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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/766 /2005 Date 09/07/2008

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 MITTAL PIGMENTS PVT LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/187/08-CUSTOMS DT. 09.07.08**

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 MITTAL PIGMENTS PVT LTD
A-203, INDRAPRASTHA INDUSTRIAL AREA.
ROAD NO.5. KOTA (RAJASTHAN)

2. Adv. / Consult MR. SANJAY GROVER, ADV.
C/O M/S MITTAL PIGMENTS PVT LTD., A-203,
INDRAPRASTHA INDUSTRIAL AREA.
ROAD NO.5. KOTA (RAJASTHAN).

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. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal No. 766 of 2005

[Arising out of the Order-in-Appeal No. 13 (MPM) CUS/JPR-I/05 dated 24/05/05 passed by The Commissioner (Appeals-I), Customs & Central Excise Commissionerate, Jaipur.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	No

CC, Jaipur — Appellant

Versus

M/s Mittal Pigments Pvt. Ltd. — Respondent

Appearance

Shri B.K. Singh, Authorized Representative (DR) – for the appellant.

Shri Sanjay Grover, Advocate – for the respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/06/2008.
DATE OF DECISION: 9/7/08 .

Final Order No. C/187/08 Dated : 9/7/08

Per. Rakesh Kumar :-

The point of dispute in this appeal of the Revenue is whether consignment of zinc dross imported by the Respondents is covered by Institution of Scrap Recycling Industries (ISRI) Code SCRUB and ~~have~~ hence covered by EXIM code 79020010 and freely importable, or is the 'zinc dross other than that covered by ISRI code scrub, seal, seam or shelf and hence covered by EXIM code 79020090 and restricted for import. The Commissioner of Customs (Appeals), Jaipur, by the impugned order ~~has~~ set aside the confiscation of the goods and penalty imposed on the Respondents, holding that the goods are zinc dross covered by code scrub of ISRI and hence the same are freely importable.

2. Heard both the sides.

2.1 Shri B.K. Singh, the learned Departmental Representative made the following submissions :-

(i) Any type of zinc dross not covered by the ~~definition of~~ ISRI code scrub, seam, seal and shelf, is covered by EXIM code 79020090 and the same is restricted for import. The imported zinc dross is covered by EXIM code 79020090.

(ii) Since as per the test report of the Central Revenue Control Laboratory, the imported zinc dross contains 3-4% iron, it is not covered by the ISRI specification for zinc dross scrub, which must be free from skimmings, and tramp iron.

(iii) The Tribunal's judgments in case of **Varun Aluminium Industries Ltd. vs. CC, Nhava Sheva,** reported in **2002 (141) E.L.T. 238** and in case of **CC, Customs, Mumbai vs. Metal Tone (Gujarat) Pvt. Ltd.** reported in **1999 (107) E.L.T. 722 (Tribunal)** relied upon by the CC (Appeals), are not applicable to the facts of this case, as the question in this case is not whether the goods imported are 'zinc dross', but whether the same are zinc dross of scrub, seam, seal or shelf ISRI code, which alone is freely importable.

(iv) No evidence has been produced by the Respondents that there was mutual agreement between the respondents and the suppliers that the zinc dross scrub can have traces of iron.

2.2 Shri Sanjay Grover, Advocate, the learned counsel on behalf of the Respondents made the following submissions :-

(i) The chemical examiner of CRCL in this test report has not assigned any reason to reach the conclusion that in spite of the fact that the sample is zinc dross having more than the minimum content of zinc, it is other than scrub/seal/seam/shelf. A material having characteristics of dross and more than 92% of zinc can not be anything other than zinc dross scrub.

(ii) The agreement between the Respondent and the supplier M/s HEMSU, International, U.S.A. is for supply of 40MT of zinc dross of ISRI code scrub and the test certificate received from the supplier also certifies the goods to be zinc dross of ISRI code scrub.

(iii) In two consignments of zinc dross imported from the same supplier during the same period, the goods on being tested by the CRCL had been found to be zinc dross of ISRI scrub code, as certified in the supplier's test certificate.

3. We have given careful consideration to the submissions of both the sides. As per the EXIM policy, the zinc dross, which is freely importable, is the zinc dross conforming to ISRI code scrub, seal, seam and shelf covered by EXIM code 79020010. The zinc dross, other than that conforming of ISRI code scrub, seam, seal and shelf is covered EXIM code 79020090 and the same is restricted for import.

3.1 In this case, there is no dispute that the goods are zinc dross with zinc content of more than 92%. The point of dispute is whether the goods, in question, conform to the specification of ISRI code scrub, seal, seam and shelf. The chemical examiners of CRCL have tested the sample from the consignment twice and on both the occasions have reported that the sample does not conform to the ISRI code for scrub. The goods, admittedly are not of ISRI code seal, seam or shelf. The imported goods, therefore, are zinc dross other than the dross confirming to ISRI code scrub, seal, seam or shelf and hence the same are restricted for import. The impugned order, therefore, is set aside and the Revenue's appeal is allowed.

(Pronounced in open court on 9.7.08)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK