CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
WEST ZONAL BENCH

Custom Appeal No. 545 of 2011

(Arising out of Order-in-Original No. 40/2011/CC(I),JNCH dated 15.7.2010 (date of issue: 9.5.2011) passed by the Commissioner of Customs (Import), Nhava Sheva.)

M/s.Mangalam Alloys Ltd. **.....Appellant**

Vs.

Commissioner of Customs (Import), Nhava Sheva **.....Respondent**

APPEARANCE:

Shri Akhilesh, Advocate for the appellant
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE SHRI P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No: A/87473/2019

DATE OF HEARING: 09.12.2019
DATE OF DECISION: 09.12.2019

PER: P. ANJANI KUMAR

The appellants imported 139.24 MT quantity of *'stainless steel melting scrap grade AISI 410'* and filed bill of entry no. 702726 dated 22.06.10 classifying under Heading 72.04 (Tariff Item 7204 21 90) of the Customs Tariff as *'re-melting scraps ingots of iron or steel'* and claiming the benefit of exemption under Sl. No.202 of Notification No.21/02-Cus., dated 01.03.02. Department, on physical examination, objected to the Appellants' claim that the imported goods are scrap, it was of the opinion that these goods are in nature secondary / defective / rejected / serviceable material. Appellants waived show cause Notice. A personal Hearing was held on 14-07-2010. Commissioner passed Order-in-Original No.40/2011/CC(I), JNCH dated 15.07. 10 was passed confirming differential duty of Rs 7,62,622 and imposing redemption fine of Rs 10,00,000 and penalty of Rs 4,00,000. The same is under challenge.

2. Learned counsel for the appellants Shri T. Vishwanathan submitted that all documents viz., commercial invoice, bill of landing and sale contract with the supplier, described imported goods as 's*tainless steel melting scrap, grade AISI 410*';Pre-Shipment Inspection Certificate No. GCFE/SM0688/ 2010 dated 04.05.10 as required under ITC (HS) Foreign Trade Policy 2009-2014 certify that the imported goods are indeed melting scrap; examination report was not provided to the Appellants, though requested; the Appellants vide their letters dated 03.07. 10 and 07.07.2010, contended that they are actual users and are having requisite facility i.e., furnace for melting the scrap, and are regular importers of re-melting scrap and also (a) requested the department to allow mutilation of that portion of the imported goods, which according to the department, are not scrap, (b) requested to allow clearance of the goods on payment of differential duty; meanwhile, M/s. Alloys & Metal Test Services, Mumbai (recognized by government departments) vide test report dated 09.07. 10 opined that the imported goods are stainless steel melting scrap in the form of coils and U&C type channels in various length, having grade AISI410grade. These evidences have been completely ignored and overlooked by the Respondents and assessment has been upheld based on opinion of the customs officials, and no opinion of technical expert *I* chartered engineer had been called for. He placed Reliance on the following decisions:

- Chan dan Steel Vs. CC - 2018 (5) TMI *995* - CESTAT MUM.,
- Prince Fortified Steels Vs CC - 2018-TIOL-2299-CESTAT-

2.1. Learned counsel for the appellants further submits that the imported goods satisfy the definition of scrap as per Note 6(A) of Section XV and do not confirm to the definition of Note 2(n) of Chapter 72 (for channels) and definition of 2(k) of Chapter 72 (for coils); therefore, the imported goods are correctly classifiable under Heading 72.04 of the Customs Tariff and are eligible for exemption under Notification No.21/02-Cus; the entire consignment was melting scrap only; 'scrap' bought as stock lot is bound to contain articles in different shapes and forms including some serviceable material which are considered as scrap in the exporting country; it does not mean that the entire lot will be considered not as scrap or segregated within serviceable and scrap; Appellants are actual users and are regular importers of re-melting scrap; consignment imported has indeed been used in their furnace for manufacture of stainless steel ingots, flats and rounds; these satisfy the definition of scrap as per Section Note 6(A) of Section XV; Reliance is placed on the following judicial precedents:

- A.P. Steel Re-Rolling Mills Vs. CC - 2004 (175) 580 (Tri. -Bang.),
- CCE Vs. Rimjhim Ispat - 2005 (183) ELT 283 (Tr-Del.),
- Lloyds Steel Industries Vs. CC - 2007 (207) ELT 431 Tri-Mum.)
- Swarup Casting Vs. CC - 2018 (8) TMI 833 – CESTAT All.
- R L Steel & Energy Vs. CC - 2018-TIOL-1777-CESTAT-MUM,

2.2. Learned counsel for the appellants further submits that department even if arriving to the conclusion that some portion of the imported goods are serviceable material, could have ordered mutilation of the part of the goods, as requested by the Appellants vide their letter dated 07.07.10; request for mutilation does not imply admission of mis-declaration of description or value by the Appellants. Reliance is placed on the following judicial precedents:

- Shri Renga Steel Corporation Vs CC —2006 (206) ELT 933 (Tri-Chennai.), Affirmed by the Hon'ble Madras High Court reported at 2014 (305) ELT 377;
- G. H. Shaikh Vs. CC - 2003 (151) ELT 190 (Tr-Mum.);
- Agarwal Impex Vs. CC - 2018 (5) TMI 1475 - CESTAT AIIM.,
- P.A.B. Traders Vs. CC —2009 (244) ELT 146 (Tri- Bang);
- CC Vs. O.P. Steels Ltd. - 2001 (135) ELT 608 (Tri-Chennai);
- CC Vs. Kamatchi Sponge and Power Ltd., - 2016-TIOL-1489-CESTAT-MAD

2.3. Learned counsel for the appellants further submits that as far as value is concerned, the value declared at the time of import is the price actually paid by the Appellants to their supplier; there is no allegation of extra payment to the supplier over and above the invoice price; thus, genuineness of the transaction value is also not doubted; therefore, there is no occasion to invoke Rule 10 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007; hence, the transaction value in the present case has to be accepted for the purpose of customs duty in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuations Rules, as held by the Hon'ble Supreme Court in Eicher Tractors Ltd - 2000 (122) ELT 321; enhancement of the value based on the price prevailing in international market (based on London Bullion Metal Exchange) is incorrect in case none of the circumstances specified under Rule 3(2) exists and hence, the declared value which is the transaction value, needs to be accepted in absence of allegation to this effect; he also placed reliance on Jindal Ispat and Alloys Vs. CC - 2018-TIOL-2319-CESTAT-DEL. He also submits that here is no mis-declaration of description or value of goods imported; therefore, goods are not liable for confiscation under Section 111(m) of the Customs Act 1962; consequently, no penalty is imposable under Section 112(a) of the Customs Act, 1962.

3. Learned Authorised Representative appearing for the department reiterated the findings of Order-in-Original and relied upon decisions rendered in the case of ***Commissioner of Customs, Tuticorin vs. Rabbani Exports: 2011 (271) ELT 533 (Tri.-Chennai)*** and ***Radhey Shyam Ratanlal vs. Commissioner of Customs. (Adjudication), Mumbai: 2009 (238) ELT 14 (SC)***.

4. Heard both sides and perused the records of the case. Brief point to be decided in this case is as to whether heavy melting scrap HMS imported by the appellants can be classified as serviceable parts and thus, exemption availed needs to be denied. On the basis of the examination conducted at the time of clearance, department opined that the impugned goods were secondary / defective / rejected stock comprising of stainless-steel U and C channels of grade 410 (magnetic) and HR coils / strips of grade 410 (magnetic). The appellants submit that the examination report was not given to them. Learned AR submits that as the show-cause notice was waived by the appellants, the examination report could not be given to them. The appellants further submitted that no examination by a Chartered Engineer was conducted; pre-shipment inspection certificate and certificate issued by M/s. Alloys and Metal Test Services, Mumbai were ignored. Also, the request of the appellants for mutilating the goods before clearance was also not allowed. It is the contention of the appellants that by nature steel melting scrap is likely to have some defective secondary parts or articles. However, the supplier treated the same as scrap only. It is a matter of fact that the said scrap was utilised in their factory for melting only. Therefore, denying the classification and the exemption are bad in law.

5. We find that the appellants have a point in their favour. We find that the adjudicating authority has not explained as to why various certificates submitted by the appellants were not accepted. It is not known

as to why the department has not allowed the request for mutilation of the goods before clearance. Chartered Engineer's examination was also not ordered. This being the factual milieu, we find that department cannot reclassify the goods unilaterally on the basis of the examination report of officers alone. Technical opinion given by the pre-inspection certificate and by M/s. Alloys and Metal Test Services, cannot be disregarded. Also the fact that all the shipping documents describe the goods as steel melting scrap only cannot be denied. Under such circumstances, denying the classification and the benefit of exemption are not tenable. For the same reason, the department has not made its case for redetermination of the value of the impugned goods for the purpose of assessment. We find that declared classification and valuation cannot be rejected only on the basis of examination report of the officers, more so, when technical reports were not in favour of the view taken by the Revenue. Therefore, taking recourse to LME prices is also not acceptable. It is not the case of the department that to value over and above the price declared in the invoice was paid to the overseas supplier. It is also not the case of the department that the said scrap was not utilised as scrap. Therefore, we find that department has not given forth any evidence to support the allegation. We find that the impugned order is not maintainable.

6. In view of the above, the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the Order was pronounced in open court on 09/12/2019.)

S.K. MOHANTY
MEMBER (JUDICIAL)

P. ANJANI KUMAR
MEMBER (TECHNICAL)

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