

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV**

Appeal No. C/50103, 50129/2016

[Arising out of Order-in-Appeal No. CC(A) CUS/D-1/EXP/ 1072 & 1073 dated 09.10.2015, passed by the Commissioner of Custom, New Delhi-110037]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri V. Padmanabhan, 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?	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 Sterling Ornaments Pvt. Ltd.

M/s Mrigank Shekhar

....Appellants

Vs.

C.C.- New Delhi

....Respondent

Appearance:

Sh. J.M. Sharma, Consultant for the Applicants

Sh. K. Poddar, Departmental Representative for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 11.11.2016

Date of Pronouncement: 06/01/2017

FINAL ORDER NO. 50148-50149 /2017-CU[DB]

Per V. Padmanabhan

The appeals are directed against the order dated 09.10.2015, passed by the Commissioner (Appeals) IGI Airport, New Delhi. The Appellant is a unit located in Noida Special Economic Zone engaged

in manufacture of artificial jewellery. One of the inputs required to manufacture the goods is brass in the shape of sheets, wires etc. For manufacture of goods, the sheets are required to be cut into smaller sizes and punched. Similarly, wires are cut to smaller sizes depending upon the design. The remnants of the punched brass sheets and wires etc. result in scrap to be sold in the domestic tariff area on payment of appropriate duty of Customs. For convenience of storage, easy transportation and safety requirements, the resultant scrap along with various impurities are heated and compressed and compressed material takes the shape of brick. The appellants have been clearing the said compressed scrap material classifying the same under heading 74040022, after assessment by proper officers of Customs. The appellant filed Bill of Entry No. 2913 dated 25.03.2014 on behalf of DTA purchaser for clearance of goods. The Bill of Entry was properly assessed by the proper Officers of Customs as per the classification and the valuation declared by the appellant. At the time of examination of goods under clearance department felt that these were brass ingots classifiable under heading 74072110. The department also felt that the value of goods was not correctly declared. During the investigation, the Department sent the goods for laboratory test for opinion as to whether the goods may be classified as brass scrap or brass ingots. The laboratory did not give any opinion as to whether the goods sent for testing were brass scrap or brass ingot. The goods, in the test report, were described "as provided by the party i.e. the Department". The Department, after investigation, issued a

Show Cause Notice dated 10.10.2014 proposing higher value for assessment of duty; demanding differential duty which worked out to Rs. 27,694/-; proposing confiscation of brass bars valued at Rs 3,48,000/- u/s 111(k) & 111(m) of the Customs Act and imposition of penalty u/s 111(a) & (b) of the Customs Act, 1962. The appellant submitted reply dated 14.10.2014 to the Show Cause Notice dated 10.10.2014 and also attended Personal Hearing. The Adjudicating Authority, after granting P.H., adjudicated the case vide O-in-O dated 27.10.14 confirming all the allegations and proposals in the Show Cause Notice. The appellant filed an appeal before Ld. Commissioner of Customs (Appeal) New Delhi without any success. The Order-In-Original passed by Original Authority was upheld. The present appeal is against Commissioner Appeal's Order dated 09.10.2015.

2. With the above background, we heard Shri J.M Sharma, Id. Consultant from the appellants and Shri K. Poddar, Id. Departmental Representative for the Revenue.

3. The impugned order has been challenged mainly on the following grounds:

i) The disputed goods are nothing but brass scrap arising during the course of manufacture, which has been melted and compacted in the form of a brick. The department has classified the same under 74072110 as brass ingots, as against the classification of 74040022 proposed by the appellants under brass scrap. Even

though sample of the product was got tested in the laboratory, no opinion was given regarding the classification of goods. The laboratory simply give the composition of the goods. The appellant further submitted that they have submitted a technically opinion from a Chartered Accountant dated 5.12.2014, in which he opined that the goods are nothing but brass scrap in the form of a brick. Under the circumstances, no mis-declaration can be attributed to the appellant.

ii) The rate of duty under both the classification are the same. However, Revenue has enhanced the value without following the provision of Customs Valuation Rules. The value has been arbitrarily adopted on the basis of brass sheets imported by the appellant, ignoring the transaction value.

iii) Since the dispute is purely legal, no malafied intention can be attributed to the appellant.

4. Ld. Departmental Representative reiterates the findings of the authorities below.

5. The present dispute is regarding the classification and valuation of brass scrap which has arisen during the course of manufacture of artificial jewellery. The appellant is a registered unit in Noida Special Economic Zone. For clearance of these goods, they filed a bill of entry on behalf of DTA buyer to whom goods were being cleared. The nature of goods is actually not in dispute. The brass scrap arising in the process of manufacture, has been compacted in

the form of brick making use of heat of the furnace. Since, the goods do not have the form of loose scrap; Revenue took the view that the appropriate classification will be under 7407210 which covers brass bars. Looking to the shapes in which the goods are being cleared, the classification as a brass bar is more appropriate than the classification as brass scrap. There is no difference in rate of duty between the two classifications. In the Impugned order, mis-declaration has been alleged against the appellant. However, it is obvious that it is a classification dispute. Since two views are easily possible in the classification of a product, mis-declaration with intend to evade payment of duty cannot be alleged. Consequently, we are of the view that the order of confiscation made under Section 111(k) and 111(m) is not justified and is required to be set aside.

6. Now, we consider the issue of valuation. The Bill of Entry has been filed by the appellant for clearance of the impugned goods to DTA buyer. The value declared is on the basis of the transaction value. From the impugned orders we find that Revenue is not in possession of any evidence to conclude that the transaction value is to be disregarded. It is also on record that the appellant has received payment through cheque to the extent of the value declared in the documents. The only reason cited by Revenue to enhance the value appears to be the nature of the goods. By considering the goods as other than brass scrap, Revenue has gone ahead with enhancement of the value of the goods. We find that

such a step adopted by Revenue does not have the sanction of law. Valuation of imported goods is required to be done on the basis of normal transaction value. To disregard transaction value, sufficient reasons should be available. Only if there are valid reasons to disregard transaction value can the Revenue take recourse to the Customs Valuation Rules to redetermine the value. From the records of this case, we find that there are no valid reasons to disregard the transaction value in the present case. Hence, we are of the view that the enhancement of value ordered by Revenue is without justification.

8. In view of the above discussions, the impugned order is set aside and appeals are allowed.

[Pronounced in the open Court on 06/01/2017]

Archana Wadhwa
(Member Judicial)

V. Padmanabhan
(Member Technical)

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