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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/438 /2005 Date 16/07/2008

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

To :
M/S SONA CASTIONGS (P) LTD.
G.T.ROAD (SIRHIND SIDE), MANDI GOBINDGARH
(PB). DISTT. FATEHGARH SAHIB.

M/S SONA CASTIONGS (P) LTD. Appellant
Vs
COMMISSIONER OF CUSTOMS, KANDLA (GUJRAT) Respondent

I am directed to transmit herewith a certified copy of Final order No.C/195/08-CUS. DATED 16.06.08

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
COMMISSIONER OF CUSTOMS.
CUSTOMS HOUSE KANDLA, KANDLA (GUJRAT)
2. Adv. / Consult MR.K.K ANAND. ADV.
A-5,BASEMENT,LAJPAT NAGAR-III.
NEW DELHI-24
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

COURT – II

CUSTOMS APPEAL NO. 438 OF 2005

[Arising out of Order-in-Original No. KDL/COMMR/15/2005 dated 12.01.2005 passed by the Commissioner of Customs, Kandla]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. 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?	
2.	Whether it would 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. Sona Castings (P) Limited — Appellants

Vs.

C.C., Kandla — Respondent

Appearance:

Shri Vikrant Kackria, Advocate for the appellants;
Shri B.K. Singh, Departmental Representative for the Revenue.

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 16th June, 2008

FINAL ORDER NO. C/195/08 **dated** 16-6-08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against the impugned order passed by the Commissioner of Customs. The appellants made import of 396.68 M.T. of Heavy Metal scrap and filed Bill of Entry on 23.12.2004. The goods were examined 100% and no war related material was noted during the examination. The Customs authorities are of the view that out of total consignment 4 M.T. was Re-rollable scrap of steel and iron and the appellants has not produced pre-shipment inspection certificate as per EXIM policy, therefore, liable for confiscation. The adjudicating authority imposed redemption fine of Rs. 4,25,000/- and imposed penalty of Rs. 2,25,000/-.

3. Contention of the appellants is that total consignment is 396.68 M.T. Out of this only 4 M.T. was found to be Re-rollable scrap. The appellants are actual user and all scrap is required for melting purpose. As per Customs authorities the same can be used for re-rolling purposes and are of higher value. Contention is that in view of the small quantity of re-rollable scrap in a big consignment will not make the entire consignment liable for confiscation. In respect of pre-inspection certificate the contention is that the condition to obtain pre-shipment inspection was introduced w.e.f. 15.10.2004. In the present case goods

were on board on 5.10.2004 and as per bill of landing and that date there was no such condition. As the goods were shipped prior to imposition of pre-shipment condition, therefore, on this ground confiscation of goods is not sustainable.

4. Contention of the Revenue is that re-rollable scrap is of higher value and it can be used for re-rolling. Therefore, the impugned order was rightly passed. In respect of Pre-shipment inspection certificate contention is that, as the scrap coming into India from Iraq it contains unexploded ammunition, therefore, this condition was imposed. As this condition was not complied with confiscation was rightly ordered.

5. Total consignment is of 396.68 M.T. and out of this small quantity of only 4 M.T. is found to be re-rollable scrap. In these circumstances that small quantity of goods which is also scrap, may be of re-rollable quality, cannot make goods liable for confiscation. In respect of Pre-shipment inspection certificate we find that as per bill of landing certificate goods were shipped on board on 5.10.2004 and the condition regarding certificate was imposed on 15.10.2004. At the time of shipment there was no such condition and, therefore, confiscation on this ground is also not sustainable. The impugned order is set aside and appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 18th June, 2008
RK