CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
COURT NO.1
Appeal No. C/60032/2018

[Arising out of the Order-in-Appeal No. CHD-EXCUS-001-APP-120-22 dated 07.12.2017 passed by the Commissioner of Customs (Appeals), Chandigarh]

Date of Hearing/Decision: 26.10.2018

For Approval & signature:

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

M/s Mohit Industries **Appellant**

Vs.

Commissioner of Customs, Ludhiana **Respondent**

Appearance

Shri. Saurabh Kapoor, Advocate- for the appellant
Shri. Tarun Kumar, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 63293 / 2018

Per Ashok Jindal:

1. The appellant is in appeal against the following order which has been affirmed by the ld. Commissioner (A) by way of impugned order.

"22. Accordingly, the impugned goods imported under the bills of entry 8095216 dated 06.01.2017, 8362288 dated 30.01.2017, 8519138 dated 11.02.2017 are allowed to be cleared on the following terms and conditions:

i. The goods imported under the three bills of entry are held classifiable under the tariff item 72261100 and shall be assessed to duty accordingly on the re-determined assessable value accepted by the importer.

ii. The goods imported under the three bills of entry are held labile to confiscation under the provisions of section 111 (d) and 111 (m) of the Customs Act, 1962. However, the importer is allowed to redeem these goods on payment of fine as mentioned in the table next.

iii. The importer is held liable to a penalty under Section 112 (a) of the Customs Act, 1962 for his acts and omissions which have rendered the goods imported under the three bills of entry liable to confiscation as per the penalty mentioned in the table next.

	Bill of entry		Revised assessable value (in Rs.)	Fine	Penalty
	Number	Date			
1	8095216	06.01.2017	13,16,667	50,000	15,000
2	8362288	30.01.2017	8,02,105	30,000	10,000
3	8519138	11.02.2017	13,48,892	50,000	15,000
	Total				

iv. The impugned goods after their redemption and payment of duty and fine 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."

2. The facts of the case are that the appellant has filed three bills of entry declaring goods as under:

	Bill of entry		Port of import	Declared description of the goods	Quantity (MT)	Assessable value (Rs.)	Duty self-assessed (Rs.)
	Number	Date					
1	8095216	06.01.2017	OWPL	Cold rolled steel sheet cutting secondary/defective -width less than 600 mm. Tariff item 722112390	43.610	1031700	334825
2	8362288	30.01.2017	GRFL		26.375	626783	203415
3	8519138	11.02.2017	OWPL		44.870	1024417	332463
	Total						

3. The goods imported bills of entry were examined and the chartered engineer in respect of bills of entry no. 8095216 dated 06.01.2017 reported that the goods imported were Silicon Steel Sheet Cuttings (CRGO) (Secondary & Defective) having different irregular shapes and sizes. Some of the sheet cuttings were in trapezoidal shapes and sheet cuttings were having triangular cut in the centre. The sheets were ranging from 4′ to 8′ approximately. The said sheets were having surface defects like bent corners, defects and damages/damaged edges. The said sheet cuttings seem to be left over of prime material.

4. Further with regard to bill of entry no. 8362288 dated 30.01.2017. The Chartered Engineer reported that the material imported was discarded/rejected/scrapped side/end cutting left over/non uniform pieces of CRGO sheets having plain surfaces. The sides of some of the sheets are twisted/bent and irregular left over/remnants of prime quality material.

5. Further with regard to the bill of entry no. 8519138 dated 30.01.2017. The Chartered Engineer reported that the material imported was cut to size cold rolled grain oriented (CRGO) Transformer Lamination. The cargo was in heterogeneous composition consisting of trapezoidal in shape, some having

triangular cut in centre, having width in the range of 6′ to 18′ and lengths in the range from 6′ to 8′ and varying thickness from 0.25 to 0.50 MM. The sheets at the outer side are bent/cut and damaged.

6. The appellant made request vide letter dated 16.03.2017 for withdrawal of samples but the same were neither withdrew nor tested the material in order to confirm the composition and classification of the said material.

7. The appellant made further request for provisional release of the goods in question but the said request was never considered by the adjudicating authority. The appellant approached the Hon'ble High Court for the purpose of release of the goods whose were held up for a long period of time and incurring demurrage and detention charges. The Hon'ble High Court vide order dated 01.05.2017 in CWP No. 9194/2017 ordered for deciding the representation dated 17.04.2017 within 2 weeks by passing speaking order after affording an opportunity of personal hearing to the Appellant.

8. However, despite the orders passed by the Hon'ble High Court to decide the representation for provisional release, the goods were ordered for spot adjudication, wherein, on the basis of the reports given by the Chartered Engineers, the classification was changed from 72112390 to 7226110 as CRGO Sheets. The market price as suggested by the Chartered Engineers was accepted by the department wherein the differential duty was demanded by concluding that the goods imported were Secondary & Defective Cold Rolled Grain Oriented Sheets and the goods were ordered to be released only after mutilation to render them scrap and payment of

redemption fine and penalty. The said order was challenged before the ld. Commissioner (A) who affirmed the adjudication order, therefore, the appellant is before us.

9. The ld. Counsel for the appellant submits that reports of the Chartered Engineers for change of classification are not admissible. It is his submissions that the findings of the Chartered Engineers who are not the metallurgical engineer and were based on the visual examination without getting it tested from any BIS Recognised Laboratory. To support this contention, he relied on the decision of this Tribunal in the case of ***M/s R.G. Gupta Vs. Commissioner of Central Excise, Ludhiana reported in 2017 (356) ELT 470 (Tri. Chan), Hindustan Zink Limited Vs. Commissioner of Central Excise, Jaipur reported in 2005 (181) ELT 170 (SC), Commissioner of Customs, New Delhi Vs. Pashupati Industries reported in 2017 (358) ELT 840 (Tri. Del.), Marvel Agencies vs. Commissioner of Customs, New Delhi reported in 2017 (348) ELT 534 (Tri. Del.), Ocean Marketing Vs. Commissioner of C. Ex & ST, Jaipur reported in 2017 (348) ELT 269 (Tri. Del.).***

10. He further submitted that the Chartered Engineers were not empanelled under the BIS, therefore, the report of the Chartered Engineers cannot be relied on for rejection of the declared classification. To support of this, he relied on the decision of this Tribunal in the case of ***Shivam International Vs. Commissioner of Customs, Chennai reported in 2011 (272) ELT 693 (Tri. Chennai.).***

11. He further submitted that the classification has purposed by the Revenue cannot be accepted in the absence of the any test report. It is his submissions that the appellant vide letter dated 10.02.2017 and 16.03.2017 requested to get the goods tested from a laboratory in order to ascertain the classification and compliance of BIS but the said request was not acceded to by the Revenue.

12. He further submitted that vide letter dated 03.04.2017, a request was again made to test the goods in order to ascertain the actual classification of the goods. It was also requested that the goods are sheet cuttings the same may be classified as scrap.

13. It is further submitted that the goods were neither seized nor detained under any panchnama, therefore, the appellant made request vide letter dated 17.04.2017 to release the goods provisionally but the Revenue has demanded duty on the said goods by classifying as CRGO sheets, therefore, the Revenue cannot direct the Appellant to get the same mutilated as scrap. Once the department has classified and ordered for clearance of the goods as CRGO sheets, therefore, the order of directing mutilation is bad in law. For that, he relied on the decision of this Tribunal in the case of R.G. Gupta (Supra) which has been affirmed by the Hon'ble High Court in Customs Appeal No. 10 of 2017, he also relied on the decision of this Tribunal in the case of ***BIL Power Vs. Commissioner of Customs, Kolkata***.

14. He further submitted that in terms of Section 24 of the Customs Act, 1962, there exist no rules for mutilation of goods. To support of this, he relied on the decision of Commissioner of

Customs JNCH Nava Sheva Vs. Madhu Sudan Metals reported in 2011 (266) ELT 334 (Bom.) and Union of India Vs. Madanlal Steel Industries Ltd. reported in 2001 (132) ELT 526 (SC) wherein it has been held that in the absence of any regulations under Section 24 of the Customs Act, 1962, the goods cannot be ordered to the mutilated by the department.

15. He further submitted that mutilation of goods in terms of Section 24 cannot be orders since the instruction No. FO/400/71/2014 CUS 14 dated 09.07.2014 relied upon by the Department only restricts the import of material in terms of steel control order dated 12.03.2012 and nowhere directs that any goods imported in contravention of provisions may be subject to mutilation before release of the same to the importer.

16. He further submitted that the adjudicating authority has erred in holding that the appellant has accepted the reports of Chartered Engineer, without appreciating that the copies of the report of the chartered engineer, were never supplied to the appellant. Further having accepted the findings of the respondent, the right to challenge the same cannot be objected to once an appeal has been filed against the order of adjudication. To support of this contention, he relied on the decision of this Tribunal in the case of ***Marque Enterprises Vs. Commissioner of Cus (Preventive) Amritsar 2015 (329) ELT 307 (Tri. Del), Commissioner of Customs, Delhi Vs. Maruti Fabric Impex reported in 2016 (343) ELT 963 (Tri. Del.), Digitech Photocopier Vs. Commissioner of Customs, Mumbai reported in 2009 (233) ELT 425 (Tri. Del.),***

therefore, he prayed that the impugned order is to be set aside and the appeal be allowed and the goods are allowed to be released.

17. On the other hand, the ld. AR supported the impugned order and prayed that the authorities below has examined the issue and after considering the reports of the Chartered Engineers found that the goods in question are CRGO sheets and as the appellant has declared as scrap, therefore, they are required to be mutilated before release.

18. Heard the parties and considered the submissions.

19. On careful consideration submissions made by both the sides, we find that the following issues emerges.

(A) Whether the Chartered Engineer report is acceptable in the facts and circumstances of the case or not?

(B) Whether the classification of the impugned goods has been done by the adjudicating authority correctly or not in the absence of any test report.

(C) Whether the goods are required to be mutilated as directed by the adjudicating authority.

(D) Whether in the facts and circumstances of the case redemption fine and penalty can be imposed on the appellant or not?

(A) Whether the Chartered Engineer report is acceptable in the facts and circumstances of the case or not?

We find that the Chartered Engineer who has examined the goods are not metallurgical engineer and the reports were based on visual examination without any market inquiry, therefore, the reports provided by the Chartered Engineers are not acceptable as held by this Tribunal in the case of R.G. Gupta (Supra) wherein this Tribunal observed as under:

> *"With regard to Containers Nos. SCZU7828581 & SCZU7833398, the Chartered Engineer opined that these containers contain material in the form of CRGO Sheet in coil form. The coils were found to be pressed and stuffed in the shape of stripped bundles and the said scrap was consisting of side trimmings, wires, auto bodies and other waste of steel. <u>If the condition whereas is like that the Chartered Engineer has given opinion only on the basis of visual inspection and no other market enquiry has been conducted and he has not examined the usage of said sheets/strips.</u> Further, I have gone through the classijfication of the Chartered Engineer who examined the priorities on visual examination on steel scrap, <u>therefore, the opinion made by the Chartered Engineer is false and the same cannot be accepted unless until, there is concrete evidence on record</u>."*

Further, this Tribunal has also observed in the case of the M/s Pashupati Industries INC. (Supra), wherein this Tribunal examined the issue and observed as under:

> *"Admittedly the Mechanical Chartered Engineer is not an expert to value the readymade garments. <u>The report of the Chartered Engineer is merely on the basis of eye-estimation and who had not conducted any analysis with regard to raw material used in manufacture of readymade garments and quality and quantity of readymade garments. The mechanical engineer can examine the machinery, but not the readymade garments. Therefore, the learned Commissioner (Appeals) has rightly rejected the value adopted by the Chartered Engineer.</u> In that circumstances, we do not find any infirmity in the impugned order. As we have decided the issue of merit in favour of the respondent, therefore, we are not dealing with the preliminary objections raised by the respondent during the course of argument. In result, impugned order is upheld. Appeal filed by the Revenue is dismissed."*

Further in the case of M/s Marvel Agencies (Supra) wherein this Tribunal observed as under:

> *"We also note that <u>the opinion of Chartered Engineer is based upon visual examination of the motors and same do not stand</u>*

> *<u>open to check out the contents and to find out efficiency of the motors. Such an opinion given on the basis of mere visual examination cannot be held to be binding.</u> The Chartered Engineer also was not produced for cross-examination and as such his opinion cannot be given preference."*

We also take note of the fact that in the case of M/s Ocean Marketing (Supra), this Tribunal has further observed as under:

> *"Further, the submissions of the appellant recorded in the impugned order at Paragraph 7.3 (page 6) that <u>Shri M.N. Mathur being a Civil Engineer, is not competent to furnish the report in the field of Metal and that the Department has influenced him for issuing the report, has not been addressed by the ld. Commissioner (Appeals). On the contrary, the earlier reports furnished by the experts in the field of metals have been discarded by the Department for assessment of the Bill of Entry. Since, the standing of Shri Mathur is doubtful, we are of the opinion that his views cannot be considered as the expert report in terms of Section 45 of the Indian Evidence Act, 1872, and thus, cannot be relied upon for change in the classification of the impugned goods."</u>*

20. In view of the above analysis, we hold that the as Chartered Engineers who were not metallurgical engineer and given the reports without market survey on visual examination cannot be relied upon. Therefore, the reports given by the Chartered Engineers are not acceptable for assessment of the bills of entry in question.

<u>(B) Whether the classification of the impugned goods has been done by the adjudicating authority correctly or not in the absence of any test report.</u>

Admittedly, no samples have been drawn for testing despite several requests were made by the appellant in terms of Steel and Steel Products (Quality Control) second order dated 12.03.2012 wherein para 3(ii) deals with how the goods are to be disposed of, which is reproduced as under:

> *"(2) 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 the Bureau of Indian Standards."*

Admittedly, as per the steel and steel products (quality control) second order 2012, the goods are required to be testing and inspection of the Bureau of Indian Standard and the same has not been done. In that circumstances, the classification arrived by the adjudicating authority is not acceptable, therefore, classification is declared by the appellant is accepted.

(C) Whether the goods are required to be mutilated as directed by the adjudicating authority.

As the reports of the Chartered Engineers are not acceptable and the goods declared by the appellant as scrap has been accepted. In that circumstances, the goods are none other than the scrap as declared by the appellant, therefore, the same are not required to be mutilated. Moreover, the Hon'ble High court of Bombay in the case of Madhu Sudan Metals (Supra) held that no rules have been framed permitting the mutilation of goods, the mutilation cannot be allowed. Therefore, we hold that in the absence of any rules framed for mutilation, the mutilation of the said goods cannot be allowed.

(D) Whether in the facts and circumstances of the case redemption fine and penalty can be imposed on the appellant or not?

Admittedly, the declaration made by the appellant has been accepted. Moreover, the goods were not mis- declared and held to be scrap. In that circumstances, the redemption fine and penalty imposed on the appellant are set aside.

21. As all the issues has been answered in favour of the appellant, therefore, the impugned order is set aside and the appeal is allowed with the direction the goods to be released immediately.

(Dictated and pronounced in the open court)

Anil G. Shakkarwar **Member (Technical)**	**Ashok Jindal** **Member (Judicial)**

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