercial productions.

6.0 Conclusion:

In view of the observations, discussions & analysis given above, it is concluded that material in question is a type of melting scrap. It can not be termed as prime material or secondary defective input material for down the line further commercial productions.

7.0 Photographs of Material:

Some of the photographs of the material which were taken during the time of inspection in the CFS yard are given below:



The Revenue, on the other hand, has relied on the letter issued by NISST dated 24.03.2017 to say that, in case somebody ventures into waste utilization other than re-melting, we cannot comment on those. In fact, the NISST has given a categorical finding that such type of scrap material cannot be utilised further manufacturing in any manufacturing process but the Revenue has relied that this waste may be utilised other than re-melting, therefore, they ordered for mutilation of the same. There may be chances that after mutilation also some pieces of scrap can be re-used or used other than re-melting. It is not the tenor of the Standing Instruction dated 13.05.2013. It is required to be seen with a broader perspective whether the goods can be re-used or not. As the Chartered Engineer Shri Varun Chandok with the Metallurgical Engineer has given a clear-cut finding, after considering the Chapter notes of Section XV 8(a)that the goods in question is a scrap only. With regard to the marketability, the same is to be ascertained through market survey but no enquiry has been done by the Revenue. Further, the NISST has also classified the said goods as melting scrap. In that circumstance, if the said goods qualify the specifications as per ISRI 207, the goods are to be released without mutilation. The said order of mutilation stands the harassment to the trade and against the Standing Instructions No. 02/Cus/2013 dated 30.05.2013.

9. We further find that the adjudicating authority has classified the goods as Cold Rolled sheets therefore, needs mandatory compliance of BIS is based on the test reports obtained after passing of the order. The said test reports have been conducted without following the prescribed procedure as per BIS, whether a particular material is cold rolled or hot rolled, tests including Bend test, Cupping test, Rockwell test, Tensile test etc. are required to be conducted in addition to chemical composition as per IS-513 of BIS. As the said tests have not been conducted by the said laboratory is contrary to the NISST holding that material imported are Heavy Melting scrap as per ISRI specifications. In that circumstance, we hold that mutilation of the impugned goods are not required.

10. In view of the above discussion, we modify the impugned orders as under:-

(i) The goods shall be assessed to duty provisionally on the basis of the declared invoice value, purely for the purpose of provisional release of goods only, without any prejudice to the right of the department to issue the show cause notice on any aspect including valuation.

(ii) The importer shall furnish a bond equal to the seizure value i.e. Rs. 27,26,429/- of the seized goods to bind himself to pay in case of demand the differential duty, fine, penalty or interest as may be leviable on such goods, if these are held to be other than scrap, subsequently in adjudication.

(iii) The Assistant Commissioner (Shed), CFS OWPL, Ramgarh, Ludhiana shall issue a Detention Memo for the goods from the period for which they remained a detained in terms of regulation 6(1)(l) of Handling of Cargo in Customs Area Regulations, 2009 (HCCAR, 2009).

9. The appeals disposed of in the above terms.

(Order pronounced in the court on ____________)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

KL

PER: DEVENDER SINGH

10. After going through the draft order of learned Brother Member (J), I record a separate order.

11. I find that the appellant imported Heavy Melting Scrap (HMS), which on verification was found to be contain M.S. Sheet, cutting, strips/slit (Cr) mix coated/plated width less than 600 mm, M.S.Sheet, cutting, strips/slit width more than 600 mm but of serviceable nature. It is pertinent to mention that the appellant in his statement dated 10.2.2017 recorded under Section 108 of the Customs Act, 1962 has admitted that certain CR strips/sheet/slit covered under Bill of Entry No.8155288 dated 11.1.2017 having width more than 600 mm can be used as such other than melting scrap. The impugned goods were examined by empanelled Chartered Engineers, who certified that only 50% approximately was melting scrap. Summaries of these reports are tabulated below:

(i) For B/E 8155288 dt.11.1.2017, the summary of the reports given by the empanelled Chartered Engineers are tabulated below:

Sr. No.	Name of Chartered Engineer (Sh.)	Date of Report	Description of goods actually found	Appx. Quantity (MT)
1	Rajesh John	02.02.17	i) CR sheets/strips/slits width less than 600 mm (Second & defective)	60

			ii) CR sheets/strips/slits width more than 600 mm (Second & defective)	05
			iii) Coated/plated CR sheet (Second & defective)	02
2			iv) Melting Scrap	65.895
3	Varun Chandok	01.03.17	He opined that he could not Rule out any possible re-use of this material (para 4, page 4), that as the consignment is in a mix condition and unable to opine neither for the total contents of scrap nor for any type of material (para 1, page 5) & that commercial marketability of the gods exceeding 2 feet by 5 feet, if found during segregation depends upon its market demand type of end use (point 5 page 5). Therefore, largely the report of Sh.Varun Chandok remained inconclusive.	
3	Anil Kumar soni	07.03.17	i) CR sheets/strips/slits width less than 600 mm (Second & defective)	60
			ii) CR sheets/strips/slits width more than 600 mm (Second & defective)	05
			iii) Coated/plated CR sheet (Second & defective)	02
			iv) HMS of MS sheet curtns	65.895

(ii) For B/E 8414179 dt.2.2.2017, the summary of the reports given by the empanelled Chartered Engineers are tabulated below:

8.

Sr. No.	Name of Chartered Engineer (Sh.)	Date of Report	Description of goods actually found	Appx. Quantity (MT)
1	Sh.Jaspal Singh	17.02.2017	i) HMS	72.00
			ii) CR Cut Sheets/strips/slits having uniform dimensions and width less than 600 mm (Second & defective)	72
			iii) Coated/plated sheet pcs/strips (Second & defective)	15.75
2	Varun Chandok	01.03.17	He opined that he could not Rule out any possible re-use of this material (para 4, page 4), that as the consignment is in a mix condition and unable to opine neither for the total contents of scrap nor for any type of material (para 1, page 5) & that commercial marketability of the gods exceeding 2 feet by 5 feet, if found during segregation depends upon its market demand type of end use (point 5 page 5). Therefore, largely the report of Sh.Varun Chandok, remained inconclusive.	
3	Anil Kumar Soni	07.03.17	MS sheet cutting/strips/slits (CR) mixed coated/plated width more than 600 mm (Sec. & def)	15.75

			MS sheet cutting/strips/slits (CR) mixed coated/plated width more than 600 mm (Sec. & def)	72
			HMS of MS sheet curtns	72.00

12. Opinion of NISST was obtained on recommendation of Shri Varun Chandok, one of the Chartered Engineers. I find that the report of NISST dated 24.3.2017 was not categorical that the material in question cannot be utilized other than by re-melting. Subsequent clarification dated 22.6.2017, which was obtained by the importer after passing of the order of the Commissioner (Appeals), merely mentions that the material cannot be used as such for any standard manufacturing and fabrication process.. However, clarification dated 22.6.2017 has not been examined by the adjudicating authority and the first appellate authority as it was obtained by importer subsequently. The NISST has not tested the goods for carbon content of the impugned material.

13. I find that the goods were also tested for carbon content as per the directions of the adjudicating authority in his order

dt.12.4.2017. On testing of the goods at the Research and Development in Bicycles and Sewing Machines (RDBSM) laboratory, Ludhiana, the material in question has been found to be low carbon steel, which attracts mandatory BIS certification. However, the appellant have not produced any evidence before this Tribunal or Commissioner (Appeals) that supplier of goods was granted such certification under FMCS Scheme or the imported goods were as per Indian Standard of Certification IS513

14. I also find that the appellant had tried to mislead the Tribunal by wrongly submitting before the Tribunal that the Research and Development in Bicycles and Sewing Machine laboratory is an non-BIS approved laboratory whereas on the BIS website, which is in public domain, it is listed as BIS approved laboratory. The laboratory is an UNDP-UNIDO assisted entity of Punjab Govt.

15. I find that both the NISST clarification dt.22.6.2017 and the report dt.18.4.2017 of the RDBSM laboratory, Ludhiana have a direct bearing on the outcome of the adjudication. It will therefore be prudent that these reports, which are subsequent developments after passing of the adjudication order, are examined cumulatively by the adjudicating

authority, who will pass a fresh order after giving fair opportunity to appellant to defend their case.

16. In the result, the appeals are disposed of by way of remand in above terms

(DEVENDER SINGH)
MEMBER (TECHNICAL)

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DIFFERENCE OF OPINION

As there is divergent views of the Members of this Tribunal, therefore the matter may be placed before the Hon'ble President to appoint third Member to resolve the following issue;

Whether the goods can be released provisionally to the appellant as per the terms and conditions of Para 10 of this order, as held by Member (Judicial);

OR

Whether the matter needs re-examination by the adjudicating authority as per Para 15 of this order as held by Member (Technical).

(Points of difference pronounced in the court on ______________)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

KL

Per: Anil G Shakkarwar:

Heard on difference of opinion.

2. Heard both sides and perused the records.

3. Para 15 of order as held by Member (Technical) indicates that the report dated 18/04/2017 and NISST clarification dated 22/06/2017 being development subsequent to the passing of provisional release order dated 12/04./2017, the matter needs to be re-examination by the original authority.

4. I have examined the clarification dated 22/06/2017 issued by NISST. The said clarification dated 22/06/2017. I find that the same refers to the clarification issued by NISST on 24/03/2017 and also reaffirming their findings that the goods in question were melting scrap as opined by them in report dated 14/03/2017. Therefore, I do not find that the contents of said clarification dated 22/06/2017 issued by NISST are having any developments after the said order dated 12/04/2017 has been passed. Further the said report dated 18/04/2017 has also been ordered in the said paragraph. Therefore, I do not find that any purpose would be served by remanding the matter back to the original authority as opined by Member (Technical) I therefore, do not agree with Member(Technical). I further find that the terms and conditions of para 10 passed

by Member (Judicial) are well reasoned and therefore, I support the order passed by the Member (Judicial). The matter is referred back to Division Bench with this Opinion.

(Anil G. Shakkarwar)
Member (Technical)

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MAJORITY ORDER

In view of the majority decision, it is held that the goods can be released provisionally to the appellants as per terms and conditions enunciated in Para 10 of the order of Member (Judicial) and the appeals are not required to be remanded back to the original adjudicating authority.

2. Both the appeals disposed of.

(Order pronounced in the court on 26/03/2018)

Devender Singh
Member (Technical)

Ashok Jindal
Member (Judicial)

KL