

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

APPEAL NO: C/12/2011

[Arising out of Order-in-Appeal No: 296 (GR.IV)/2010 (JNCH)/IMP-276 dated 15th October 2010 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai – II.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)

Hon'ble Shri Ajay Sharma, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of 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
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Dadra Nagar Steel P Ltd

... Appellant

versus

Commissioner of Customs (Imports)
Nhava Sheva

...Respondent

Appearance:

None for appellant

Shri C Singh, Assistant Commissioner (AR) and Shri Bhushan Kamble, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 01/01/2019
Date of decision: 01/01/2019

ORDER NO: A/85094 / 2019

Per: C J Mathew

Though none appeared for the appellant, this appeal of M/s Dadra Nagar Steel P Ltd against order-in-appeal no. 296(GR IV)/2010 (JNCH)/IMP-276 dated 15th October 2010 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva that has confirmed the confiscation of goods imported against bill of entry no. 932100/08.06.2009 for mis-declaration of serviceable CRGO strips as 'heavy melting scrap', is taken up for disposal on merit.

2. The cargo of 25.595 metric tons valued at ₹ 17,16,400 was confiscated under section 111(m) of Customs Act, 1962 but allowed to be redeemed on payment of fine of ₹ 4,25,000 while enhancing the

value to US \$ 1400 per metric ton from the declared value of US \$ 280 per metric ton and imposing penalty of ₹ 1,75,000 under section 112 (a) of Customs Act, 1962. Appeal against the order of the original authority did not sustain and hence the present proceedings before us.

3. We have heard Learned Authorised Representative who relies on the decision of the Tribunal in *Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) ELT 84 (Tri-Mumbai)]*.

4. On perusal of the appeal, it is seen that the claim of excessive redemption fine as well as the penalty are made in the context of the differential duty being a mere ₹ 3,35,335. It is a further claim of the appellant that the goods were imported solely for melting and that the serviceability of the imported goods, even if admitted, does not detract from the intended utilization. According to appellant, the denial of their request for mutilation was inappropriate and the enhanced valuation was totally misplaced for being non-compliant with the rules notified under section 14 of Customs Act, 1962.

5. No evidence is forthcoming in the appeal to counter the finding that the imported goods were serviceable. Serviceable 'CRGO strips' would not be covered within the description of 'heavy melting scrap' and the finding of mis-declaration is, therefore, beyond the scope of challenge. However, in determining the value of the goods consequent

upon rejection of the declared value owing to the finding of mis-declaration, the proper officer has failed to offer justification, acceptable under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, for adoption of that proposed by the appraising officers. In the absence of exposition of the judgement, in adherence to which the revised value was arrived at, the enhancement upheld in the impugned order fails the test of law. With such failure, the scope for invoking section 111(m) of Customs Act, 1962 is questionable as the value declared ceases to be 'material particular' for justifying confiscation.

6. In the circumstances, the confiscation of imported goods, the enhancement of value and the imposition of penalty are without sanction of law. Accordingly, the impugned order is set aside and the appeal allowed.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)