IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40785/2019

(All arising out of Order-in-Original No. 67705/2019 dated 27.2.2019 passed by the Commissioner of Customs – Imports, Chennai)

M/s. V.K. Industrial Corporation **Appellant**
No. 304/304 Loha Bhavan
93, P.D. Mellor Road, Carnac Bunder
Mumbai – 400 009.

Vs.

Commissioner of Customs **Respondent**
Chennai III Commissionerate, SIIB
Custom House, 60, Rajaji Salai
Chennai – 600 001.

With

Customs Appeal No. C/41329/2019

Commissioner of Customs **Appellant**
Chennai III Commissionerate, SIIB
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Vs.

M/s. V.K. Industrial Corporation **Respondent**
No. 304/304 Loha Bhavan
93, P.D. Mellor Road, Carnac Bunder
Mumbai – 400 009.

With

Customs Appeal No. C/41330/2019

Commissioner of Customs **Appellant**
Chennai III Commissionerate, SIIB
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Vs.

M/s. Leitwind Shriram Manufacturing Ltd. **Respondent**
Plot No. D-17, SIPCOT Industrial Complex
Gummidipoondi, Tiruvallur Dt.
Tamil Nadu – 601 201.

And

Customs Appeal No. C/41331/2019

Commissioner of Customs **Appellant**
Chennai III Commissionerate, SIIB
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Vs.

M/s. Orissa Stevedors Ltd. **Respondent**
No. 14/8, See View Towers, Phase III
Krishnan Koil Street, Mannady
Chennai – 600 001.

APPEARANCE:

Shri Derrick Sam, Advocate and
Shri N. Viswanathan, Advocate for the Assessees
Ms. K. Komathi, ADC (AR) for the Department

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order Nos. **40214-40217 / 2022**

Date of Hearing : 8.6.2022
Date of Decision: 10.6.2022

Per Ms. Sulekha Beevi C.S.

The issue involved in these appeals being connected, they are heard and disposed of by this common order.

2. Brief facts are that the appellant M/s. V.K. Industrial Corporation Ltd. had made in-bond purchase of goods described as 'hot rolled painted steel plates' from M/s. Leitwind Shriram Manufacturing Ltd. who were the original importers of the said goods. Subsequently, the appellant had filed two ex-bond bills of entry dated 8.10.2016 and 21.6.2017 and cleared the goods for home consumption. The appellant was served with a Show Cause Notice dated 28.9.2018 calling upon them to show cause as to why anti-dumping duty should not be demanded from the appellant in respect of the goods cleared by them. The department was of the view that anti-dumping duty is leviable in terms of Notification No. 44/2016-Cus. (ADD) dated 8.8.2016 and Notification No. 17/2017-Cus. (ADD) dated 11.5.2017. The Show

Cause Notice also proposed to demand interest and impose penalty under sec. 114A of the Customs Act, 1962. The appellant filed reply dated 14.12.2018 contending that the goods are coated with zinc silicate and that Notification No. 17/2017-Cus. (ADD) dated 11.5.2017 specifically excluded hot rolled flat products and steels which were coated with zinc. The adjudicating authority after due process of law confirmed the demand of anti-dumping duty along with interest. However, he dropped the proposal for imposing penalty under sec. 114A of the Customs Act, 1962. Aggrieved by such order of confirming the anti-dumping duty and interest, the assessee has filed appeals. Aggrieved by the order of the adjudicating authority dropping the proposal for imposing penalty, department has filed separate appeals.

3. The learned counsel Shri Derrick Sam appeared and argued for the assessee. He adverted to Notification No. 17/2017-Cus. (ADD) dated 11.5.2017 and submitted that as per the Note at the end of the Notification, it is clearly stated that 'hot rolled flat products of steel otherwise plated or coated with zinc' is excluded from the category of goods on which anti-dumping duty has to be imposed. However, the adjudicating authority observed that as per the sales contract, the goods described are 'hot rolled painted steel plates' and therefore cannot be concluded that goods are coated with zinc. The appellant had requested to send the goods for chemical analysis which was not headed to by the adjudicating authority. After filing this appeal, the appellant had filed an application before the Tribunal seeking permission to send the samples of the goods for testing before recognized laboratory. The test report has been filed by the department in which it is shown that the goods are plated with zinc.

He argued that this would clearly show that the goods are exempted from levy of anti-dumping duty as contended by assessee. He prayed that the appeal assessee may be allowed.

4. The learned AR Ms. K. Komathi supported the findings in the impugned order.

5. Heard both sides.

6. From the narration of facts as above, it can be seen that the issue is as to whether the goods are coated with zinc and is excluded from the levy of anti-dumping duty as per Notification No. 17/2017-Cus. (ADD). During the pendency of the appeal, the appellant had filed an application to send the sample of the goods for chemical analysis. The test report issued by the Metal Lab dated 22.1.2022 shows that the goods are plated with zinc. The case put forward by the assessee succeeds. For this reason, we find that the demand of anti-dumping duty along with interest cannot sustain. The impugned order is set aside. The appeal filed assessee is allowed with consequential reliefs if any.

7. Consequently, the appeals filed by the department contending that penalty has to be imposed under sec. 114A of the Customs Act, 1962 does not survive. The appeals filed by the department are dismissed.

(Pronounced in open court on 10.6.2022)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

Rex