TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/192 /2006 - CU[DB] Date 19/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER OF CUSTOMS, JAIPUR
NCRB , STATUE CIRCLE, C-SCHEME, JAIPUR

THE COMMISSIONER OF CUSTOMS, JAIPUR Appellant
Vs
M/S MANGLA PRODUCTS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order** No.C/340/08-CUS DATED 02.09.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S MANGLA PRODUCTS PVT LTD
   B-235, ROAD NO. 9, VKIA, JAIPUR
2. Adv. / Consult
   MR.HARPREET SINGH, ADV.
   G-125, PREET VIHAR, DELHI-110092
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, COURT No.I
NEW DELHI

Customs Appeal No.192/2006-CUS(BR)

(Arising out of order in appeal No.1(MPM)/Cus/Jpr.1/06 dated 16.1.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur)

Date of Hearing/Decision: 2.9.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member(Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	NO
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

CCE, Jaipur — Appellant
(Rep. by Shri Fateh Singh, DR)

Vs

M/s Mangla Products — Respondent
(Rep. by Shri Harpreet Singh, Advocate)

Coram: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member(Technical)

Final Order No C/340/08

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeal No.1(MPM)CUS/JPR.I/2006 dated 12.1.2006.

2. Herd both sides.

3. The relevant facts of the case are as follows:-

a) The respondent imported a consignment weighing 110.65 MT declaring the same as heavy melting scrap of iron and declared the value at Rs.11,43,451/-.

b) On examination, 65 MT of the goods were found to be Nails and Screws in good condition; based on market enquiry, they were assessed at a value of Rs.9,75,000/- ; and the value at the rate of Rs.15 per kg was accepted by the respondent. The original authority enhanced the value and held differential duty of Rs.2,33,914/- was payable; he ordered confiscation of 65 MT of Nails and Screws and allowed the same to be redeemed on payment of redemption fine of Rs.1,50,000/- and imposed penalty of Rs.30,000/-.

c) The respondent filed appeal before the Commissioner (Appeals) challenging only confiscation and imposition of redemption fine and penalty.

d). The Commissioner (Appeals) held that the goods cannot be considered other than heavy melting scrap based on the report of the jurisdictional Central Excise Authorities that the said quantity of nails and screws was also melted in the furnace; he also relied on the Inspection certificate.

4. The learned DR submits that the respondent has clearly mis-declared the description of goods. He admitted the mis-declaration and accepted the value of Rs.15 per kg on such nails and screws. The Commissioner has relied on the end use certificate given by the jurisdictional Superintendent which was issued only on the basis of records maintained by the importer and not on the basis of physical inspection at the time of import of scrap.

5. The learned Advocate appearing for the respondent submits that what was imported was only heavy melting scrap. The inspection report accompanying the consignment mentioned them as seconds and defective; they were not in original packing; they had not admitted that the goods were meant for sale or meant for reuse. The Commissioner (Appeals) has relied on the end use certificate issued by the jurisdictional Superintendent; therefore, he seeks upholding the order of the Commissioner (Appeals).

6. We have carefully considered the submission from both the sides. At the time of adjudication, it is noticed that the appellants have agreed to

pay duty on screws and nails under a different tariff heading but claimed exemption under Notification No. 21/2002 as scrap. The Commissioner (Appeals) after making a reference to the Range Superintendent and on the basis of his report dated 9th January, 2006 to the effect that the impugned goods were melted in the furnace, accepted the view of the party and set aside the fine and penalty. The challenge by the Department that the report of the Superintendent is not based on physical supervision and is merely based on record, is not evident from the report itself. Under these circumstances, the reliance placed by the Commissioner (Appeals) on the said report cannot be faulted. We also find that at the time of adjudication or at the time of investigation, the party has not made any averment to the effect that the goods were meant for sale or re-use. Under these circumstances, the decision of the Commissioner (Appeals) to treat the consignment as scrap as claimed by the party, cannot be held un-reasonable. It is not a case that the heavy melting scrap cannot include scrap of screws and nails. If the view that nails and screws are also scrap is accepted, then they paid the duty as heavy melting scrap and there may not be any mis-declaration. The Commissioner (Appeals) has merely used the end use certificate to resolve the dispute as to whether the imported goods can be considered as scrap or not.

7. In view of the above, we do not find any grounds to interfere with the findings and reasoning given by the Commissioner (Appeals).

8. The appeal by the Department is rejected.

(order pronounced and dictated in the open Court.)

(Justice S.N. JHA)
President

(M. Veeraiyan)
Member(Technical)

MPS*