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

Appeal No. C/246 /2006 - CU[DB] Date 23/10/2008

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

To :
M/S RADDISON METALS
BD 23, VISHAKA ENCLAVE, PITAMPURA, DELHI

M/S RADDISON METALS Appellant
Vs
COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/419/08- CU[DB]** dated **16.10.08**
CU(DB)
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 :
1. Respondent
COMMISSIONER OF CUSTOMS
ICD, TKD, NEW DELHI
2. Adv. / Consult ~~R.K.Jain & Associates,610, Padma Tower-I, Rajendra Place ,N. Delhi~~ Sh. Bipin Garg
B - 1/1289 - A Basant Kunj N. Delhi

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 - 3
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
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
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:1.10.2008
Date of pronouncement: 16 10.2008

Customs Appeal No.246 of 2006

Arising out of the order in original No.03/2006 dated 16.1.2006 passed by the Commissioner ,Customs, ICD, New Delhi.

For Approval and Signature:

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

1	Whether Press Reporter 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 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

Appellant — M/s Raddison Metals

vs.

Respondent — C.C., ICD, New Delhi

Appearance:

Shri Atul Gupta, C.S. for the appellant
Shri Vijay Kumar, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/419/08

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No.3/2006 dated 16.1.2006.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant imported goods and filed bill of entry No.474284 dated 14.12.05 for clearance of goods weighing 49.032 MT and bill of entry No. 473368 dated 15.12.2005 for clearance of the goods weighing 48.500 MT ;declared the description of the goods as "Electrolytic Tin Plate Prime Sheets"; declared the value as 655 per M.T. CIF. The goods were imported from a dealer. 'The mill test certificate' was not produced from the manufacturer but from the said dealer.

b) On the basis of intelligence, the goods were examined and found to be secondary tin plate sheets; the width of the secondary tin plate sheets was found to be more than 600 mm.; they were having non-uniform coating; they were of mixed gauges and of sub-standard quality.

c) The electrolytic tin plate prime sheets attract lower rate of basic customs duty at 5% whereas the secondary tin sheets attract higher duty at 20% BCD.

d) After the examination revealed the discrepancies were noticed, the importer intimated that they had since negotiated the prices with the supplier and that the supplier had agreed to reduce the price to US $ 455 PMT and agreed to give credit note of US $ 19,507.

D) Commissioner held that the value for assessment should be US $ 655 PMT as originally declared by the appellants. The Commissioner ordered confiscation of the goods valued at Rs.29,68,861.50 but allowed the same to be redeemed on payment of fine of Rs.4.50 lakhs; he also imposed a penalty of Rs.1.50 lakhs.

4. The learned authorised representative submitted that they ordered only for the prime quality; they filed the bills of entry based on the documents received from the supplier. On coming to know of the discrepancies, they took up with the supplier who has reduced the rate to US $ 455 PMT. He also submitted that the mis-declaration was not deliberate. Therefore, the violation of the condition that such consignment could be imported only through Customs Sea Port only at Mumbai ,Chennai and Calcutta should be not viewed seriously. Further ,there was import of secondary prime tin sheets at prices lower than the price at which they have claimed assessment. He sought for leniency in imposing fine and penalty and for acceptance reduced price of US $ 455 PMT .

5. Learned DR submits that this is a deliberate ploy to import high rated items in the guise of low rated items. The import has taken through

non-specified Port. Further, the requirement of pre-shipment inspection certificate has also not been met. They are claiming reduction in price subsequent to import on the ground original declared price related to prime materials. This claim may not be admitted as there were imports of prime sheets at a price US $ 1030 PMT as mentioned in the order in original itself.

6.1. We have carefully considered the submissions. The goods imported were found to be different from than what has been declared by them. The imported material consisted of mixed gauges and of non-uniform coating and were found to be sub-standard products. These discrepancies have been noticed only on detailed examination based on intelligence received. We hold that there is clear mis-declaration of the imported goods which is in clear violation of Section 46(1).

6.2. The prime grade tin sheets though may be costlier than the secondary tin sheets, but they carried only 5% basic customs duty as against 20% basic customs duty on the secondary sheets. The incentive for mis-declaration is clearly evident.

6.3. Seconds and defective items are subject to wide fluctuation in value. The value of such items depends on several factors, like dimensions, nature of defects and uniformity in size etc. Under these circumstances, comparison of value with the value other imports of secondary tin plate sheets is not well conceived. Further, the order in original records that prime sheets/coils has been imported US $ 1030 PMT vide bill of entry No.47494 dated 23.12.05 at ICD , New Delhi. Therefore, the claim the price of US $ 655 PMT related to prime sheets can not accepted. Therefore, the claim that they got the prices reduced by negotiation subsequently, has been rightly rejected by the Commissioner.

6.4 The mis-declaration was with the intention to evade Customs Duty and also to violation of restriction relating to port of import prescribed under exim policy. Therefore, the confiscation deserves to be upheld, penalty also justified. Further, considering the entire facts and circumstances of the case including the value of the goods and the duty sought to be evaded, the redemption fine and penalty imposed cannot considered to be excessive.

7. Therefore, the order of the Commissioner is upheld and the appeal is rejected.

(Pronounced in the open Court on 16-10.2008)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/