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

C/484/2005

(Arising out of Order-in-Original No. 4204/2005 dated 12.10.2005 passed by the Commissioner of Customs (Exports), Chennai).

M/s. R.K.K. R. Steels Ltd. : Appellant

Vs.

CC (Port-Export), Chennai : Respondent

Appearance

Shri Derrick Sam, Adv.,
For the appellant

Shri K. Veerabhadra Reddy, JC (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: 09.02.2017

FINAL ORDER No. 40234 /2017

Per: D.N.Panda,

Appellant imported two consignments of goods declaring that as non-alloy heavy metal scraps. The first consignment was cleared making provisional assessment under section 18 of the Customs Act, 1962 and taking samples there from to test the

Customs, Excise & Service Tax Appellate Tribunal nature and character of the goods by an authorized laboratory. However, result of the laboratory test went against the appellant.

2. The second lot of import was subject to laboratory test on the request of the appellant taking samples therefrom. Report thereof came in favour of the appellant. In view of the favourable report came in respect of the 2nd lot of consignment, appellant says that a very small sample taken from the first lot had resulted adverse inference against the appellant for which the second lot test report should be utilised in respect of the first lot cleared provisionally.

3. Revenue on the other hand says that declaration of non-alloy heavy metal scrap made by appellant was to take undue advantage of law under DFRC scheme. What that was provisionally cleared resulted with unfavourable report against the appellant. There is no warrant in law to use the result of test report of the second lot to convert the mis-declared goods into proper declaration.

4. Heard both sides. It is common sense that test result is applicable in respect of a lot from which sample is taken but not to any other lot. The test result of the first lot of consignment proved the nature and character of the goods therein. Provisional assessment is made at the insistence of either side. Where there is no certainty of the nature and character of the goods to ascertain classification thereof, one of the modality open to customs is to test the goods by an authorised laboratory. The sample taken

from the first lot of goods provisionally released, resulted in adverse report against the appellant. There is no prayer of the appellant to the authority to re-test the samples thereof if the appellant had doubt. In absence of any such prayer, no plea of use of test report of second lot of consignment against first lot of consignment is untenable. Executive action appears to have been carried out in good faith. Accordingly, the adverse test report is bound to be applied against the first lot. Appellant's claim of the goods to be non-alloy heavy metal scrap is bound to be scrapped. Not only duty is imposable but mis-declared goods become smuggled goods under section 2 (39) of the Customs Act, 1962 for which that was liable to confiscation and penalty. This calls for dismissal of appeal. We order accordingly.

(Dictated and pronounced in open Court)

14/02/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

13/2/2017

(D.N. PANDA)
JUDICIAL MEMBER

BB

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Customs, Excise & Service Tax Appellate Tribunal