CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 1256 of 2009

(Arising out of Order-in-Original No. 86/2009-CC(Import), JNCH dated 28.04.2009 passed by the Commissioner of Customs (Imports), JNCH, Nhava Sheva.)

M/s Balbir Metals & Power P. Ltd. ....Appellant
Division of M/s Vishesh Dhatu Inds.,
Surevy No. – 263/3/3/7, Vil, Sayli,
Silvasa - 396230

VERSUS

Commissioner of Customs (Import) ....Respondent
Nhava Sheva
J N C H, Post – Uran,
Dist.- Raigad, Sheva – 400 707

APPERANCE:

Shri None for the Appellant

Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

ORDER NO. A/85965/2019

Date of Hearing: 24.01.2019
Date of Decision: 21.05.2019

PER: DR. SUVENDU KUMAR PATI

Redetermination of value of imported goods allegedly mis-declared as "Heavy Melting Scrap" along with order of confiscation under Section 111(m) of the Customs Act, 1962 with redemption of some upon payment of fine and imposition of penalty under Section 112(a) of the Customs Act, 1962 by the Commissioner of Customs (Imports), JNCH Nhava Sheva is assailed by the appellant in this appeal.

2. Factual backdrop of the case is that appellant imported a consignment of HMS scrap from M/s ARK trade link, UAE and filed Bill of Entry No. 753375 dated 19.01.2009 for clearance of those said goods for home consumption but during the X-ray scanning, it was found to be “primarily steel plates of prime quality” which were found to be camouflaged with the help of shredded scrap and stamping waste scrap. It was further examined by the Officers of SIIB (I) (JNCH) under dock supervision who found the same to be goods of serviceable plates and not scrap. Accordingly, value of goods were re-determined and enhanced to Rs. 22,69,826/- from its declared value of Rs. 15,43,506.20/-, upon admission of representative of the importer who accepted the classification as 72082510 and value of goods as Rs. 40/kg loaded on the basis of Rule 9 of the Valuation Rule, 2007. Appellant was ordered to pay basic Customs duty @ 10% of the goods value. Confiscation order was also passed under Section 111(m) of the Customs Act, 1962 with option to the importer under Section 125 of the Act for redemption of goods on payment of fine of Rs. 4,00,000/- within 30 days of receipt of this order along with imposition of penalty of Rs. 2,00,000/- under Section 112(a) of

the Customs Act, 1962. Appellant challenged the legality of the said order in this appeal.

3. In the memo of appeal and during course of hearing of the appeal learned Counsel for the appellant, placing reliance in the case of *M/s Vardhaman Tradelink P. Ltd. Vs. Commissioner of Customs, Jamnagar* CESTAT Final Order Nos. *A/2708-2709/2008-WZB/AHD dated 17.12.2008* and *Sona Castings (P) Limited Vs. Commissioner of Customs, Kandla* CESTAT Final Order No. *C/195/2008-(PB) dated 16.06.2008* submitted that goods may be serviceable in India but for exporting countries those are scraps and as it was purchased as HMS scrap on highseas sale basis on good faith, there was no reason to mis-declare the goods or under value or even camouflage the same for which no value should be loaded without valuation being done by Chartered Engineer/Surveyor. He further submitted that invocation of Rule 9 of the Valuation Rule, 2007, without relying on any single document of similar imports is unsustainable. Further, placing reliance on various decisions reported in *2006 (197) ELT 386 (Tri.-Mumbai), 1990 (45) ELT 9 (Mad.), 2001 (132) ELT 93 (Tribunal) and 2001 (137) ELT 1388 (Tribunal)*, Learned Counsel for the appellant submitted that there was no *mala fide* intention or *means rea* established against the appellant, since Bill of Entry was filed on the basis of documents received from high seas seller for which the order of the Commissioner of Customs (Import) is liable to be set aside.

4. In response to such submissions, learned Authorised Representative for the respondent-department Shri Majoj Kumar, Assistant Commissioner argued in favour of the reasoning and rationality found in the order of the Commissioner of Customs (Import) and took us through his order which indicated that not only X-ray image of the container was taken but Container Scanning Division staff in the presence of the importer’s representative as well as Dock’s Appraiser in the presence of SIIB(I) and JNCH Officer had also examined the same, weighed the same, measured the same, ascertained those to be serviceable and not scrap, two of which were bearing stickers of made in China. He further pointed out that the Dock’s Officer reported that the CTH of the goods was suggested as 72082510 and the fair value was suggested as Rs. 40/kg basing on which, having regard to the declared unit price of the imported goods at various ports, the value was appropriately determined that established mis-declaration of goods and its value by the appellant and therefore, interference by the Tribunal in the order of the Commissioner of Customs (Imports) is uncalled for.

5. We have heard from both sides at length and perused the case record. It is admitted by the appellant that goods were scanned at the port of import and it was found to be primarily steel plates of prime quality and those were camouflaged. Such finding was also confirmed by the officers of SIIB. The only ground on which appellant tried to plead innocence regarding such mis-declaration about the description of goods was that it purchased the same on

high sea sale and filed Bill of Entry on the basis of invoice raised by the exporter but there was no bar on the appellant for personal inspection before finalisation of purchase. Further appellant disputed the valuation made under Rule 9 of the Customs Valuation Rules, 2007 on the ground that no single document of import was relied upon while proposing loading of value on the imported goods but going by the Commissioner's order it is very much clear that he himself had noted in his order that though Rs. 40/kg cannot be taken as the value of identical/similar goods but the same can surely indicate the price of such goods in international market and it had been noticed that such goods were imported at a declared unit price of Rs. 40/kg at various ports and the same was accepted by the department that forms the basis of valuation under Rule 9 which provides residual method for determination of value of imported goods using reasonable means consistent with the principle and general provision of the Rules, on the basis of data available in India and the same should not exceed price at which ordinarily it is sold in the course of international trade. This being the guiding force of Rule 9, no irregularly can be noticed in the order passed by the Commissioner of Customs (Imports) when appellant itself admitted the examination report concerning the quality of goods imported.

6. Appellant had contended that no act or omission was proved against the appellant that would result in confiscation under Section 111(m) and Section 119 of the Customs Act and imposition of penalty under Section 112(a) of the Customs Act, 1962. As found

from the Commissioner order's and from the case record, 28,000 Kg. HR M S plates valued at Rs. 11,20,000/- (re-determined) were mis-declared for which those were liable for confiscation under Section 111(m) of the Customs Act, 1962 and HR M S plates of 81,780 Kg. valued at Rs. 11,49,826/- were camouflaged that made the goods liable for confiscation under Section 119 of the Customs Act, 1962. No plausible explanation was offered by the appellant to refute those findings for which appellant-importer was also imposed with penal action under Section 112(a) of the Customs Act. We found no illegal or irrationality in the order of the Commissioner of Customs (Imports) that would require interference by the Tribunal. Hence the order.

ORDER

7. The appeal is dismissed and the order passed by the Commissioner of Customs (Imports), JNCH, Nhava Sheva vide Order-in-Original No. 86/2009-CC(Import), JNCH dated 28.04.2009 is hereby confirmed.

(Order pronounced in the court on ……………..….)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

Prasad