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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/68 /2007 - CU[DB]   Date 13/06/2011

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

To :
C.C. JODHPUR (HQ AT JAIPUR)
N.C.R. BUILDING, STATUE CIRCLE,
C- SCHEME, JAIPUR.

C.C. JODHPUR (HQ AT JAIPUR) Appellant
Vs
M/S SUNSHINE ARTIFACTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/243/ 2011 CU|DB|** dated 06.06.2011 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 SUNSHINE ARTIFACTS
27 SECTION 7, NEW POWER
HOUSE ROAD, JODHPUR.

2. Adv. / Consult SH. O.P. AGARWAL, C.A.
56, SECTION-7, NEW POWER HOUSE ROAD,
JODHPUR, RAJASTHAN.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO.III

Appeal No.C/68/2007

Arising out of OIA No.600(HKS)CUS/JPR-II/2006 dt.31.10.06

Passed by: Commissioner of Central Excise & Customs (Appeals), Jaipur

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	No
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/s	...	CC Jodhpur
Represented by	...	Shri K.K. Jaiswal, SDR
		Vs.
Respondent/s	...	M/s. Sunshine Artifacts
Represented by	...	Shri O.P. Agarwal, C.A.

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing :02.06.11
Date of Decision:02.06.11

Final ORDER No. C/243/11

Per: Mrs. Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals) vide which he has rejected the Revenue's appeal filed before him, Revenue has filed the present appeal.

2. Briefly stated facts of the case are that M/s. Sunshine Artifacts, 27 Sector 7, New Power House Road, Jodhpur, (hereinafter referred to as "Respondents") filed bill of entry No.70 dated 27.08.05 for clearance of import consignment of Heavy Melting Scrap declaring under CTH 72044900 claiming benefit of Notification No.21/2002-Cus. dated 01.03.02 (S.No.200). The said goods were declared to be of U.A.E. origin. The bill of entry was assessed on first check basis.

3. On examination of the imported goods by the Customs Authority, goods were found to be re-rollable as well as re-usable (serviceable) material i.e. bars, rods, pipes, sheets & rails (old & used) of iron and steel in assorted length, cut.

4. Vide assessment orders dated 16.09.05, the re-rollable material weighing 383.215 MT were assessed under Chapter sub-heading 72044900 at the concessional rate of customs duty i.e. (5% + 16% + 2% + 2%) and serviceable second hand goods weighing 181.00 MT under chapter sub-heading 73269099 at normal rate of customs duty (15% + 16% + 2% + 2%). The total duty so assessed was Rs.18,18,634/- and Rs.1,44,481/- respectively, which was paid by the respondents. All the goods have been cleared as freely importable items.

5. Being aggrieved with the order of assessment Revenue filed an appeal before commissioner (Appeals). The appellate authority however rejected the appeal by observing as under:

> *"Discussions & Findings:*
>
> *I have carefully gone through the case records and written submissions made by the appellants. I find that this is a departmental appeal in which the department has come up with the arguments that the entire imported goods should fall under the category of Chapter 73 and, therefore, attract higher rate of duty.*
>
> *It is found that the on importation the goods underwent physical examination, and were segregated. The assessment order mentions that the goods were found to be 'scrap of iron & steel/re-rollable as well as reusable, thus classifiable under Chapter 72 and 73 of the CTH'. The examination was conducted by the Departmental Officers in the presence of the representatives of the respondents. None of participants in the examination can go back from the examination report, unless they adduce additional evidence to substantiate discrepancy in the examination report. The officers found nearly 181 tonnes to fall under Chapter 73 on which the appropriate duty has already been paid by the respondents. The rest of the quantity was found to fall under the category of Chapter 72 and appropriate duty was also paid for the same. No additional evidence/reasons have been put forward by the department which could show that the Departmental Officers had erred in arriving at the conclusion in the examination report. In the absence of any additional evidence, the examination report of the Departmental Officers cannot be re-opened. The appeal is not maintainable on this ground.*
>
> *The other argument put forward by the department that the goods classified under the Chapter 73 were restricted items and per EXIM policy they should have been adjudicated cannot be taken up at this stage now and, therefore, the appeal of the department fails on this count also.*
>
> *The appeal is accordingly, rejected."*

6. The said order is impugned before us.

7. After hearing both the sides duly represented by Shri K.K. Jaiswal, learned SDR appearing for the Revenue and Shri O.P. Agarwal, learned Chartered Accountant appearing for the respondents, we find that the examination report of the goods is to the effect that out of the total quantity of 515.690 MT, 181 MT was reusable scrap and the balance 334.690 MT was re-rollable scrap falling under Chapter 72. The

respondents have accepted the above examination report and have accordingly paid duty in respect of 181 MT at the higher rate. We also note that the remarks on the bill of entry are to the effect "BE assessed after examination of goods in 20 containers received (except the mark by *) as per examination report goods found to be scrap of iron and steel (re-rollable as well as reusable thus classification under Chapter 72 and 73 of the Customs Tariff Act." We also note that the relevant part of the examination report is as follows:

> *"Detailed examination was done thereafter during which the cargo has been found to be consisting of sariya/tor obtained from dismantled RCC structures; end cuttings of sariya/tor of assorted lengths; girders of assorted length cut/sheared into pieces and obtained from dismantled structural steel work; roughly shaped pipes of assorted length cut/sheared into pieces and obtained from dismantled pipelines; roughly shaped steel plates obtained after cutting/shearing of structural steel work; rails of assorted length cut into pieces and other iron and steel scrap items having faulty surface obtained as a result of breaking of steel structures/machinery/vehicles."*

8. From the above it is clear that the goods were old and used cut pieces, and cuttings etc. of various articles of iron and steel. Hence the same were in fact melting steel scrap, which is classifiable under Chapter 72. No infirmity, thus, can be found in the views adopted by the lower authorities. The Revenue's appeal is accordingly rejected.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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