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

Appeal No.C/1/2012

[Arising out of Order-in-Appeal No.847/2011 dt. 13.10.2011 passed by Commissioner of Customs (Appeals), Chennai]

Sri Lakshmi Metal Company — Appellant

Versus

Commissioner of Customs,
Chennai — Respondent

Appearance :

Shri M. Karthikeyan, Advocate
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 : 10.12.2018

FINAL ORDER No. 43073 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that appellants had filed Bill of Entry dt. 13.06.2011 for clearance of the goods declared as Aluminium Scrap Throb Grade valued at Rs.45,58,319/- claiming benefit of customs duty exemption under Sl.No.579 of Notification No.21/2002-Cus.. The goods were got tested by National Metallurgical Laboratory (NML), Chennai who, vide their test report dt.

26.8.2011 stated that "*BASED ON THE VISUAL examination and chemical analysis, the material in the consignment cannot be considered as Aluminium scrap Throb. The material can be considered as Aluminium alloy ingots closely matching to LM 24 Grade*". Based on this report, the goods were considered to be of Aluminium Alloy Ingots - LM 24 Grade and value was enhanced to Rs.55,98,551/-. Further, the original authority ordered confiscation of the imported goods under Section 111 (m), however, allowed redemption of the same under section 125 ibid on payment of fine of Rs.14,00,000/-. In addition, penalty of Rs.2,50,000/- was also imposed on the appellant under Section 112 (a) ibid. In appeal, the Commissioner (Appeals) who vide impugned order dt. 13.10.2011 did not find any reason to interfere with the original authority's order and rejected the appeal. Hence the appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri M. Karthikeyan draws our attention to the reports of NML filed in page 33 onwards of the appeal book, to point out that even in the two samples, some variation in the chemical analysis report of both the samples; that it has not been stated with finality that the imported items are LM 24 Grade Aluminium Alloy only. On the other hand, NML have only concluded that the ingots contained copper and silicon as main alloy element and the composition is closely matching with that of LM 24 Grade Aluminium Alloy. He further submits that they had suffered demurrage of Rs.6 lakhs as the goods had been lying uncleared for three months. He submits that considering the demurrage charges suffered by appellant, the redemption fine and penalty imposed is out of proportion.

3. On the other hand, Ld. A.R Shri A. Cletus supports the impugned order. He submits that testing has been got done by the reputed and recognized testing laboratory who have concluded that the goods cannot be considered as Aluminium Scrap Throb and that they can be considered as Aluminium Alloy Ingots.

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

5.1 The reclassification of the imported goods as well as the revaluation thereof has been done only based on upon the NML test reports. Indubitably, NML is a reputed and recognized testing centre of a national stature. As such, credence will certainly have to be accorded to these test reports of NML. If the appellants had found any inconsistency or discrepancy in the NML reports, they could have challenged the same or asked for retest of the samples, neither of which been done in this case. In the circumstances, we do not find any reason to interfere with the reclassification of the goods and also the consequent enhancement of the value. So ordered.

5.2 However, coming to redemption fine, we find that enhancement of value is around Rs.10 lakhs resulting in differential duty liability of around Rs.4.8 lakhs. It is also important to take note of the Ld. Advocate’s assertion that the goods suffered demurrage of around Rs.6 lakhs. Taking all these factors into account, we are of the considered opinion that the there is a case for reduction in the quantum of redemption fine. Accordingly, we order reduction of redemption fine imposed under Section 125 ibid from Rs.14,00,000/- to **Rs.3,00,000/-** (Rupees three lakhs only) under Section 125 ibid. For the same reason, penalty imposed under Section 112 (a) ibid is reduced from Rs.2,50,000/- to **Rs.1,00,000/-** (Rupees One lakh only). So ordered.

6. Appeal is partly allowed on above terms.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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