

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

Appeal No. C/205 /2005

Date 20/02/2008

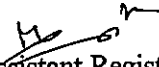
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S. DEWAN STEEL INDUSTRIES
MOTIA KHAN, MANDI GOBINDGARH

M/S. DEWAN STEEL INDUSTRIES
COMMISSIONER OF CUSTOMS, AMRITSAR

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. **C/30/08** Customs dated **06.02.2008** 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

COMMISSIONER OF CUSTOMS, AMRITSAR
ADDITIONAL COMMISSIONER, CUSTOMS
COMMISSIONERATE, AMRITSAR, CUSTOMS AND
CENTRAL EXCISE OFFICE, THE M

2. Adv. / Consult

MR.NAND KISHORE, 112-EIL APARTMENTS, PLOT NO. 13,
POCKET-6, NASIRPUR ROAD, DWARKA, NEW DELHI.

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO.I**

Customs Appeal No. 205 of 2005

[Arising out of order-in-appeal No. 19/Cus/Appeal/Ldh/04 dated 30.11.2004
passed by the Commissioner (Appeals) Central Excise, Ludhiana]

Date of Hearing/decision: 06.02.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

Hon'ble Mr. A.K. Srivastava, Member (Technical)

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- | | |
|--|---|
| 1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982. | : |
| 2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not? | : |
| 3. Whether Their Lordships wish to see the fair copy
of the Order? | : |
| 4. Whether Order is to be circulated to the Departmental
authorities? | : |
-

M/s Dewan Steel Industries

...Appellant
[Rep. by Mr. Rupender Singh, Advocate]

Vs.

CC, Amritsar

...Respondent
[Rep. by Mr. R.K. Verma, DR]

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. A.K. Srivastava, Member [Technical]

Final ORDER No C/30/08

Per: A.K. Srivastava:

Heard both the sides and perused the records.

2. The Additional Commissioner, vide Order-in-Original No. 33/ADC/CUS/02 dated 23.09.2002, ordered that the 19.110 MT of M.S. Rounds to be classified under tariff sub heading No. 7214.20 of the 1st Schedule to the Customs Tariff Act, 1975 and to be assessed at the rate of Rs. 7.67 per Kg. He  ordered the confiscation of 27.300 MT of goods under section 111(m) of the Customs Act, 1962. However, in exercise of the powers conferred upon under section 125 ibid, he gave the option to the appellants to redeem the same on payment of fine of Rs. 25,000/- besides payment of duty and other charges leviable, if any. He also imposed a penalty of Rs. 15,000/- on the appellants under Section 112(a) ibid. On appeal, the Commissioner (Appeals) has confirmed the above order. Hence this appeal.

3. The brief facts of the case are that the appellants, a trader importers, imported Heavy Melting Scrap (HMS) vide Bill of Entry No. 635 dated 13.04.2000, consisting of five containers which weighed 107.100 MT. The Bill of Entry mentioned the goods as HMS classifiable under 7204.49 of the Customs Tariff Act, 1975. Accordingly, the appellants claimed concessional rate of duty @ 5% vides Notification No. 16/2000-Cus. dated 01.03.2000 by claiming classification of HMS imported under Tariff Heading 7204.49 of the Customs Tariff Act.

4. The appellants requested the Customs authorities to release the consignment. However, after inspection, the authorities detained one container out of five containers on the basis of the doubt about the description of the material.

5. The HMS normally contains girder, channels, pipes, saria etc. In the present case, on opening of containers, it was found that one container had tor/ribbed steel bars (of various lengths and of various diameters). The customs authority did not permit the release of this container namely SSMU 2966398 and allowed release of the remaining four containers containing HMS.

6. The appellants on 25.05.2000 requested the Deputy Commissioner of Customs, Ludhiana for release of the consignment after mutilation. Thereafter, the appellants once again requested the Commissioner of Customs for mutilation of goods on 09.06.2000.

7. On 20.06.2000, the panchnama was prepared and goods were seized. Seizure was made on the basis that the cargo did not appear to be HMP as declared by the appellants, but contains MS round of different dimension, diameter & length and were fresh and usable. 19.110 MTs out of 27.300 MTs goods of the above said container appeared to be M.S. Rounds classifiable under heading No. 72.14 of the 1st Schedule to the Customs Tariff Act, 1975 (1 of 1975) attracting higher rate of customs duty as compared to HMS which is a low value item attracting lower rate of duty.

8. The authorities in the case of identically placed importers M/s Sona Castings Ltd., and M/s Bhawani Castings Ltd., duly permitted clearance after mutilation of material containing serviceable material. Similarly, in the case of M/s Dutt Multi Metals Ltd., the High Court in the C.W.P. No. 7717 of 2002 permitted the said party to lift the material after mutilation vide interim order dated 16.6.2002. All the aforesaid importers were also importing HMS for the purpose of melting to manufacture MS ingots.

9. In view of the aforementioned cases, the appellants once again on 23.6.2000 requested the Chief Commissioner of Customs, Delhi for permission for mutilation of the contents of container SSMU 2966398. However, the authorities refused to accede to the request of the appellants.

10. We find that the Commissioner (Appeal) has rejected the plea of mutilation made by the appellants on the ground that the appellants had tried to compare its case with some other importers, who were allowed mutilation of goods by the Department. The Commissioner (Appeals) reasoned that the other importers are manufacturers and the appellants are merely a trader. Therefore, the mutilation of goods shall not be allowed. This does not appear to be justified. There is no

ground to discriminate against the Trader-importer and the manufacturer-importer on this count. Irrespective of the status of the importers, if the serviceable materials are mutilated under the supervision of the Customs and are rendered into scrap, before release to the party, the same cannot be misused thereafter.

11. Another ground on which the request for mutilation was rejected by the Commissioner (Appeals) was that the request for mutilation was made by the appellants only after the detention of goods as fresh bars and rods instead of HMS as declared. In this connection, it is to be noted that the appellants had placed order for HMS on the supplier/exporter. The invoice under the cover of which goods were supplied also described the goods as HMS and the price was also accordingly charged. Thus, the appellants had no means to know in advance as to what is contained in the container is fresh bars and rods or HMS. The true identity of the goods could have been ascertained only after the containers were opened and inspected. Therefore, the rejection of the request of mutilation by the Commissioner (Appeals) on this ground is also not correct.

12. The legislation has created specific provision under Section 24 of the Customs Act, 1962 for mutilation of imported goods. The appellants specifically requested for mutilation of goods, so as to satisfy the Customs officials about the material being in the nature of waste and scrap. Therefore, the request of the appellants for mutilation ought to have been considered favourably by the authorities below.

13. As per the Boards' instructions dated 16.6.95, wherever serviceable goods are noticed in the scrap, mutilation can be allowed. The instructions cater to the situation where goods are found to be predominantly scrap as per declaration and ^o same material which seems to be of serviceable nature is also found. Therefore, the Boards' instructions dated 16.5.95 aptly apply to the present case where only 19.110 MTs of serviceable material was found out of 107.100 MTs of HMS imported and, therefore, the Customs authorities should have allowed mutilation in this case.

14. The reliance placed by the lower authorities on the Supreme Court judgement in the case of CC, Bombay vs. Hardik Industrial Corporation reported in 1998 (97) ELT 25 (SC) for rejecting the request of the appellants for mutilation of the goods is misplaced as the facts are distinguishable. In that case, the respondents therein were willing to have the goods mutilated. They expressed their willingness before the Tribunal in this regard. However, no formal written request was made by them to that effect. In that context, the Supreme Court in the case law cited supra observed that the purpose of Section 24 was not to condone or erase the consequences of an offence that had been committed. Whereas in the case before us, it is on record that the appellants, vide their letter dated 25.5.2000, 9.6.2000 and 23.6.2000, had requested the Customs Authorities for granting permission for mutilation of the goods weighing 19.110 MTs out of 107.100 MTs, which were found to be serviceable. Immediately after the import of the impugned goods on 13.4.2000 vide Bill of Entry No. 635, repeated requests were made by the appellants for permission to mutilate the offending goods before their release. This establishes their bonafide and, therefore, the above observations of the Supreme Court cannot be blindly applied to the present case.

15. It is also erroneous on the part of the lower authorities to presume that the appellants imported fresh material in the garb of HMS. When only 19.110 MTs was found as serviceable material as against 107.100 MTs HMS imported vide Bill of Entry No. 635 dated 13.4.2000 and rest was admittedly HMS, it cannot be said that fresh material was attempted to be imported as HMS. In India, it may be regarded as serviceable material in the trade parlance. However, in U.A.E. (Country of Export), it was considered as scrap and accordingly shipped to India by exporter/supplier by describing it so as HMS in the invoice and other accompanying documents.

16. We, therefore, direct that the offending goods may be released to the appellants after effective mutilation under the Customs supervision, thereby rendering them as scrap. Scrap so generated after mutilation will be cleared on

payment of appropriate Customs duty at the declared value by classifying it under Tariff Heading 7204.49 of the Customs Tariff Act. In the facts and circumstances of the case, there is no warrant for the confiscation and imposition of penalty and redemption fine. The same are set aside. The appeal filed by the appellants is allowed.

[Pronounced in the Open Court].

[Justice S.N. Jha]
President

[A.K. Srivastava]
Member [Technical]

[Pant]