CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60419 of 2021

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-778-2021 dated 14.07.2021 passed by the Commissioner (Appeals), CGST, Ludhiana.]

M/s S R K Manufacturing **......Appellant**
C-7k Focal Point, Khanna, Punjab 141401

VERSUS

Commissioner of Customs, Luhiana **......Respondent**
ICD GRFL, GT Road, Sahnewal, Ludhiana, Punjab

WITH

Customs Appeal No. 60469 of 2021

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-778-2021 dated 14.07.2021 passed by the Commissioner (Appeals), CGST, Ludhiana.]

Commissioner of Customs, Luhiana **......Appellant**
ICD GRFL, GT Road, Sahnewal, Ludhiana, Punjab

VERSUS

M/s S R K Manufacturing **......Respondent**
C-7k Focal Point, Khanna, Punjab 141401

APPEARANCE:

Present for the Appellant: Mr. Saurabh Kapoor, Advocate

Present for the Respondent: Ms. Swati Chopra, Authorized Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.60967-60968/2021

DATE OF HEARING: 30.11.2021
DATE OF DECISION: 15.12.2021

PER: SULEKHA BEEVI C.S.

The above appeals which are filed against the same impugned order, were heard together and disposed by this common order. The parties are hereafter referred to as importer and Revenue for the sake of convenience.

2. Brief facts are that, on receiving intelligence that the importer is indulging in importing old used CRGO sheets/coils and old & used gas cylinders by way of concealment / misdeclaration in the guise of consignment of Heavy Melting Scrap (HMS) falling under CTH 72044900 at Ludhiana Port, an alert was issued for examination of the consignments in the presence of DRI officers.

3. The importer had filed four Bills of Entry dated 28.4.2021 (2 nos), 6.4.2021, and 12.5.2021 for clearance of the imported goods. The details of the goods declared as per import documents are as under:

Sr. No.	**Bill of Entry No. & date**	**Container No.**	**Commodity declared in Bill of Entry**	**Total Weight (in MT)**	**Rate (USD) per MT**	**Total Value (USD)**
1	3743347 dated 28.04.2021	BAXU2661023 BAXU2680173	Heavy Melting Scrap ISRI Code 200 to 206	31.66	300	9498.0
2	3461412 dated 08.04.2021	AKLU6013550 BLZU2081197 MCLU1000033 QCLU2230610 QCLU2230950 XINU1542774	Heavy Melting Scrap ISRI Code 200 to 206	160.75	300	48223.5
3	3743346 dated 28.04.2021	IAAU2680025	Heavy Melting Scrap ISRI Code 200 to	28	300	8400.0

			206			
4	3921658 dated 12.05.2021	CMAU1569439 CPIU8238256 GATU1181242 TSAU2701357	Heavy Melting Scrap ISRI Code 200 to 206	95.15	300	28545.0

4. On examination of the goods it appeared that the importer had misdeclared the goods and the summary of the examination is as under:-

Sr. No.	Bill of Entry No. & date	Container No.	Examination/Observation of the DRI officer
1	3743347 dated 28.04.2021	BAXU2661023 BAXU2680173	Examination done vide Panchnama dated 07.05.2021, 21.05.2021 & 24.05.2021. The imported goods appeared to be Old & Used empty gas cylinders of various sizes and Table Tennis rackets apprx. 13544 pairs. Goods were detained and Supardari of the goods were handed over to port officials of ICD CONCOR.
2	3461412 dated 08.04.2021	AKLU6013550 BLZU2081197 MCLU1000033 QCLU2230610 QCLU2230950 XINU1542774	Examination done vide Panchnama dated 07.05.2021. The imported goods appear to be Old & used CRGO sheets of various lengths and coated with some oily substance. Representative samples drawn vide Panchnama dated 10.05.2021. Goods were detained and Supardari of the good were handed over to port officials of ICD CONCOR
3	3743346 dated 28.04.2021	IAAU2680025	Examination done vide Panchnama dated 07.05.2021. The imported goods appears to be Old & used CRGO sheets of various lengths and coated with some oily substance. Representative amples drawn vide Panchnama dated 10.05.2021. Goods were handed over to port officials of ICD CONCOR
4	3921658 dated 12.05.2021	CMAU1569439 CPIU8238256 GATU1181242 TSAU2701357	Examination done and representative samples drawn vide Panchnama dated 13.05.2021. The de-stuffed imported goods prima-facie appeared to be Old & used CRGO sheets coated with some oily substance. Goods were detained and Supardari of the goods were handed over to port officials of ICD CONCOR.

5. The importer, though had declared the goods as "Heavy Melting Scrap ISRI Code 200 to 206", the goods on examination were found to be "old and used CRGO (secondary Cold Rolled Grain Oriented)

Sheets/old and used "empty gas cylinder" and "Table Tennis Rackets".

6. According to Revenue, the import of old and used CRGO sheet and old empty gas cylinders (when imported without license) are prohibited in India in view of the OM dated 9.11.2020 issued vide F.No. 01/89/180/MONI-5852/AM-03/PC 2 (A) PART-III/V of III/E-2787. Further, as per the extant Steel and Steel Products (Quality Control) order issued by the Ministry of Steel under Bureau of India Standards Act, 2016, import of Cold Rolled Grain Oriented (CRGO) Electrical Steel is permitted inter alia, subject to the conditions that the goods shall bear Standard Mark under a license from the BIS and meet the quality parameters / technical requirements of Indian Standard. As per CBIC's instruction dated 9.7.2014 issued under F.No. 450/71/2014-Cus IV, it is clarified that import of second/defective/old and used CRGO sheets, strips and **coal**is not permitted. The Technical Division, Ministry of Steel has issued an OM dated 13.10.2020 with regard to import of substandard and used oily CRGO laminations into the country.

7. Again, as per the Explosives Act, 1884 r/w the Gas Cylinder Rules 2016, no person shall import any gas cylinders filled or intended to be filled with any compressed gas except under and in accordance with the conditions of license granted under the Foreign Trade (Development & Regulation) Act, 1992.

8. The goods were examined by a Chartered Engineer and in his report dated 4.6.2021, it was stated as under:

DESCRIPTION OF GOODS	DECLARED QTY In Kgs	ASCERTAINED QTY In Kgs	SUGGESTD CIF PRICE/MT
Old & used Cylinders	--------------	20786 Kg	USD 350/MT
New Tennis Bat	-------------	13544 Pcs (3425 Kgs)	INR 50/PC
Heavy Melting Scrap	31660 Kgs	6929 Kgs	USD 300/MT
Total Weight	31660 Kgs	31140 Kgs	

9. As it appeared to the Revenue that, importer attempted to import old and used CRGO sheets and old and used gas cylinder without license and also misdeclaring them; attempted to clear Table Tennis rackets clandestinely to evade customs duty, the goods were seized in terms of Section 110 of the Customs Act, 1962 under Seizure mahazar / Panchnama dated 4.6.2021 on the reasonable belief that the goods are liable for confiscation under Section 111 and Section 119 of Customs Act, 1962.

10. The importer vide letters dated 10.5.2021 and 19.05.2021 requested for provisional release of the goods. The adjudicating authority vide Provisional Release Order dated 9.6.2021 rejected the request for release of old and used CRGO steel sheets and Old and used gas cylinders. The adjudicating authority however, allowed the release of table tennis racket and HMS on furnishing necessary Bond.

11. The importer filed appeal before the Commissioner (Appeals) who vide order impugned herein allowed the release of the old & used CRGO sheets and old and used gas cylinders, after imposing conditions. The operative part of the order passed by Commissioner(Appeals) reads as under:

ORDER

> 6. In view of the above discussion and analysis, I allow the appeal filed by the appellant to the extent that the impugned goods b provisionally released after mutilation as discussed above, subject to furnishing of bond equal to

> the value of all the impugned goods alongwith furnishing of Bank Guarantee equivalent to 30% of the value of the goods, in addition to duty assessed by the department, covered under above mentioned bills of entry, for covering of redemption fine and penalty that may be levied at the time of final adjudication of the case.

12. The importer has filed the above appeal aggrieved by the conditions imposed for provisional release of the goods. The Revenue has filed appeal aggrieved by the order allowing the release of goods.

13. On behalf of the importer, the Ld. Counsel, Shri Saurabh Kapoor appeared and argued the matter. He submitted that though the Commissioner(Appeal) partly allowed the appeal of the importer by allowing provisional release of the goods after mutilation of the same, he has imposed a condition to furnish Bank Guarantee of 30% of the value of the goods which would be Rs. 38,88,717/- . This condition is highly harsh and contrary to the view taken in similar imports.

14. He explained that the importer is engaged in import as well as trading of Iron and Steel and is registered with the Central Excise / GST Department. They have been importing raw material for the past several years. The present consignment were imported from UAE. The goods declared as HMS were accompanied by documents in the nature of invoice, packing list, Bill of lading and pre-inspection certificate. The goods were examined by the pre-inspection agency duly authorized by the Director General of Foreign Trade, who after examining the goods had certified the goods as 'Heavy Melting Scrap'. On arrival of the goods, the appellant filed Bill of Entries for clearance of the goods on the basis of these documents. After

examination, the goods were detained holding that the goods are old and used CRGO sheets and old and used empty cylinders.

15. The ld. Counsel submitted that the Revenue did not obtain any expert opinion as to the nature of the goods. The goods were seized on the belief formed by mere visual examination of the goods. The officers have not send any sample for testing to a BIS laboratory or any other Government laboratory to ascertain the composition of the imported goods.

16. The Revenue has erred in holding the goods as 'prohibited goods' as there are basically scrap and imported for the purpose of melting only. The provisions of the Gas Cylinder Rules are not attracted as these goods in the form of cylinders have not been imported for the purpose of filling gas or for reuse as such .These cylinders have been used for a considerable period of time and are declared as unfit for use as such and are scrap only. Further, the Commissioner(Appeals) having ordered to release these goods after mutilation, the same would be released as scrap only and the Gas Cylinder Rules would then not apply.

17. The other goods which are held to be CRGO sheets by the Revenue are nothing but end cuttings and used pieces of metals having homogenous holes in all pieces. These cannot be categorized as CRGO in the absence of any test report. They are not sheets as there are only end cuttings which cannot be put to reuse at all. In the examination report it is stated that the presence of oil on these goods would show that they are old and used.

18. He submitted that the importer does not contest the direction of the Commission(Appeals) to subject the gas cylinders and alleged CRGO sheets to mutilation before release of the same. So, also the importer is ready to execute bond equal to the value of the impugned goods. The importer has already paid the duty as per the declared value. The importer is only contesting the direction to furnish Bank Guarantee equivalent to 30% of the value of the goods.

19. The Commissioner (Appeals) has erred in directing the importer to furnish BG equivalent to 30% value of the good by relying on the judgment in the case of Bhaiya Fibers Vs Addl. Director General, DRI 2012 (281) ELT 396 (Del). In fact, the Hon'ble High court in the said case had directed release of the goods upon deposit of 20% of differential duty. In the present case, apart from directing to pay the enhanced differential duty, the Commissioner (Appeals) has imposed a further condition to furnish BG of 30% of value of goods. Since there is a direction for release of the goods after mutilation, this condition could not have been imposed. The reliance placed on the direction in the case of Max Enterprises vs Deputy Commissioner of Customs Chem 2019 (367) ELT 753 (Mad) is also not proper.

20. The Ld. Counsel relied on the directions in the following cases:

a) Amit Enterprises vs. UOI 2011 (269) ELT 314 (P & H)
b) Shilpi Crafts vs UOI 2014 (314) ELT 48 (P & H)
c) Gaurav Electronic vs Additional Commissions of Customs Sahenwal 2015 (324) ELT 149 (p & h)

21. The Ld. Counsel submitted that the goods are lying detained at the port of ICD CONCOR, Ludhiana and the importer is incurring huge

ground rent charges. It has put him to huge financial loss. He prayed that the appeal may be allowed.

22. The Ld. AR Ms. Swati Chopra appeared and argued for the Revenue. She submitted that the Commissioner (Appeals) has erred in allowing provisional release of the CRGO sheet, which are prohibited goods in terms of CBE'S instruction dated 9.7.2014 issued under F.No. 450/1/2014 Cus IV. It is categorically mentioned therein that the import of second/defective/old and used CRGO sheet, strips and coil in shape and size are not permitted. The importer has attempted to import these goods misdeclaring them as 'Heavy Melting Scrap ISRI 200-206 .With regard to the release of old and used empty gas cylinders of various sizes, she submitted that the import of such cylinders are prohibited under the Explosive Act, 1884 r/w Gas Cylinder Rule 2016. These Rules state that no person shall import any gas cylinder filled or intended to be filled with any compressed gas except in accordance with the conditions of license. The importer had not obtained any prior approval from competent authority. The plea of the importer that these are old and used and scrap only is false and cannot be accepted. The Ld. AR referred to para 2(ii) of Circular No. 35/2017-Cus issued by CBEC dated 16.8.2017 to argue that the goods being prohibited ,the provisional release ought not to be allowed. She prayed to set aside the impugned order.

23. Heard both sides and perused the records carefully.

24. The issue to be decided is whether the impugned goods can be provisionally released to the importer ;

if can be released,whether the conditions imposed by Commissioner (Appeals) are legal and proper.

25. According to the importer, the goods imported are Heavy Melting Scrap ISRI Code 200-206. The Pre Inspection Certificate issued by the agency 'Wize Services FZE' has certified the goods to be Heavy Melting Scrap. The Ld. Counsel has furnished photographs of these goods held by department to be CRGO Sheets.He submits that these are end cuttings and used pieced of metals having homogenous holes in all the pieces. There is no expert opinion placed before us. At this stage, we do not consider it proper to enter into any discussion as to the nature or the classification as these issues are under investigation and yet to be adjudicated.

In para 5.3 the Commissioner (Appeals) has observed as under:

> 5.3 I note that the very basis of the rejection of the request for grant of provisional release of the goods imported vide Bill of Entries Nos. 3461412 dated 06.04.2021, 3743346 dated 28.04.2021 and 3921658 dated 12.05.2021 comprising of 'Old & Used CRGO sheets of various length having been based on the ground that the subject goods do not fall under the definition of Scrap as mentioned in the ISRI Code from 200 to 206. In this regard, as per examination report, I note that the material is Old & Used comprising of different lengths, further the presence of oil in the said material strengthen the argument of the appellant that the same has been used before and therefore in view of the above, prima facie the impugned goods appears to be scrap.

Again in page 5 of the impugned order, the Commissioner (Appeals) has relied on the order passed by Jt. Commissioner, Custom Ludhiana vide O-I-O LDH-CUS-JC-RRG-127-18-19 dated 5.3.2019 by which goods alleged to be CRGO Sheets were allowed to be cleared. In that case the entire consignment was ordered to be mutilated and rendered as scrap before allowing to be redeemed by the importer therein.

26. The Commissioner (Appeals) has thus directed to subject the impugned goods to mutilation before release of the same .When similar import declared as HMS and reclassified and reassessed as CRGO sheets were ordered to be released after mutilation and payment of duty, we do not find any reason to interfere with the view taken by the Commissioner (Appeals) directing provisional release of the impugned goods.

27. Coming to the issue of import of goods in the nature of old and used gas cylinders, the main objection raised by Revenue is that the Gas Cylinder Rules prohibit import of gas cylinders which are filled or intended to be filled with any compressed gas. Here again, the Commissioner (Appeals) has ordered for mutilation of these goods so as to render them as scrap. On such score, the contention raised by the Revenue adverting to Gas Cylinder Rules and Explosives Act is without any basis. We therefore hold that the view taken by the Commissioner (Appeals) to allow provisional release of the goods is legal and proper.

28. The next question would then be as to the legality and propriety of the conditions imposed in the impugned order for provisional release of the goods. The operative portion of the impugned order has already been reproduced above. As per the order the conditions imposed for provisional release are as under:

The goods are to be provisionally released:-

(i) the goods are to be subjected to mutilation so as to render them as scrap

(ii) furnish bond equal to the value of the impugned good.

(iii) furnish Bank Guarantee equivalent to 30% of the value of the goods.

(iv) pay the differential duty assessed by the department.

29. The Ld. Counsel for importer has submitted that they have no objection to comply with all the above conditions except the condition to furnish Bank Guarantee equivalent to 30% of the value of the goods. It is submitted by him that they have paid the entire duty on the declared value and also willing to pay the differential duty if any assessed by the department. We find that when the importer has made such payments and the goods having been mutilated to render them as scrap so as not to be reused as such for any purpose, the condition to furnish BG in addition to bond is not warranted or justified.

30. The commissioner (Appeals) has relied on the judgments in the case of Bhaiya Fibre Ltd (supra) and Max Enterprises Vs. Dy. Commissioner of Custom, Chennai 2019 (367) ELT 753 (Mad.) in these decisions, the Hon'ble High Courts have not imposed condition to furnish Bank Guarantee. In para 12 of the decision in the case of Bhaiya Fibre Ltd, the Hon'ble High Court observed as under:

> 12. Under the circumstances, we have to go by the principles laid down by the Customs (Provisional Duty Assessment) Regulations, 1963. We, therefore, direct the Respondent to provisionally clear the goods forming the subject matter of 12 bills of entry that have been mentioned in the petition upon the Petitioner depositing an amount equivalent to 20% of the difference in the provisional duty as sought to b assessed by the Respondent and on the basis of the value Prima facie determined by the Respondent, that is US$ 1640/PMT and the value declared by the Petitioner, that is between US$ 870/PMT and US$ 1000/PMT. The Petitioner will, of course, be also obliged to execute a bond to pay the balance of the differential duty as and when it I finally assessed. The Respondent will issue a show cause notice to the Petitioner before taking a final view in the matter.

31. The case of Max Enterprises (supra) the Hon'ble High Court in para 14 observed as under:

> 14. The cases cited at the Bar indicate the consistent view that release of the consignments be permitted in terms of Section 110A of the Act upon condition that the petitioner directed to remit 30 to 50% of 30% of the differential duty and execute a personal bond for the remaining 70%., upon remittance and furnishing of which, the goods shall be released forthwith. On the aspect of underinvoicing, the Department is at liberty to initiate proceeding for adjudication that will be concluded after hearing the petitioner and in accordance with law.

From the above, it can be seen that the reliance placed by the Commissioner (Appeals) to impose the condition to furnish BG is highly misplaced and misconstrued. In both these decisions, the Hon'ble Courts have directed to pay 20/30 percent of the differential duty. In the present case, the importer having paid duty on the declared value and having accepted to pay the entire differential duty, we are of the considered opinion that in the interest of justice, the condition to furnish Bank Guarantee equivalent to 30% of value of the goods requires to be waived which we hereby do.

32. In the result, the impugned order is modified to the limited extent of setting aside the direction to furnish Bank Guarantee of 30% equivalent to the value of the goods. The appeal filed by importer C/60419/2021 is partly allowed in above terms. The appeal filed by Revenue C/60469/2021 is dismissed.

(pronounced in the open court on 15.12.2021)

SULEKHA BEEVI C.S.
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

SB