CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Customs Appeal No. 86914 of 2013

(Arising out of Order-in-Appeal No. 96 (GR.IV)/2013 JNCH, IMP-89 dated 08.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s. Parshav Alloys **Appellant**
Shop No. 152, Gr. Floor,
Kumbarwada, Mumbai 400 004.

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, District Raigad,
Sheva 400 707.

Appearance:

Shri Akhilesh Kangasia, Advocate, for the Appellant
Ms. Trupti Chavan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/87220/2019**

Date of Hearing: 22.11.2019
Date of Decision: 22.11.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against order in appeal No 96(Gr. IV)/2013 JNCH, IMP-89 dated 08.02.2013 of Commissioner Customs (Appeals), Nhava Sheva. By the impugned order, Commissioner (Appeals) upheld the Order in Original F No S/26-Misc-311/2011 Gr IV. JNCH dated 09.08.2012.

1.2 Additional Commissioner Customs Appraising Group IV, JNCH has by his order held as follows:

"13 I reject declared value of goods (16.626 MTs of Stainless Steel Sheets) under Rule 12 of the Customs Valuation Rules,

2007 and order to re-determine at rate US$ 3258 PMT (CIF) based on contemporary import price, under Rule 5 of the Customs Valuation Rules, 2007. I order to impose Anti Dumping Duty on Item No 2 of the Bill of Entry of 1.232 MTs of H R Stainless Steel Sheets in terms of S N 5 of the Notification No 104/2011 dated 25.11.2011. The Bill of Entry will be assessed accordingly and importer shall pay differential;/ anti dumping duty.

14. I order confiscation of the impugned goods under Section 111(m) of the Customs Act, 1962, however under provisions of Section 125 (1) of the Customs Act, 1962, I give an option to the party to redeem the said goods on payment of redemption fine of Rs 6,40,000/- (Rupees Six Lakh Forty Thousand only).

15. I impose penalty of Rs 3,20,000/- (Rupees Three Lakhs Twenty Thousand only) on the importer under Section 112(a) of the Customs Act, 1962.

16. An option to redeem the goods should be exercise by the importer within 45 days of issue of this order."

2.1 Appellant have filed Bill Of Entry No 7076773 dated 12.062012, for clearance of the goods declared as Cold Rolled Stainless Steel Secondary/ defective sheets cutting pieces Grade 321, Hot Rolled Stainless Steel Secondary/ defective sheets cutting pieces Grade 304 (width 2000 mm/ 2003 mm and 1219 mm) with declared assessable value of Rs 25,46,014/- and the duty payable of Rs 7,34,572/-.

2.2 On examination the consignment covered by the Bill of Entry it was found that consignment comprised of following goods:

i. Goods declared as Cold Rolled Stainless Steel Secondary/ defective sheets were prime goods, having weight 16.63 MTs

ii. Goods declared as Hot Rolled Stainless Steel Secondary/ defective sheets cutting pieces Grade 304 (width 2000 mm/ 2003 mm) were having width of 1002 mm, having weight 1.232 MTs.

iii. Goods declared as Hot Rolled Stainless Steel Secondary/ defective sheets cutting pieces Grade 304 (width 1219 mm) were as declared, having weight .702 MTs.

2.3 Thus the goods were found to be misdeclared with respect to description with an intention to undervalue the same and also to avoid payment of Anti Dumping Duty as per Notification No 104/2011.

2.4 Statement of Shri Bharat N Kanungo, Director of Appellants was recorded under Section 108 of the Customs Act, 1962 wherein he admitted that the

- correct details of the goods were not shown on the Bill of Entry, import invoice and packing list;
- he did this to undervalue the goods to save duty and avoid payment of Anti Dumping Duty;
- Details were mentioned on the invoice and packing list issued as per his direction;
- He is ready to get the goods assessed as per the goods found during the examination;
- He does not want the show cause notice and case can be adjudicated after hearing him in person by the adjudicating authority, as he is incurring heavy demurrage in respect of the goods.

2.5 Matter was adjudicated by the Additional Commissioner as per order referred in para 1.2, supra.

2.6 Aggrieved by the order of Additional Commissioner, Appellants filed the appeal before the Commissioner. Appeal was dismissed as per the impugned order. Aggrieved appellants have filed this appeal.

3.1 We have heard Shri Akhilesh Kangasia, Advocate for the appellant and Ms Trupti Chavan, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant, learned advocate submitted that;-

- the goods were not misdeclared as alleged by the revenue. To establish the goods were seconds, defective goods he referred to the Invoice, packing list and bill of lading sent by the supplier along with the test reports sent by Aperam.
- The goods were not examined as per the Standing Order dated 61/2009 dated 21.02.2009. As per this standing order in view of the fact that the duty structure, of Hot/ Cold Rolled Steel Sheets, the Prime Steel products is 18.62% whereas the duty structure for Seconds/ Defective is 24.42%. Hence the standing order cautioned against the defectives as prime quality to avail the benefit of lower rate of duty.
- The value declared by them is the actual price paid by them to their supplier and hence their cannot be justification for enhancing the value without adequate evidences to reject the transaction value. As had been held by the Hon'ble Supreme Court in case of Eicher tractors Ltd [2000 (122) ELT 321 (SC)].
- He also submitted that the enhancement of value on the basis of visual examination also is not justified in view of the following decision-
    - Aneri Steel [2013-TIOL-1070-CESTAT-Mum]
    - Venture Impex [2016 (338) ELT 759 9T-Mum)]
    - Ames India [2019 (4) TMI 109- CESTAT-MUMBAI]
- While the value has been enhanced on the basis of contemporaneous imports under Rule 5 of the Valuation Rules, 2005, the copies of the relevant Bill of Entries was not provided to them.
- Thus there is no misdeclaration of description or value with respect to the imported goods as the same was made as per the invoice/ packing list issued by the supplier as held in Dhamm Steel Services [2013 (297) ELT 291 (T-Mum)]. Hence the goods could not have been held liable for confiscation.

- Even if it is admitted that the goods had been misdeclared, then also the Custom Duty differential duty payable on the goods as declared by them and as determined by the revenue would be Rs 74,226 (Rs 29,772 (BCD +CVD) + Rs 44,454 (ADD)). He submitted when the aggregate differential duty is itself, Rs 74,226/- then redemption fine of Rs 6,40,000/- and penalty of Rs 3,20,000/- cannot be justified.

3.3 Arguing for the revenue, learned Authorized Representative while re-iterating the findings recorded in the order in original and order in appeal, stated that the-

- The appellants have themselves admitted the fact about misdeclaration of the goods as alleged, and have agreed to the examination conducted.
- The Mill test certificates subsequently produced by the appellants were never produced at the time of examination or adjudication.
- The Director of the company in his statement recorded under Section 108 of Customs Act, 1962, specifically agreed to misdeclaration, and also admitted the goods were mis-declared by the supplier as per his instructions.
- The Director had waived of the show cause notice and asked for the adjudication directly after hearing him. Having done so appellants cannot have grievance that they were not supplied the B/E of contemporaneous imports.
- Since the goods have been found to be misdeclared in description and value they are liable for confiscation and the appellants are liable to penalty.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 The present case of misdeclaration of the goods is based on the:

a. Examination of the goods.
b. Statement of the Director of the Appellants.

4.3 On examination the goods were not found to be as declared by the appellants on the Bill of Entry. The examination was conducted in the presence of the representative of the CHA. In his statement recorded under Section 108 of Customs Act, 1962 on 06.07.2012, Shri Bharat N Kanungo admitted the fact about misdeclaration of the goods. He also admitted that supplier has described the goods at his instance in the manner they have been declared. He also stopped the further investigations in the matter as he waived the requirement of Show Cause Notice and sought the adjudication of the case after grant of personal hearing by the adjudicating authority.

4.4 At the time of investigations i.e. examination of the goods or during the time when the statement of Shri Kanungo was being recorded, not even a single word in respect of Mill Test Certificate etc was stated. Further the Mill Test Certificates produced are the certificates not issued by the supplier to them, but are from certain manufacturing facility located in Belgium to the suppliers of good. There is nothing on record to co-relate the same with the goods imported as these were not produced with the import documentation nor find any mention on the said documents. Even Shri Kanungo has in his statement referred to the existence of any such Mill Test Certificates. Hence we do not find any substance in the submissions of the appellants in this respect specifically when mis-declaration of the goods has been admitted by them. Hon'ble Supreme Court has in case of Surjit Singh Chabbra [1997 (89) ELT 646 (SC)] held that confiscation made by the person in his statement recorded under Section 108 will bind the person making such confession.

4.5 Since Appellants had waived of the requirement of show cause notice they could not in subsequent proceedings complain about the non supply of the relied upon/ relevant documents. In view of the above facts and admissions made we are not inclined to accept the submissions made by the appellants relying on the standing order of 21.02.2009 in respect of the examination undertaken.

4.6 Thus we uphold the charge of misdeclaration of the goods. Since the goods have been misdeclared they are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and appellants are liable for penalty under Section 112(a) ibid. However taking into account that

- the total differential duty payable which is only Rs 99,556/- (Rs 7,64,344(as assessed) – Rs 7,34,706 (as declared) + Rs 69,784 (Anti Dumping Duty))
- the total differential value on account of alleged misdeclaration is Rs 7,35,505/-(Rs 32,81,069/- – Rs 25,46,014/-).

We agree with the submissions made by the appellants that the redemption fine and penalty imposed is excessive. Accordingly we reduce the redemption fine imposed to Rs 30,000/- and penalty to Rs 20,000/-

5.1 In view of the discussions as above, we partially allow the appeal and reduce the redemption fine imposed to Rs 30,000/- and penalty to Rs 20,000/-.

(Order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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