**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH**
**CHENNAI**

**Appeal No.C/65/2012**

[Arising out of Order-in-Appeal No.2/2012 dt. 07.02.2012 passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirapppalli]

Shriniwas Impex — Appellant

Versus

Commissioner of Customs,
Tuticorin — Respondent

Appearance :

Shri R. Balagopal, Consultant
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of hearing / decision : 10.08.2018

**FINAL ORDER No. 42248 / 2018**

**Per Madhu Mohan Damodhar**

The facts of the case are that appellants had filed Bill of Entry No.2879790 dt. 03.03.2011 for import of Aluminium scrap tread with declared assessable value of Rs.28,12,383/- classifying under Customs Tariff Heading (CTH) 76020010 . On examination, 75% of the imported goods were found to be used aluminium profiles of various lengths between 10 feet and 20 feet. Department took the view that the imported goods therefore can be used "as such", hence the consignment was referred to National Metallurgical Laboratory (NML), Chennai who vide their report dt. 22.3.2011 gave a conclusion that "*based on the visual examination and chemical analysis, the materials in the consignment can be considered as Aluminium extrusions-seconds*". It appeared that the goods imported are unused aluminium extrusions / seconds and not aluminium scrap tread as declared by the importer; that the goods are classifiable under CTH 76109030 attracting merit rate of duty; hence declared value is liable for rejection and the value required to be enhanced based on contemporaneous import values. The importers requested for waiver of show cause notice and personal hearing vide a letter dt. 7.4.2001. The original authority vide adjudication order dt. 08.04.2001 rejected the declared value in respect of the goods and classified the same under CTH 76109030, enhanced the determined assessable value as Rs.40,40,646/-, ordered confiscation of the impugned goods under Section 111 (m) of the Customs Act, 1962, however gave option to importers to redeem the same on payment of fine to Rs.8 lakhs under Section 125 ibid. Penalty of Rs. 3 lakhs was also imposed under Section 112 (a) ibid. On appeal, Commissioner (Appeals) vide impugned order dt.7.2.2012 upheld the order of original authority. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Consultant Shri R. Balagopal submits that appellants are not contesting reclassification of the goods and also enhancement of declared value and that they are only seeking for setting aside of redemption fine and personal penalty.

3. On the other hand, Ld. A.R Shri A. Cletus reiterates the impugned order.

4. Heard both sides and have gone through the facts.

5. The test report of NML has conclusively proved that the imported goods are in the nature of "seconds" and not scraps. There definitely is vast difference between the goods in the form of seconds and that in the nature of scrap. The appellants have also not contested the report of NML. However, as pointed out by Ld. Advocate, they had ordered for scrap only and all the import documents including invoice, packing list etc. had described the impugned goods as scrap only. We consider these as a mitigating factors and also taking note that the appellants are not contesting the enhancement of value and reclassification of the goods, we find it proper to reduce the redemption fine of the goods imposed under Section 125 of the Act from Rs.8,00,000/- to **Rs.3,00,000/-**(Rupees three lakhs only) and the penalty imposed from Rs.3,00,000/- to **Rs.1,00,000/-** (Rupees one lakh only).

Appeal is partly allowed on above terms with consequential benefits, if any, as per law.

(dictated and pronounced in court)

**(P. Dinesha)**
**Member (Judicial)**

**(Madhu Mohan Damodhar)**
**Member (Technical)**

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