IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>EAST REGIONAL BENCH : KOLKATA</u>

<u>MA(ROA)-75909/2018</u>
<u>& Customs Appeal No.566/2009</u>

[Arising out of Order-in-Original No.30/Cus/CC(P)/WB/2009 dated 29.10.2009 passed by Commissioner of Customs (Prev.), Kolkata]

Dilip Kr. Paul

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Preventive), W.B.

Respondent (s)

<u>Appearance:</u>

Shri Sujit Ranjan Biswas, Advocate for the Appellant (s)
Shri S. Guha, AC (AR) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

<u>Date of Hearing/Decision : 13.07.2018</u>

ORDER NO.MO/75724/18 & FO/76436/18

<u>Per Shri Bijay Kumar :</u>

Misc. Application has been filed by the appellant/applicant for restoration of their appeal which was dismissed for non-prosecution vide Final Order No.FO/75888/2018 dated 03.05.2018. Ld. Advocate appearing on behalf of the applicant submits that the appellant Shri Dilip Kr. Paul was all along under medical treatment and mostly travelled to Kolkata and other places for the purposes of his treatment and the notice of hearing sent to his address in Tripura might have been overlooked and necessary arrangement for attending the hearing of the case on the date fixed could not be made.

2. In view of the reasons explained in the present Misc.Application, the order dismissing the Appeal is recalled and the appeal is restored to its

original number. Miscellaneous Application (ROA) is allowed. With the consent of both sides, we take up the appeal for final disposal.

3. The main appeal has been filed against the Order-in-Original No.30/Cus/CC(P)/WB/2009 dated 29.10.2009 wherein various penalties have been imposed by the Adjudicating Authority. The issue involved is regarding carrying of scraps in the Truck No.WB-23A-6934 valued at Rs.36,20,000/- were being transported from Agartala to Kolkata and on the suspicion that these goods were of the foreign origin, the truck was brought to Kolkata from Barasat where it was intercepted by the Preventive team of the West Bengal Preventive Commissionerate. After fulfilling the legal formalities the truck was put to seize and the goods were detained. After following the process of law, the aforesaid adjudication order was passed which is the subject matter of this appeal.

4. We have heard ld. Advocate contesting the order on the ground that the ld.Commissioner has not accepted their view that the scraps were not of the Bangladesh origin, that were locally collected and locally purchased from Tripura. To that effect he also relies upon the report sent by the Assistant Commissioner, Agartala which is also not conclusive so far as the source of goods i.e. metal scraps is concerned and therefore contends that the conclusion of the Adjudicating Authority that the metal scraps are of the Bangladesh origin is without any legal basis and only on the basis of presumption.

5. Per contra, ld.D.R. supports the order of the adjudicating authority on the three grounds:

(i) The number plate of the truck in which the scraps were being carried out was defaced with grease and which has been confirmed by the driver of the truck. In his statement he has stated that this was done probably to cover the goods under suspicion of being smuggled goods.

(ii) The report of the Asst. Commissioner, Agartala is inconclusive and therefore cannot be relied upon. During investigation of various scraps dealers of Bhangri, it was found that they did not maintain any counter foils of the Bill/Cash memo they use for sale/transportation of these goods outside of Tripura, they maintain only one register of sale, stocks and purchase.

(iii) Among the two consignment notes, one was for carrying old clothes, sarees and the other was for the scraps being carried out in the truck. So these consignment notes were not correct and therefore, there is a chance that these goods are of the Bangladesh origin and accordingly, the Commissioner has rightly concluded thereof.

6. Heard both sides and perused the appeal records.

7. On perusal of records, we find that the Adjudication Order suffers from inherent deficiency. We are unable to understand that on what grounds, the Adjudicating Authority has arrived at the conclusion that the goods are of Bangladesh Origin whereas the report sent by their own Asstt. Commissioner states that it is not possible to substantially justify the origin of these scraps to be of Bangladesh origin.

8. Regarding carrying of two consignment notes, it is not clear from the investigation report that these consignment notes were of the same date. Possibly the driver of the truck has forgotten to unload the consignments of the previous journey, which has not been verified by the department.

9. We also perused the letter of the Tripura Metal Scraps Merchant Association stating that the scraps, are locally produced scraps from different small hawkers, who collect them from different households of Tripura.

10. On these backgrounds we have observed that the entire order need to be set aside. In view of the above, we are of the view that the adjudicating authority has not arrived at the correct conclusion by holding that the scraps are of Bangladesh origin and in the circumstances we allow the appeal filed by the appellant setting aside the impugned order.

(Dictated and pronounced in the open Court.)

S/d.
(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

S/d.
(BIJAY KUMAR)
MEMBER (TECHNICAL)

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