IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/772/2011

[Arising out of Order-in-Appeal No: 428(GR.VII-D)/2010(JNCH)/EXP-74 dated 27.09.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II]

Chandan Steel Ltd. ***Appellant***

versus

Commissioner of Customs (Export) Nhava Sheva ***Respondent***

<u>*Appearance*</u>*:*

Shri V.M. Doiphode, Advocate for appellant

Shri C. Singh, Assistant Commissioner (AR) for respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing: 14/08/2018
Date of decision: 14/08/2018

ORDER NO: A/88214 / 2018

<u>*Per: S.K. Mohanty*</u>

This appeal is directed against the impugned order dated 27.09.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Brief facts of the case are that the appellant is engaged in the manufacture of steel products. During the disputed period, the

appellant had entered into contract No. 102 dated 26.06.2009 with M/s. Crown Industries, Bahrain for purchase of 300 MT of Stainless Steel Melting Scrap, grade 304, coils sheets, tapes mix and for that purpose, had opened an irrevocable letter of credit. The appellant had filed the bill of entry dated 29.08.2009, declaring the imported goods as per the description provided in the sales contract and the invoices. The imported consignment was examined on first check basis in the presence of CIU Officers and it was found to contain 117.57 MT of cold rolled stainless steel, coils/sheets grade 304 (secondary goods), 56.580 MT of hot rolled stainless steel coils grade 304 (secondary goods) and 126.90 MT of stainless steel scrap, grade 304. Based on investigation, department initiated show cause proceedings against the appellant, alleging mis-declaration of the imposed goods. The show cause notice had proposed for confiscation of goods, re-determination of value and imposition of penalty. The matter was adjudicated vide order dated 31.03.2011, wherein the imported goods were confiscated under Section 111(l) and (m) of the Customs Act, 1962, with the option to redeem the same on redemption fine of Rs.30,00,000/-. The said order also re-determined the value of disputed goods at Rs.2,74,72,849/- under Rule 9 of the CVR, 2007 and imposed penalty of Rs.15,00,000/- under Section 112(a) of the Act. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 27.09.2011 has set aside enhancement of value and reduced the redemption fine to Rs.10,00,000/- and the quantum of penalty to Rs.5,00,000/-. In support of confirmation of the demand, the Learned Commissioner (Appeals) has held that the appellant did not obtain the technical opinion and that the Managing Director of the appellant had accepted that goods were CR/HR stainless steel grade 304. Further, it has also been observed that the appellant did not insist for seeking of any technical opinion with regard to the description of the goods. Thus, it has been concluded that the appellant had mis-declared the goods, with intent to evade payment of duty.

3. The Learned Advocate appearing for the appellant submitted that the imported goods were consumed by the appellant in its induction furnace for melting and manufacturing stainless steel billets. In this context, he has also placed reliance on the End-use certificate dated 15.01.2010 issued by the Jurisdictional Range Superintendent of Central Excise. He further submitted that since the appellant had imported the goods for the purpose of melting and for further use in the manufacture of the final product and for that purpose, had maintained statutory records, it cannot be said that there was mis-declaration of goods. The learned Advocate further submitted that the department had not conducted any enquiry or obtained any opinion from the expert in the field to ascertain the nature of goods imported by the appellant. In this context, the Learned Advocate has relied on the order no. A/86233/2018 dated 26.04.2018 passed by this Tribunal

in the case of the appellant itself, wherein the Tribunal has allowed the appeal in favour of the appellant under similar set of facts.

4. On the other hand, the Learned DR appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that since on first check basis, the department had observed that the imported goods were different than those declared in the bill of entry, confiscation of the same and imposition of redemption fine and penalty is proper and justified.

5. Heard both sides and perused the records.

6. The issue involved in this appeal for consideration is, whether the subject goods are liable for confiscation and the authorities below are justified in imposing fine and penalty on the appellant.

7. We have perused the certificate dated 17.09.2009 issued by overseas supplier of goods and also End-use certificate dated 15.01.2010 issued by the Jurisdictional Range Superintendent. Both the certificates confirmed to the fact that the goods imported by the appellant were scrap items only and used for melting purpose in the induction furnace, for further manufacture of the final products. We also find that the department had not sought for any assistance from the technical expert in the field to ascertain whether goods in question were scrap or some other articles, which were not usable for melting

purpose. This Tribunal vide order no. A/86233/2018 dated 26.04.2018, in the case of the appellant has set aside the demand and allowed the appeal in respect of imports made vide bill of entry dated 05.03.2010, holding that decision with regard to nature of the goods cannot be ascertained by eye estimate and an expert opinion is required for ascertaining such facts. Thus we are of the view that customs examination report, without obtaining the expert opinion, cannot be the reason to determine the nature of goods and that mere agreement by the appellant or his employee with the contents of such examination report cannot be considered as conclusive proof in support of claim of revenue regarding confiscation of goods, payment of fine and penalty.

8. Therefore, we do not find any merits in the impugned order, so far as it confirmed the redemption fine and penalty on the appellant. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order Pronounced in Court)

(C.J. Mathew)	**(S.K. Mohanty)**
Member (Technical)	***Member (Judicial)***

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