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

Appeal No. C/170/2011

(Arising out Order-in-Appeal No. 49 (Gr.IV)/2011 (JNCH)/IMP-33 dated 31.01.2011 passed by the Commissioner of Customs (Appeals), Nhava Sheva)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

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?	No
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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M/s. Metal Link Alloys Ltd. — Appellant

Vs.

Commissioner of Customs (Import), Nhava Sheva — Respondent

Appearance:

None for the appellant
Shri Bhushan Kamble, AC (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 06-02-2019
Date of decision : 25-02-2019

O R D E R No: **A/85364 / 2019**

Per: C J Mathew

This appeal lies against order-in-appeal no. 49(Gr.IV)/2011 (JNCH)/IMP-33 dated 31st January 2011 of Commissioner of Customs (Appeals), Nhava Sheva which has upheld the order of the original authority confiscating goods valued at ₹40,88,720/- under section 111(m) and 111(d) of the Customs Act, 1962 with option to redeem on payment of fine of ₹8,50,000/- besides imposing penalty of ₹3,50,000/- under section 112(a) of Customs Act, 1962.

2. The issue, in brief, is that the goods entered, *vide* bill of entry no. 956566/24.03.2010, for import as 'brass scrap engel' was found to comprise of 2 nos. 'pipes of over 19 feet length and thickness of 22 inches' which, according to the original authority, being old and used other than capital goods, was importable, as per paragraph 2.17, only against a specific licence issued in exercise of powers under the Foreign Trade Policy.

3. We have heard the Learned Authorised Representative. Though none appeared for the appellant, we find that this matter can be disposed off without detailed arguments at the bar.

4. The goods were declared as 'scrap' and it is on record that this is not in dispute. It has been held by the lower authorities that the ultimate usage is of no relevance to assessment. 'Scrap,' by its definition, cannot but be old and used and, therefore, the provisions of Foreign Trade Policy pertaining to licensing will not apply. The restrictive provisions in the Policy would be applicable to goods, other than 'scrap', identifiable as such. It was, therefore, incumbent on the lower authorities to first reclassify the goods under the appropriate heading on the First Schedule to the Customs Tariff Act, 1975. In the absence of such an exercise, the goods cannot be anything other than 'scrap' which is a separate heading in the First Schedule to the Customs Tariff Act, 1975. There cannot be two distinct determination of classification for the purpose of recourse to the general restrictions in the Foreign Trade Policy. Accordingly, there is no option but to consider the goods as 'scrap' and import of scrap requires no licence. Consequently, the finding of liability to confiscation, under section 111(d) and 111(m) of Customs Act, 1962, fails. The impugned order is set aside and appeal allowed.

(Pronounced in Court on 25.02.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)