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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/771/2007-CU[DB]

Dated: **29/06/2012**

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

H.R. ENTERPRISES
F-141 (C) Vasni, 2nd Floor, Near and
Shops Jodhpur, Rajasthan

H.R. ENTERPRISES (Appellant)

VS

C.C. (ICD) NEW DELHI (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **C/A/176/2012-CU[DB]** dated **08/06/2012** passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi 110020.

2. Advocate(s) / Consultant(s):
Piyush Kumar,Adv
B-25,Lajpat Nagar-III,N.Delhi

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

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

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Assistant Registrar
CUSTOMS Appeal Branch

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

PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 771 of 2007

[Arising out of Order-In-Appeal No.50/2007, dated 12.11.07 issued by CC, New Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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?	Yes
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

M/s HR Enterprises — Appellant
Vs.
CC(ICD), New Delhi — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri Piyush Kumar, Adv. for the Appellant
Shri K.P.Singh, AR for the Respondent

Date of Hearing / Decision : 08.06.2012

Final **ORDER NO .** C/A/176/12-Cus

Per Ms. Archana Wadhwa:

As per the facts on record, the appellants imported a consignment of used and old re-rolable scrap from Kristi Corporation, USA. The declaration made in the bills of entry dtd. 14.09.06 and 05.09.06 declared the goods as re-rolable scrap, classifiable under heading 72044900, attracting basic customs duty as 5%, countering in duty 16%, educational cess 2% and special additional duty 4%.

2. The said imported consignment contained in 19 containers was found to be tallied with declared weight of the goods. However, as the goods on examination were found to be used and old rollers appearing to be part of steel sheet/plate bending ~~beinding~~ machines, samples were drawn and sent to CRCL. As per test report dtd. 16.04.07 of CRCL, the sample was a circular metallic piece made of steel having uneven flat surface on top and bottom, the sides were rusted and the chromium content was more than 0.3% by weight.

3. The appellants were directed to produce the literature so as to show the origin of the goods. Vide their letter dtd. 29.09.06, the appellants submitted that his supplier has denied the availability of any literature in as much as the goods were scrap and rejected re-rolable material, which comes from upcountry via local traders.

4. Subsequently the consignment was got examined from Chartered Engineer (CE), govt. valuer. As per his report, all the rolls were solid and none of these was hollow, that these rolls were part of Steel Sheet/Plate Bending Machines, that all the rolls were having necks but some of these were with threading on the ends, while others were without threading, that these threads were for mounting couplings for power driving the same, while those without threads were the idle rollers (without power driven); that the curvature towards the center of the rolls from both the sides vary in different rolls; that these rolls did not seem to be made of

stainless steel, as all the rolls were having corrosions while stainless steel was highly resistant to corrosion (atmosphere oxidation); that the conditions of these rolls were reasonably goods, even while the same were rusted; that these rolls seem to be made of induction hardened high carbon steel, as was required for the rolls of Plate Bending machines; that these rolls were having pre-form shapes to give the desired radius to the plate which is to be bent; that these rolls cannot be termed as scrap, as the same maybe used in the plate bending machine, suitable to bend plates approx 5 mm thick.

5. Based upon the above report of the CE, Revenue entertained a view that in as much as the material in question is capable of being used as rollers after small repairing/re-conditioning, the same is classifiable under heading 8455, 90.00, attracting higher rate of duty. Accordingly, proceedings for confirmation of differential customs duty of Rs.6,70,080/- were initiated against the appellants by way of issuance of Show Cause Notice (SCN) dtd. 07.06.07. The notice also alleged violation of the Para 2.33 of the Handbook of Procedures under Foreign Trade Policy, 2004 and proposed confiscation of the goods.

6. The said SCN stands culminated into impugned order passed by Commissioner of Customs vide which he has confirmed the demand of duty of Rs.6,70,080/- by treating the goods as part of steel sheet, plate bending machine and rollers. He has also upheld violation of the provisions of Foreign Trade Policy. Accordingly goods stands confiscated with an option to the appellants to redeem the same on payment of redemption fine of Rs.7 lakhs.

Penalty of Rs.4 lakhs stands imposed on the appellants under the provisions of Section 112 of the Customs Act, 1962.

The said order is impugned before Tribunal.

7. After hearing both the sides duly represented by Shri Piyush Kumar, ld. Advocate appearing for the appellants and Shri K.P.Singh, ld. AR appearing for the Revenue, we find that the issue required to be decided in the present appeal is as to whether the goods imported by the appellants and declared by them as re-rollable scrap is actually parts of steel sheets/plate bending machines or not? Admittedly, the imported consignment consists of old, used, rusted and corroded parts of various machines and as such goods are bound to be parts of machines. The question required to be decided is as to whether the same had become unusable on account of being old and used parts of machines. The description as contained in invoices issued by M/s Kristi Corporation, USA is to the effect that the goods are MS re-rollable scrap. The bill of lading also describes goods as re-rollable scrap. To the same effect is the packing list as also the certificate of CE. To the same effect is the pre-shipment certificate accompanying the goods.

8. The Commissioner in his impugned order has dealt with the said pre-shipment inspection certificate submitted by the appellants and has held that the same is prescribed mainly for the purpose to ensure that the consignment does not contain any type of arms, ammunition, mines, shells, corrosion, radio active contaminated or any other explosive material for the purpose of clearance of scrap. The said certificate is based on visual

inspection during loading process, as mentioned in the certificate itself. As such he has discarded the said certificate and proceeded ahead to rely upon the Chartered Engineer's certificate given in India on examination of the goods.

9. It is seen that CRCL report prepared by the Revenue doe not indicate whether the goods are re-rollable scrap or not. The Chartered Engineer's report is to the effect that the goods in question are corroded and most of the rollers do not have threading on the neck. He has further observed that the rolls with threading are for mountain coupling for power driving whereas those without thread are ideal rollers without power driven. Admittedly Chartered Engineer has observed in his report that rolls are having corrosions and have uneven surface, apart from being very rusted. The Commissioner has adopted the opinion of the said certificate of Chartered Engineer whereas he has stated that the rollers can be used after small repair/re-conditioning and hence cannot be treated as re-rollable scrap.

10. We do not find any merit in the above stand of the Revenue. Admittedly the appellants have ordered for re-rollable scrap, the goods stand described as re-rollable scrap in the supplier's invoice as also in all other connected documents including the pre-shipment inspection certificate. There is no deviation in the weight declared by the appellants. The price of the goods also stand paid by treating the same as scrap in as much as there is no evidence on record produced by the Revenue indicating that the goods were valued as rollers. Even we find that the Chartered Engineer's certificate do not fully advance the Revenue's case in as much as

there is no dispute that the goods were rusted, old and damaged. The observations of the Chartered Engineer are to the effect that such rollers after repairing/reconditioning are capable of being used as rollers. It is well settled law that the goods have to be assessed in the condition in which they are imported. Even if some of the rollers can be put to use after some reconditioning, the said fact will not make the imported goods as rollers to be used as parts of the machine.

11. The decision of the Hon'ble High Court of Punjab & Haryana in the case of Patiala Castings P.Ltd. v. Union of India reported in 2003(156)ELT458(P&H) fully covers the appellants' case. While dealing with an identical case where the imported consignment consisted of old and used, rusted and waste & scrap, the Hon'ble High Court observed that in as much as admittedly the consignment was of non-usable pipes, mere fact that they can be used as pipes in some of the cases by itself will not lead to the conclusion that what has been imported was not scrap but pipes. By observing that it may be possible that one person considers the goods as scrap which may appear different or reusable to another. The Hon'ble High Court rejected the Revenue's contention that the consignment was to be considered as import of pipes and not scrap. To the same effect is the decision of the Tribunal in the case of Quick Car Wash P.Ltd. reported in 2007(214)ELT517(Tri.).

12. Apart from above, we find that the appellants have issued invoices to various re-rolling units describing goods as re-rollable goods. Revenue has not conducted any investigation to show that the purchaser of the goods in question have not used the said

goods as re-rollable but have used the same as parts of steel sheet/plate bending machines. There is virtually no evidence on record to indicate that the goods in question stand utilised as parts of plate bending machines and not as scrap.

12. In view of the foregoing discussion, we find no reasons to agree with the conclusion arrived at by the adjudicating authority. Accordingly the impugned order is set aside and appeal is allowed with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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