13.

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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/408 /2007 - CU[DB]   Date **19/07/2011**

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

To :
C.C. ICD, TUGHLAKABAD,
NEW DELHI 110020.

C.C. (ICD) NEW DELHI   Appellant

Vs

M/S B.S. SMELTERS   Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/332/ 2011 CU[DB]** dated 06.07.2011 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 B.S. SMELTERS
B-99, IST FLOOR, DERAWAL
NAGAR, NEW DELHI

2. Adv. / Consult

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 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI
COURT ROOM NO.III

Appeal No.Cus.Ap.408/2007

(Arising out of the Order-in-Appeal No.CC(A)/CUS/50/ICD/D II/07 dated 18.05.2007 passed by Commissioner of Customs(Appeals), New Delhi.)

For approval and signature of:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE 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 ?	:

CC, ICD, TKD, DELHI

...APPELLANT(S)

VERSUS

M/s.B.S.Smelters

...RESPONDENT(S)

APPEARANCE

Sri Sonal Bajaj, Departmental Representative (SDR)

FOR APPELLANTS

NONE

FOR THE RESPONDENTS

CORAM:

SHRI S. S. KANG, HON'BLE VICE PRESIDENT
SHRI MATHEW JOHN, HON'BLE MEMBER (TECHNICAL)

DATE OF HEARING: 06.07.2011

Final **ORDER NO.** C/332/11

PER SHRI S. S. KANG,

1. Heard the learned SDR as none appeared on behalf of the Respondents in spite of notice.

2. Revenue filed this Appeal against the impugned order whereby Commissioner(Appeals) set aside the assessment order passed in respect of aluminium dross imported by the Respondents. The Respondent made import of aluminium dross and declared the value for assessment as US Doller 420 per M.T.. The value declared by the Respondents is not accepted by the Revenue and the adjudicating authority has enhanced the value to US Doller 787.300 per M.T.. The adjudicating authority also held that the aluminium dross is liable for Additional Duty of Customs equal to excise duty. The Commissioner(Appeals) on Appeal filed by the Respondent set aside the enhanced value and also set aside the demands of Additional Duty of Customs.

3. The contention of Revenue is that the aluminium dross is liable for Additional Duty of Customs as the aluminium dross is classifiable under 2620 of the Central Excise Tariff. In respect of the valuation of the goods the contention of Revenue is that aluminium dross which contains 50% of the aluminium as per the declaration of the importer and as per the Board's Circular dated 15.09.2005 which is in respect of valuation of copper dross and copper residues, the deductions in respect of processing were also allowed from the L.M.E. price before arriving at assessable value. Hence the impugned order is not sustainable.

4. We find that the issue whether the aluminium dross is liable to central excise duty or not is now settled by Hon'ble Supreme Court in the case of CCE v. Indian Aluminium Co.Ltd. – 2006 (203) ELT page-3 where it has been held that zinc dross falling under same heading is not a manufactured product and hence not liable to excise duty. The Tribunal in the case of Vishal Pipe vs. CCE reported in 2010 (255) ELT 532 also taken the same view. In view of the above decisions we find no infirmity in the impugned order whereby the Commissioner(Appeals) held that aluminium dross is not liable to additional duty of customs.

4. In respect of valuation we find that the value was enhanced on the basis of a circular which is in respect of copper dross and copper residues and after taking into consideration that the dross contains 50% of the aluminium. The Revenue is not relying upon any other import made by other importers for the same goods during the same period. The Commissioner(Appeals) also noted the fact that there was no reason given by the Adjudicating Authority for enhancement of the value. Further we find that the cost for extracting aluminium from dross cannot be equated with the cost of ~~zinc~~ copper from ~~zinc~~ copper dross and that circular cannot be blindly applied. In these circumstances we find no reason to reject the transaction value as declared by the Appellants in the Bill of Entry in view of the decisions of Hon'ble Supreme Court in the case of Eicher Tractors reported in 2000 (122) ELT 231. In view of the above discussion we find no impurity in the impugned order. Appeal is dismissed.

(Dictated & pronounced in the open Court.)

(MATHEW JOHN)
MEMBER(TECHNICAL)

(S.S. KANG)
VICE PRESIDENT

sm/-