IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76535 of 2017

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/21/2017 dated 23.05.2017 passed by Commissioner of Customs (Port), Kolkata).

M/s Jindal Stainless Ltd.,
O.P.- Jindal Marg, Hisar, Haryana-125005.

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,
Customs House, 15/1, Strand Road, Kolkata-700001

.. ...**Respondent**

APPERANCE :

Shri Deeprosen & Mr. Shovit Betal, both Advocates for the Appellant
Shri A. K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No…77853/2024

DATE OF HEARING : 11.12.2024
DATE OF DECISION : 11.12.2024

PER R. Muralidhar :

The Appellant are manufacturers of stainless steel items such as slabs, hot rolled steel coil, cold rolled steel coil etc. falling under Chapter 84 of the Central Excise Tariff Act, 1985. Work Rolls are used in Rolling Mills in the factory of the Appellant to ensure movement and processing of products such as slabs into plates, HR Coils/Sheets, CR Coils/Sheets etc.

2. In 2013-14 and 2014-15, the Appellant purchased a total of 8 duty credit scrips issued under the Status Holder Incentive Scheme (SHIS Scheme) from various status holders. Out of such scrips, the Appellant completely used 5 of them and 42% of the 6th scrip to import "Work Rolls" by classifying the same under CTH 8455 30 00 as "Capital Goods" and availing the benefit of Notification No. 104/2009-Customs dated 14.09.2009

3. Based on the investigation taken up by DRI, a SCN was issued alleging that imported "Work Rolls" are not standalone Capital Goods. Since they are only "Parts or Spares of Capital Goods" of Rolling Mills. As per the terms of Notification No. 104/2009-Customs dated 14.09.2009, only 10% of the value of the scrips should have been used for payment of duty, whereas the entire value of the scrip was utilized by the appellant. After due process, the Adjudicating authority confirmed the demand. Being aggrieved the appellant is before the Tribunal.

4. The Ld Advocate appearing on behalf the appellant takes us through the factual details which are summarized as under :

(1) Work Rolls are used in Rolling Mills in the factory of the Appellant to ensure movement and processing of products such as slabs into plates, HR Coils/Sheets, CR Coils/Sheets etc.

(2) Rolling Mill is a machine wherein metal strips are transported and thickness (of the Slabs/Hot Rolled Steel Coil/Cold Rolled Steel Coil) is reduced by passing the strip through rotating rolls under pressure.

(3) In a broader sense, a rolling mill is an automatic system or line of machines that performs both rolling and auxiliary operations, i.e. transport/movement of the original slab from the stock to the heating furnaces and the mill rolls, transfer of the rolled material from one groove to another, turning, transport of the metal after rolling, cutting into sections, marking or stamping, trimming, packing, and conveyance to the stock of finished product.

(4) The primary shaping of the stainless steel products are done at the Hot Rolling Mill and the secondary parameters as per the customer's specifications i.e. microstructure, surface finish, elasticity etc. are improved at the Cold Rolling Mill.

(5) The work rolls of different specifications are required at roughing mill, tandem mill, finishing mill and for transporting the input/output at various stages of operation at the Hot

Rolling Mill. The rolls have their respective life cycles, after which they have to be changed.

(6) Prior to 2011, the Appellant was operating under the SEZ Scheme, and Works Rolls for the Rolling Mill was brought into India by availing the benefit of said scheme. Hence, no duty was paid on import of Rolling Mill. In 2011, the Appellant opted out of the SEZ Scheme. The capital goods imported under the said scheme were debonded as per Rule 74(4) of the SEZ Rules, 2005 by paying concessional rate of duty and transferring the same under the EPCG Scheme.

(7) Thereafter, the Appellant imported Work Rolls under EPCG Scheme. They were allowed to classify the Works under Capital goods for such imports.

(8) The present case pertains to the Status Holder Incentive Scheme [SHIS] scrips purchased by the appellant, which were used to pay the Customs Duties towards the import of the Work Rolls.

(9) The definition of "Capital Goods" as given in the Explanation to the Notification No. 104/2009-Customs dated 14.09.2009 (SHIS Scheme Exemption) is extracted hereunder for the purpose of reference:

> *"'<u>Capital goods' means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernization, technological up gradation or expansion</u>. It also includes packaging machinery and equipment, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector."*

(10) It is submitted that the definition of capital goods are wide enough to include 'work rolls'. As explained in the factual portion above, Work Rolls are used in Rolling Mills in the factory of the Appellant to ensure movement and processing of products such as slabs into plates, HR Coils/Sheets, CR Coils/Sheets etc. Therefore, such Work Rolls are capital goods themselves and not spares and parts of capital goods.

(11) The appellant has been treating the Works Rolls as Capital Goods for accounting purpose and Income Tax Department has been allowing the same to be treated as Capital Goods

(12) It is submitted that the Work Rolls imported by the Appellant is classifiable under CTH 8455 33 00. The Spares parts are covered under CTH 8455 90 00

(13) It is submitted that Work Rolls imported by the Appellant specifically falls under CTI 8455 30 00 as separate capital goods, whereas Parts of Rolling Mills are dealt with separately i.e., CTI 8455 90 00.

(14) The appellant relies on the case law of ***Shushila Steel vs. Comm. of C. Ex., Meerut, 1998 (98) ELT 237 (Tribunal)*** and ***Jamshedpur Engg. & Machine Mfg. Co. vs. Commr. Of C. Ex., Jamshedpur, 2001 (134) ELT 250 (Tri - Kolkata)*** wherein it has been held that Rolls are Capital Goods in themselves and not parts.

(15) The appellant relies on the following case laws, wherein it has been held that if the goods are allowed to be imported as Capital Goods under the EPCG scheme, the Revenue cannot take a different stand when the same goods are imported under SHIS scrips :

(a) Comm. of Cus., Chennai vs. JSW Steel Ltd., 2016 (340) ELT 262 (Tri-Chennai)

(b) Rayalseema Hi-Strength Hypo Ltd vs. Comm. of Cus, Chennai, 2016 (333) ELT 360, (Tri-Chennai)

(16) Finally the Appellant relies on the case law of ***Comm. of Customs (Port), Kolkata vs. M/s. Cosmic Ferro Alloys Limited, 2024 (8) TMI 674 - CESTAT KOLKATA ,*** *wherein it was* held that similar goods such as "Roller Sets", "Blades for Slitting Machines", "Spacers" & "Spares for Cold Rolling Mills" will be covered by the definition of "Capital Goods" under Notification No. 104/2009-Customs

dated 14.09.2009. This Hon'ble Tribunal held that the definition of "Capital Goods" in the Notification is wide enough to cover spares and parts of capital goods as capital goods itself.

(17) In view of the above submissions, the Ld Counsel submits that the impugned order may be set aside on merits.

(18) He also makes a submission to the effect that the Show Cause Notice issued on 28.10.2015 for the scrips used during the period 28-08-2014 to 17-01-2015, is time barred in respect of the part of the demand. It is submitted that the appellants were importing the Works Rolls as Capital Goods under EPCG scheme, which was allowed by the Revenue. Further, they have accounted for the Works Rolls as Capital Goods in their Balance Sheet, which has the approval of the Income Tax Dept. Further, as all the details are properly recorded, there is no case of suppression made out by the Dept. Hence, he submits that the confirmed demand for the extended period is required to be set aside even on account of time bar.

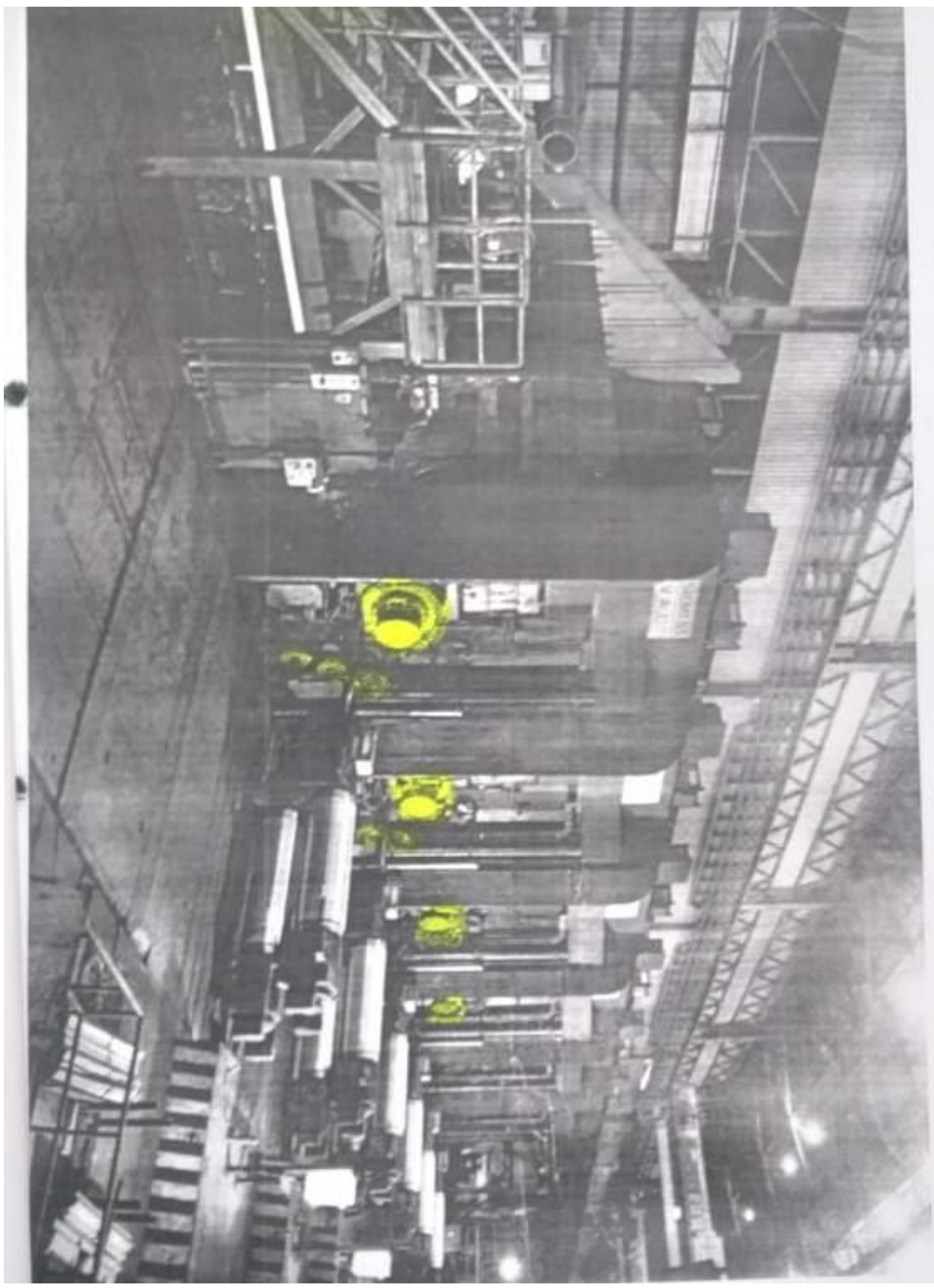
5. The Ld AR representing the Revenue submits that the Notification No. 104/2009-Customs dated 14.09.2009 , specifically mentions at Para 4 that in respect of "Parts or Spares of Capital Goods", only 10% of the value of the scrips could be used for payment of duty. The appellant has contravened this provision. Hence, he justifies the confirmed demand.

6. Heard both the sides and perused the Appeal papers, Synopsis and other documents placed before.

7. The issue to be resolved in this case is as to whether, the Works Rolls imported by the appellant can be treated as Capital Goods as is being claimed by the appellant or the same is to be treated as spare parts of the Capital goods, as is being claimed by the Revenue. If the contention of the Revenue is found to be correct, then the appellant would be eligible to utilize on 10% of the scrip amount to discharge the

Customs Duty and the balance 90% is required to be paid by way of cash [TR 6 / GAR7 Challan].

8. The appellant has enclosed the pictures of the Works Rolls used in the manufacturing process. For the sake of convenience, the same are being extracted below :



9. From the above picture, it can be seen that the Works Rolls are attached to the machinery and are being used, in the factory of the appellant without the Works Rolls. We do not see that there is any possibility for the Rolling Machine to become functional.

10. At this juncture, it would be important to go through the CTH provisions, which are reproduced below :

8455		*Metal-Rolling Mills and Rolls therefor*
8455 10 00	-	*Tube mills*
	-	*Other rolling mills*
845521	--	*Hot or combination hot and cold*
8455 30 00	**-**	***Rolls for rolling mills***
8455 90 00	-	*Other parts*

11. It can be seen the under the main heading 'Metal-Rolling Mills and Rolls therefor, the 'Rolls for rolling mills' are specifically classified under CTH 8455 30 00. The 'Other parts' are classifiable under CTH 8455 90 00, which goes on to show that the 'Other parts' ,whether in respect of 'Metal-Rolling Mills' or in respect of 'Rolls for the Metal Rolls' would get classified therein. Thus it is clear that 'Rolls for rolling mills' are independent goods are in the nature of 'Capital Goods' and are not in the nature of 'Spare Parts'. In the present litigation, it is not the case of the Revenue that the imported goods are classifiable under CTH 8455 90 00. The appellant has adopted CTH 8455 30 00 in their Bills of Entry [sample verified by the Bench] and the Revenue has cleared the same. Even in the present proceedings, the classification is not disputed by the Revenue.

12. Another fact to considered is as to how the Revenue has itself considered the goods as Capital Goods, when the same goods were being imported under EPCG Scheme. Both the EPCG License and the SHIS scrips are issued by the DGFT and under the Foreign Trade Policy,

the definition of Capital Goods is the same in respect of both. We find that in respect of SHIS scrip itself, the Chennai Tribunal in the case of ***Comm. of Cus., Chennai vs. JSW Steel Ltd., 2016 (340) ELT 262 (Tri-Chennai)***, has held as under :

> *"8. In this regard, we find the Notification No. 104/2009-Cus., dated 14-9-2009 clearly allows exemption of capital goods imported into India against Duty Credit Scrip issued under SHIS Scheme. As per Para 3.16 of Foreign Trade Policy the definition of "capital goods" and the definition of "capital goods" as provided in the Explanation under the Notification 104/2009-Cus. are identical to the definition given in the FTP and covers capital goods "plant, machinery, equipment or accessories required for manufacture, production, either directly or indirectly, of goods and includes those required replacement, modernization, technological upgradation or expansion etc. On a perusal of the contract, it is abundantly clear that respondents are setting up the plant and machinery of the Expansion Project for CAL & CGL in the Cold Rolling Mill Complex. It is pertinent to state that respondent has set up integrated steel plant at Vijayanagar, Karnataka. The contract clearly shows the import of entire supply of equipments of plant and machinery of CAL & CGL. Obviously when the respondents are to import as per the contract the whole plant and machinery for CAL & CGL, the entire goods cannot be imported in one lot under single Bill of Entry. The LAA has brought out a detailed findings on this issue and we find that equipments imported under the invoices are nothing but CAL & CGL and also considering the price, it is a single contract price and the goods are rightly to be considered as capital goods.* ***<u>The definition of "capital goods" given in Foreign Trade Policy are one and the same for EPCG licence or for SHIS Licence. The department cannot take a different stand for the same goods as 'capital goods' in EPCG scheme and not capital goods under SHIS Scheme</u>***. *Revenue's contention is that the goods imported are general purpose items i.e. Bolts & Nuts is not justified. Obviously, continuous annealing line has various*

> *sections as detailed in the impugned order. After assembly, it becomes a single Annealing Line. It is not the case of the department that respondent has placed orders for only spares or bolt and nuts and claimed as 'capital goods' under SHIS Scheme."*

13. The Chennai Tribunal in the case of ***Rayalseema Hi-Strength Hypo Ltd vs. Comm. of Cus, Chennai, 2016 (333) ELT 360, (Tri-Chennai)****,* has held as follows:

> *11. In the present case it is evident that titanium sheets are specifically used as lining material for fabricating the reactors. There is no dispute on the fact that the appellant is the actual user and the imported goods are used in the chemical industry.* ***These goods are also allowed to the importers under EPCG license. Further, we find that in respect of import of capital goods they are governed by the FTP and once the licensing authorities include any item as capital goods, the same is to be allowed by customs. Therefore, we hold that the lower authority in his impugned order dated 28-3-2013 has rightly held titanium sheets are capital goods covered under the capital goods definition and the same is eligible under SHIS scrip under Notification No. 104/2009.***
>
> *12. In this regard, the Tribunal in the case of Reliance Communications Infrastructure Ltd. v. CC, Bangalore (supra) held that the definition of capital goods as per FTP is wide and once the policy allows such items it is not open for customs to object that it only forms part of the capital goods.* ***In the present case we find that the licensing authority themselves have allowed titanium sheets as capital goods in the EPCG license. Once, it is held that, it is capital goods under EPCG license, a different stand cannot be taken for clearance through SHIS scrip. The SHIS refers to the definition of capital goods as per para 9.12 of FTP and the definition under customs***

> ***<u>notification, are identical to para 9.12 of FTP. Therefore, we hold that the goods are covered under capital goods…………”</u>***

14. Therefore, we see considerable force in the appellant's argument that Revenue cannot adopt two different standards to deny the benefit, as has been held in the above cited decision. On this count itself we set aside the impugned order and allow the appeal on merits.

15. Further we also observe identical issue was before this Bench in the case of ***Comm. of Customs (Port), Kolkata vs. M/s. Cosmic Ferro Alloys Limited, 2024 (8) TMI 674 - CESTAT KOLKATA. In that case, the goods in question were*** "Roller Sets", "Blades for Slitting Machines", "Spacers" & "Spares for Cold Rolling Mills" and the issue was whether the import of such goods would be be covered by the definition of "Capital Goods" under Notification No. 104/2009-Customs dated 14.09.2009. This Bench has held as under :

> *"11.1. From the impugned order, we observe that the importer has debited the duty payable for the goods imported, from 3 (three) Status Holder Incentive Scrips (SHIS) and availed the benefit of the Notification No. 104/2009-Customs dated 14-09-2009, as amended. However, Revenue alleged that the Respondent is not entitled for the benefit of the said Notification as they failed to comply with the conditions laid down in the said Notification. The allegation of the Revenue is that the imports are neither related to 'Capital goods imported earlier' nor are 'Capital goods' themselves and hence cannot be imported under SHIS license by claiming the benefit of exemption given by the said Notification ibid*
>
> *11.2.* ***<u>We observe that the goods imported are squarely fitting within the definition of 'Capital Goods' as defined in the FTP (2009-14) and</u>***

> ***Notification104/2009-Customs dated 14-09-2009, as amended***. ***We observe that the definition of 'Capital Goods' is wide enough to cover the imported 'spares/parts of capital goods'.*** *For the sake of ready reference, the definition of "Capital goods" as defined in FTP (2009-14) is reproduced below:*
>
> *11.3.* ***We observe that the goods imported by the Respondent are not merely spares/parts as alleged in the Notice. They are 'Capital Goods' as defined in the policy which is reproduced above****. Further, we observe that the restriction of 10% is only with respect to import of components, spares/parts of capital goods imported earlier.* ***Thus, import of capital goods (including accessories thereof) which have not been imported earlier, can be imported by utilizing SHIS without any restriction. The import of Parts/Spares/Components in the form of "Roller Sets", "Spacers", "Spares for Cold rolling Mills" & "Blades for slitting Machines" falling under Customs Tariff Item Nos. 84559000 & 82089090 respectively come under the ambit of definition of "Capital Goods"****, which are to be used in the setting up "Cold Roll Forming Mill Lines" for manufacture of "Engineering goods" ………………… …."*

16. In the present case, after going the factual matrix, we find that the above decision of this Bench is squarely applicable. As a matter of fact, the present appellants are in a better footing. While in that case, the issue was as to whether the 'spare parts' can be considered as Capital Goods for the eligibility to use the SHIS scrip, in the present case, we have already held the goods in question are Capital Goods and are not mere 'spare parts'. Hence, we have no hesitation in applying the decision of this Bench to hold that the impugned order is not legally sustainable. Accordingly, we set aside the same and allow the appeal on merits.

17. The appellant has also argued to the effect that the Show Cause Notice has been issued belated and accordingly the confirmed demand for the extended period is required as hit by time bar. We find that the issue as to whether even the Spare parts per se can be treated as Capital Goods, when they were treated as Capital goods for EPCG clearances, was under litigation. As we have observed in the above paragraphs, the Tribunals have held that the importer would be eligible to use the SHIS scrip. Thus the bonafide belief of the appellant gets fortified by the Tribunal's decisions. Hence, the issue being that of interpretation, the Revenue is not justified in fastening the suppression clause on the appellant. Accordingly, we set aside the confirmed demand in respect of the extended period even on account of limitation.

18. To summarize :

(a) It is held that the Works Rolls are by themselves Capital Goods and not Spare Parts. Hence, they are eligible to be imported against full utilization of SHIS Scrip. Therefore, on this count the Appeal succeeds on merits.

(b) The Dept. is precluded from taken different stand in respect of EPCG License and SHIS Scrip, when the FTP has a common definition of Capital Goods. Hence, when the goods have been treated as Capital Goods under EPCG License, the same cannot be treated as spare parts to deny the SHIS scrip benefit. Hence, even on this count the appeal succeeds on merits.

(c) The issue is that of interpretation and has consistently been settled by the Tribunals in favour of the importer. Hence, the confirmed demand for the extended period is hit by time bar. Therefore, such demand is being set aside on account of time bar also.

19. The appeal stands allowed. The appellant would be eligible for consequential relief as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.