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

Appeal No.C/3/2009

[Arising out of Order-in-Original No.8196/2008 dated 30.09.2008 passed by the Commissioner of Customs (Seaport-Import), Chennai)

Rasi Electrodes Ltd. Appellant

Versus

Commissioner of Customs (Seaport-Imports)
Chennai Respondent

Appearance:

Shri N. Viswanathan, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 24.03.2017

FINAL ORDER No. 40551/2017

Per D.N. Panda

Ld. counsel says that the goods imported were "Mild Steel Wire with Copper Coated (GR-ER 70S-6) and GR-ER70S-6 12MM as well as GR-ER 70S-6 V1" and classified it under **CTH 72179092** in terms of the Bills of Entry. That was assessed and cleared. Subsequently, DGCEI found the goods in the storage of the appellant and doubted the classification for which there was a seizure and confiscation.

Revenue's claim is that the goods imported shall fall under **CTH 72299021**.

2. It is further submission of ld. counsel that there was no testing done at the Customs gate. But DGCEI sent the samples for testing to the National Laboratory. The report of the laboratory was not confronted to the appellant for rebuttal.

3. Record reveals that Test Report No.20123 DT. 26-07-2006 of National Metallurgical Laboratory (NML) was confronted to the appellant. The report disclosed that there was silicon content of the sample as 1.09%, 1.22%, 1.17%,1.27% and 1.24% respectively. It is further revealed by the record that relied upon documents were given to the appellant for rebuttal.

4. Appellant says that if the assessment done at the Customs is not reviewed, there cannot be further reopening of the assessment following Apex Court decision in the case of *Collector Vs Decor India* – 1997 (94) ELT A51 (SC).

5. Revenue says, on the other hand, that the goods are rightly classifiable as sought by Revenue under **CTH 72299021**. Ld. DR says that proceedings has been initiated under proviso to section 28 (1) of the Customs Act, 1962.

6. Heard both sides and perused the record.

7. Preliminarily test report not being on record, the finding of the adjudicating authority is not evidenced for our adjudication. Therefore matter is remanded to the adjudicating authority to confront NML report to the appellant for rebuttal in the course of readjudication. On the basis of outcome of the pleadings as well as the evidence of the

Customs, Excise & Service Tax Appellate Tribunal appellant, appropriate classification shall be resorted to by the authority considering the judgement cited above. Ld. authority is expected to complete the readjudication by 30.06.2017 and pass a reasoned and speaking order.

(Dictated and pronounced in open court)

04/04/2017

(Madhu Mohan Damodhar)
Technical Member

4.4.2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai