**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI**

**Appeal No.C/237/2008**

[Arising out of Order-in-Original No.7461/2008 dated 25.3.2008 passed by the Commissioner of Central Excise (Adjudication), Chennai]

Baburam Premchand — Appellant

Versus

Commissioner of Central Excise (Adjn.)
Chennai — Respondent

Appearance:

Shri M. Masilamani, Consultant
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 :08.03.2017

**FINAL ORDER No. 40487/2017**

**PerD.N. Panda**

In the second round of litigation, appellant's submission is that there was no misdeclaration of the 48.851 of Tin Sheets imported since those were Secondary/Defective but not "Tin Free Sheets/Seconds. When there were Defective coils imported, that was declared as TFSSD Coils. Live consignment came through Bill of Entry No.404351 dt. 20.06.2002. 167 MTs of Tin Coils imported were also TFSSD and imported in terms of three Bills of Entry No.011630, 0611612, both dt.27.5.2002, and 389691 dt. 16.4.2002. Out of the past consignments of 167 MTs of TFSSD Coils imported, customs baselessly alleged that 100 MTs of coils were good coils. There was neither misdeclaration of value or description. Therefore, there should not have been levy of duty, redemption fine and penalty, following earlier direction of the Tribunal made vide Final Order No.1260/2006 dt. 11.12.2006. Ld. consultant placed reliance on para-17 of the of the order of the Tribunal to say that there was no material for enhancement of the value. Appellant prays that adjudication may be set aside.

2. Revenue, on the other hand, contends that once there was misdeclaration of the goods imported through live consignment and previous imports, there should not be any leniency to the appellant to reduce redemption fine and penalty while duty is imposable.

3.1 Heard both sides and perused the record.

3.2 In the course of investigation, Customs found 68.4 MTs of Tins Sheets in the custody of the appellant out of past imports made through three Bills of Entry misdeclaring that to be secondary and defective. Those were seized and confiscated.

4. In addition to the above, live consignment comprised 48.851 MTs of Tin Sheet/Coils imported misdeclaring that as TFSSD. Physical examination resulted that live consignments was misdeclared as to description of goods and value thereof. Seizure of part of the goods of past consignment proved misdeclaration of description and value demonstrating mischievous conduct of the appellant.

5. There is absolutely no material came to record to appreciate that appellant was innocent and imported defective coils and sheets. Misdeclaration found by Customs could not be contradicted leading any cogent evidence, by the appellant. NML report proved misdeclaration of description of goods imported by visual examination itself.

6. In para-16 of the order, ld. Adjudicating authority has brought out the nexus between the appellant and the supplier who advised the supplier to conceal Tin sheets in Tinfree sheets/seconds and defective coils while despatching from abroad.

7. When the appellant imported tin sheets in three consignments misdeclaring that to be defective prior to seizure of live consignment, enquiry was extended to past consignments.

8. Ld. Adjudicating authority had made thorough enquiry following directions of the Tribunal made in aforesaid final order. He examined the written submissions filed by appellant before him and found that there was a deliberate misdeclaration of the import and appellant could not come out with clean hands to prove its stand. Even today, appellant has no evidence to discard the allegations and physical examination result as well as NML test result. Seizure of goods proved nature and character of the goods.

9. Ld. Adjudicating Authority applied his mind to determine the value of goods when that was found to be misdeclared with the questionable conduct of appellant who had manipulated invoices (Ref :para 16 of OIO).

10. It may be stated that once the goods were subjected to be confiscation by the aforesaid act, that became smuggled goods under section 2 (39) of the Customs Act, 1962. In such circumstances, there is no possibility at all to grant any relief to the appellant or to intervene to the adjudication finding. Thus duties, penalty and redemption find imposed on various misdeclared consignments are confirmed and appeal is dismissed.

(Dictated and pronounced in open court)

16/03/2017

14-3-2017

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

**(D.N. Panda)**
**Judicial Member**

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Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai