CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40545 of 2015

(Arising out of Order-in-Appeal No. 155/2014 dated 30.12.2014 passed by Commissioner of Central Excise (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

M/s. DSRM Steels Pvt. Ltd. **...Appellant**
No. 413/1, Karur Road,
Kulathur P.O.,
Dindigul – 624 005.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Custom House,
New Harbour Estate,
Tuticorin – 628 004.

And

Customs Appeal No. 40547 of 2015

(Arising out of Order-in-Appeal No. 154/2014 dated 30.12.2014 passed by Commissioner of Customs & Central Excise (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

M/s. Amman Steel Corporation **...Appellant**
No. 25/7, Kajapet Main Road,
Trichy – 620 001.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellants : Mr. M. Karthikeyan, Advocate
For the Respondent: Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41383 – 41384 / 2024

DATE OF HEARING : 14.10.2024
DATE OF DECISION: 29.10.2024

Per Mr. VASA SESHAGIRI RAO

M/s. DSRM Steels Pvt. Ltd., Dindigul who is the Appellant (A1) in the Appeal No. C/40545/2015 and M/s. Amman Steel Corporation, Trichy who is the Appellant (A2) in Appeal No. C/40547/2015 have filed these appeals assailing the Order-in-Appeal Nos. 154&155/2014 dated 30.12.2014 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy. Both these appeals involve an identical issue of eligibility for the concessional rate of duty under Customs Notification No. 12/2012-Cus. dated 17.03.2012 *vide* Sl.No. 330 and so, these appeals are being taken up together for disposal by this common order.

2.1 Brief facts are that, the Appellants (A1&A2) purchased 251.300 MTs of re-rollable scrap each on high sea sales basis and filed the Bills of Entry No. 7043324 dated 13.10.2014 and No. 6903777 dated 27.09.2014 respectively classifying the imported materials under the CTH 7214 1090 as re-rollable scrap. But the Department was of the view that the imported goods are not eligible for the benefit of the exemption Notification No. 12/2012-Cus. dated 17.03.2012 being Defectives and Seconds and finally assessed the said two Bills of Entry denying the exemption benefit of the above Notification *supra*. The imported scrap was classified under CTH 7214 1090, and there is no dispute as to either classification or valuation of the scrap imported in respect of both the Appeals. For the purpose of assessment, the goods were examined on first check basis. The relevant portion of the examination reports dated 10.10.2024 and 16.10.2014 is as given below separately: -

(i) Examination report dated 16.10.2024 in respect of M/. DSRM Steels Pvt. Ltd.: -

"For the points raised, the following is submitted:

- *The importer is a manufacturer and is registered with C.Ex. Authorities and the material will be used by the importer as raw material;*
- *The cargo is in the form of rejected - It can be used;*
- *The cargo cannot be rerolled as such without the process of melting – The heated rods can be re-rolled by allowing it to pass through rolling Mill;*
- *The length of the cargo varies from 8 to 10 feet and the width/thickness varies from 20 to 50mm.*
- *The cargo is in the form of scrap only and not arisen from manufacture or mechanical working of metals. They appear to be the cur pieces / unwanted portion of standard length."*

(ii) Examination report dated 10.10.2014 in respect of M/s. Amman Steel Corporation: -

"For the points raised, the following is submitted:

- *The importer is a manufacturer and is registered with C.Ex. Authorities and the material will be used by the importer as raw material;*
- *The cargo is in the form of rejected;*
- *The cargo cannot be rerolled as such without the process of melting – The heated rods can be re-rolled by allowing it to pass through rolling Mill. The Mill consists of a number of rollers that compress and lengthen the rods and finish them into required shape;*
- *The length of the cargo varies from 4 to 10 feet and the width/thickness varies from 10 to 30mm.*
- *The cargo is in the form of scrap only and not arisen from manufacture or mechanical working of metals. They appear to be the cur pieces / unwanted portion of standard length."*

From the above, it is evident that the imported cargo is re-rollable iron scrap in the form of rusted iron rods, which is in the form of scrap only and not arisen from manufacture or mechanical working of metals. The importers are Central Excise registered manufacturers and imported material will be used by them as raw materials. The cargo cannot be re-rolled, without the process of melting and it can be re-rolled by allowing it by passing through the roller Mill. It was also mentioned therein that the cargo was in the form of cut pieces and unwanted portion of standard length and being rejected can be used as such. However, the benefit of the Notification as cited *supra* has been denied to the importers on the ground that imported goods are seconds and defectives which are excluded from the entry at Sl.No. 330 of the Notification No. 12/2012-Cus. dated 17.03.2012 which reads as given below: -

Effective rates of basic and additional duty for specified goods falling under Chapters 1 to 98 — Jumbo Notification No. 21/2002-Cus. replaced

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said table.

TABLE

330.	72 (except 7202 60 00)	All goods other than the following :- (i) goods mentioned against S. Nos. 329, 330, 331 and (ii) seconds and defectives of goods falling under Chapter 72	5%	-	-

2.2 It appears that the Appellants (A1 & A2) have paid the duty assessed without extending the benefit of the Notification No. 12/2012-Cus. dated 17.03.2012 under protest as they were incurring a huge amount as ground rent charges and the same has been intimated *vide* Letters dated 14.10.2012 (A1) and 08.10.2014 (A2) addressed to the Assistant Commissioner of Customs, Tuticorin. It appears that the Appellants were not given any notice, nor the Department have vacated the protests.

2.3 Being aggrieved, the Appellants (A1 & A2) filed these appeals before the Commissioner of Customs and Central Excise (Appeals), who *vide* impugned Orders-in-Appeal No. 155/2014 and No. 154/2014 both dated 30.12.2014 held that the imported goods were seconds and defectives as they were cut pieces, unwanted portions of standard length and the said Notification specifically excludes 'seconds and defectives'. The Lower Appellate Authority, thus, upheld the assessment in the Bills of Entry No. 7043324 dated 13.10.2014 and No. 6903777 dated 27.09.2014 without extending concessional duty under Notification No. 12/2012-Cus. dated 17.03.2012.

2.4 Aggrieved by both the impugned orders dated 30.12.2014, the Appellants have filed the above appeals before this forum on various grounds.

i. Seconds and defectives are the products which arise during the course of manufacture which do not conform to the prescribed standards whereas scrap is a waste which arises due to dismantling of machineries that have outlived their life. Relying on the decision in the case of *Ansun System Consulting (P) Ltd. Vs. Commissioner of Customs, Kolkata [2005 (179) ELT 511 (Tri.Del.)],* the Appellants have submitted that the imported cargo is only re-rollable scrap and not defectives or seconds.

ii. The Department has not put them on notice and not indicated the reason for denying the benefit of the Notification No. 12/2012-Cus. dated 17.03.2012 violating the principles of natural justice. and,

iii. The Appellate Authority has not given any reasons for terming the imported cargo as defectives / seconds.

3. The Ld. Advocate Shri M. Karthikeyan has mainly argued that the imported goods to be recognised as seconds and defectives, the cargo should be capable of being used as iron rods itself and it should not be meant for re-rolling. The imported cargo was treated as seconds and defectives merely for the reason that they are cut pieces / unwanted portions of standard length. Relying upon the following decisions, the Ld. Advocate has submitted that the disputed goods were scrap only and could not be defectives / seconds as there was failure on the part of the Department to adduce any evidence: -

i. Tata Iron & Steel Co. Ltd. [1994 (12) TMI 73-SUPREME COURT]
ii. Aneri Steel Pvt. Ltd. [2013-TIOL-1070-CESTAT-MUM]
iii. Kamatchi Sponge & Power Corporation Ltd. [2016 (3) TMI 220-CESTAT Chennai]
iv. Prince Fortified Steels Pvt. Ltd. [2018 (5) TMI 270-CESTAT CHENNAI]
v. Lucky Steel Industries [2023 (4) TMI 356-CESTAT AHMEDABAD]

He has averred that the goods cannot be covered under the ambit of seconds and defectives thus making it eligible for the exemption benefit.

4. *Per contra,* the Ld. Authorised Representative Ms. O.M. Reena representing the Revenue has submitted that Sl.No. 330 of Notification No. 12/2012-Cus. dated 17.03.2012 accords concessional rate of duty to all goods other than the goods mentioned against Sl.No. 329, 330 and 331 and Seconds and Defective falling under Chapter 72. The imported goods under the above impugned Bills of Entry are seconds and defectives and not eligible for the exemption of import duty in excess of 5% of duty. The imported goods were in the form of rejected and usable cut pieces / unwanted portion of standard length and the same have to be considered as seconds and defective goods. She has asserted that the Original Adjudicating Authority has correctly assessed the Bills of Entry and there is no reason to interfere with the assessment orders

5. We have heard both sides and considered the submissions and evidences available on the record.

6. The only issue that arises for determination in these appeals is whether the imported cargo is eligible for the benefit of the Notification No. 12/2012-Cus. dated 17.03.2012 or not?

7. From the facts, it is clear that there is no dispute as to the classification or valuation of the imported cargo which was declared as 'Re-rollable Scrap'.

8. Both the appellants are manufacturers and are registered with the Central Excise Authorities engaged in the manufacture of TMT bars and other iron products and the imported cargo is used as raw material. A perusal of the examination reports in both the cases indicate that the imported cargo cannot be re-rolled as such without undergoing the process of heating / and or melting. The cargo is in the form of rejected and rusted rods. There is a categorical finding that the cargo is in the form of scrap which has not arisen from manufacture or mechanical working of metals. They are in the nature of cut pieces / unwanted portion of standard length, and the length of the cargo varies from 8-10 and 4-10 feet and the width varies from 20-50mm and 10-30mm respectively. Because of this, it becomes essential whether the cargo can be used as such to be called as 'Defectives & Seconds'.

9. We find that the importers are the actual users of the scrap imported either for melting or for re-rolling. The imported goods to be called as defectives or seconds should be used and to be sold as such without undergoing the process of melting / heating for the purpose of re-rolling. The examination report is very clear to confirm that imported cargo is only a scrap and they are unwanted and rusted portion of standard length of

materials. The benefit of the Notification No. 12/2012-Cus. dated 17.03.2012 at Sl.No. 330 excludes only if the imported goods are seconds or defectives. Ministry of Steel, Government of India has given guidelines for on identification criteria in respect of Non-Prime (Seconds & Defectives) Steel Products as against the prime products.

10. We have considered these guidelines in order to determine whether the imported material can be treated as seconds and defectives. Seconds and defective steel products can be of products of non-standard dimensions or downgraded products. Downgraded products mean that the steel products suffering from surface defects and internal faults. If the imported cargo is meant for sale as defective or second goods, then only the benefit of Notification No. 12/2012-Cus. dated 17.03.2012 can be denied to the Appellants. Neither there is an allegation nor any finding that the importer-Appellants are disposing these cargo as such.

11. The Tribunal Hyderabad in the case of *Lucky Steel Industries Vs. Commissioner of Customs, Kandla [2023 (4) TMI 356-CESTAT AHMEDABAB]* has held as follows: -

> *"5.2 Appellant had classified the goods under Customs Tariff heading 72044900 and claimed exemption under Notification 21/2002-Cus. at S. No. 190B. This exemption was available to "All goods other than seconds and defectives" falling under Customs Tariff Headings 7204. However the notification nowhere defines the term second and defective. On examination of the goods, the customs officers felt that the goods were secondary or defective because they were contained Second and Defective Plates having width of less than 600 mm as well as more than 600 mm and second and defective pipes. However the documents submitted by the appellant during the import of goods nowhere mentions that the goods are seconds and*

defective plates and pipes. In our view second and defectives means the goods have prime material but have some defect and can be used as a prime material. However in the present matter there is no dispute on the facts that the disputed goods were used as re-rollable scrap/ melting scrap. Further we also noticed that the test report issued by the National Test House, Ghaziabad has determined the composition of the impugned goods which confirms that it is material of Mild Steel. The said test report nowhere confirms that the impugned goods are second and defectives. The revenue has not considered the disputed goods as scrap on the basis test report. The test report does not specify that the subject goods are scrap. However on the basis of test report it cannot be decided that the disputed goods were not scrap. Scrap whether used or cut pieces by virtues of its physical properties will contain composition of its prime material. Merely by using or cutting the material will not alter its chemical composition. In such case there is no surprise that the chemical parameters of prime material and scrap grade material may be same but externally the goods may be different in quality and use. Therefore without accepting, even if the chemical composition is same of both quality of goods, the scrap material cannot be construed as prime material or seconds materials and on this basis benefit of notification cannot be denied."

12. Taking into consideration of all the facts obtaining in all these appeals and Examination Reports as the Appellants being the manufacturers who regularly import scrap both for melting and re-rolling, we are of the view that the imported cargo cannot be treated as seconds and defectives and so are eligible for the benefit of concessional rate of duty in terms of Notification No. 12/2012-Cus. dated 17.03.2012 at Sl.No. 330. As such the impugned Orders-in-Appeal No. 154/2014 and No. 155/2014 both dated 30.12.2014 are ordered to be set aside and the appeals are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 29.10.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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