

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

APPEAL NO. C/89227/2018

(Arising out of Order-in-Appeal No. 1262 (Gr.IV) 2018(JNCH)/
Appeals-II dated 27.09.2018 passed by the Commissioner of Customs
(Appeals), Mumbai-II.)

M/s Suraya Remelters & Extruders Pvt. Ltd. Appellant

Vs.

Commissioner of Customs, Nhava Sheva-III Respondent

Appearance:

Shri Anil Balani, Advocate	for Appellant
Shri Manoj Kumar, Assistant Commissioner (AR)	for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 02.01.2019
Date of Decision: 01.03.2019

ORDER NO. A/85425/2019

Imposition of redemption fine of Rs. 3,00,000 in terms of
Section 125 of the Customs Act, 1962 that was reduced to Rs.
1,50,000/- for import of "copper scrap druid" for mis-declaration of
description and value alongwith direction for re-export within three
months and absolute confiscation for non-compliance of the said
order of the Commissioner (Appeals), JNCH, Nhava Sheva, Mumbai-II
is assailed in this appeal.

2. Factual backdrop of this case is that appellant had imported “Aluminium Scrap Twang” classified under CTH 76020012 vide two Bills of Entry dated 15.05.2018 but consequent upon testing of goods, out of 25.2 MTs copper scrap druid of 6.01 MTs was found in one consignment and 10.81 MTs of copper scrap druid was found in total quantity of 26.44 MTs in the other consignment brought with declared description “Aluminium Scrap Twang” and value of copper scrap druid was re-determined as Rs. 7,44,717.88/- and Rs. 24,95,056/- respectively for both the consignment. Test report was also obtained from M/s. Netel (India) Ltd., legal process ensued and adjudication order was passed on 17.07.2018 directing confiscation of goods under Section 111(d) and 111(m) of the Customs Act with option for redemption on payment of redemption fine of Rs. 3,00,000/- against re-export only as copper scrap druid was a prohibited goods. Penalty of Rs. 2,00,000/- on appellant under Section 112(a)(i) of the Customs Act was imposed for wilful suppression and incorrect description of goods. Appellant challenged the said order before the Commissioner (Appeals), JNCH, Nhava Sheva, Mumbai-II who reduced the fine of Rs. 1,50,000/- taking proportion of disputed copper scrap druid imported against “Aluminium Scrap Twang” and confirmed rest of the orders of adjudicating authority. Appellant is before this Tribunal against such order.

3. In the memo of appeal and during the course of hearing of the appeal, learned Counsel for the appellant Mr. Anil Balani submitted

that copper scrap druid are not absolutely prohibited for import, for which they cannot be considered as restricted and as such clearance for home consumption as against order of re-export could have been passed by the Commissioner (Appeals). While considering that appellant has been holding a valid licence from “State Pollution Control Board” and not from the “Central Pollution Control Board” which makes ‘Druid’ freely importable to units registered with the Ministry of Environment, Forest and Climate Change, Government of India, the learned Counsel for the appellant argued that M/s Sunalco Alloys Pvt. Ltd., who is holding a valid licence from “Central Pollution Control Board” and willing to buy the imported goods could have been permitted by the Customs Authority to clear the same for home consumption upon bond volunteered to be executed by the appellant. Since another similar restricted goods namely insecticides, pesticides etc. were permitted by the Customs Authorities to be cleared to the intended buyer having CBEC licence on the basis of CBEC Circular No. 401/101/2011-Cus. III dated 22.06.2011 and JNCH Public Notice No. 94/2011 dated 07.07.2011. Placing his reliance on the decision of this Tribunal delivered on 24.09.2018 in appeal No. C/87266 & 87268/2018, learned Counsel for the appellant argued that condition of re-export imposed in the confiscation order under Section 125 of the Customs Act, 1962 would make the provision redundant as both confiscation with redemption fine in lieu of confiscation and re-export are two different actions for which he prays to set aside the order of the Commissioner (Appeals).

4. In response to such submissions, learned Authorised Representative for the respondent-department, while reiterating the reasoning and rationality of the order passed by the Commissioner (Appeals), argued that appellant had not only violated provisions of Hazardous and Others Waste (Management and Transboundary Movement Rules, 2018) in importing hazardous waste without “Central Pollution Control Board” licence/registration, it had also mis-declare the description and value of goods imported by it. For which interference by the Tribunal in the order of Commissioner (Appeals) is uncalled for.

5. Heard from both sides at length and perused the case record, written notes of submission made by the adversaries and the case laws referred above. Admittedly appellant has not been in possession of any licence issued by the “Central Pollution Control Board” and the goods imported by it has been mis-declared. The plea of appellant that both the copper and aluminium are insulated for which it was difficult for it to distinguish the goods is not acceptable for the reason that no supplier would supply a high priced goods against an order of less priced goods for which the order passed by the Commissioner (Appeals) in imposing penalty for mis-declaration needs no interference. It is also an admissible fact that copper scrap druid are not absolutely permitted for import and these import is regulated by the licence to be issued by the “Central Pollution Control Board”, which appellant did not have at the time of import but going by the CBEC Circular and Public notice as describe above, such goods can

be cleared for home consumption to the interested buyer with approval of the importer. As such, going by the judgment dated 24.09.2018 as referred above, both confiscation and redemption cannot go with re-export condition. Therefore, I am of the considered view that goods can be cleared to the intended buyer in possession of such licence upon execution of bonds by the appellant and payment of redemption fine as directed by the Commissioner (Appeals). Therefore, the order necessitated modification to that effect. Hence the order.

ORDER

6. The appeal is allowed in part, setting aside of re-export condition upon payment of redemption fine and penalty has imposed by the Commissioner (Appeals). The goods may be cleared in favour of M/s Sunalco Alloys Pvt. Ltd. after verification of its eligibility and execution of bond by the appellant with declaration of such release in terms of JNCH Public Notice No. 94/2011 dated 07.07.2011.

(Pronounced in court on 01.03.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad