CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 136 of 2011

(Arising out of Order-in-Appeal No. 33 to 38-Gr.IV-/2011-JNCH-/IMP-22 to 27 dated 28.01.2011 passed by Commissioner of Customs (Appeals) JNCH, Sheva Mumbai-II)

Kanchan Steel & Alloys Pvt. Ltd. **.....Appellant**
Riddhi Apartment 7, 10th, Khetwadi Back Road, Mumbai – 400 004.

VERSUS

CC (Import) Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Post Uran, District Raigad, Sheva – 400 707.

WITH

Customs Appeal No. 137 of 2011

(Arising out of Order-in-Appeal No. 33 to 38-Gr.IV-/2011-JNCH-/IMP-22 to 27 dated 28.01.2011 passed by Commissioner of Customs (Appeals) JNCH, Sheva Mumbai-II)

Yogesh Group **.....Appellant**
Neighborhood Shopping Complex, R. No. F-15, Sector-4, Nr. State Bank of India, Nerul (W), Navi Mumbai – 400706

VERSUS

CC (Import) Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Post Uran, District Raigad, Sheva – 400 707.

AND

Customs Appeal No. 210 of 2011

(Arising out of Order-in-Appeal No. 33 to 38-Gr.IV-/2011-JNCH-/IMP-22 to 27 dated 28.01.2011 passed by Commissioner of Customs (Appeals) JNCH, Sheva Mumbai-II)

Arun Mukherjee & Co. Pvt. Ltd. **.....Appellant**
Neighborhood Shopping Complex, Room No. F-15, Sector-4, Near State Bank of India, Nerul (W), Navi Mumbai – 400 706

VERSUS

CC (Import) Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House, Post Uran, District Raigad, Sheva – 400 707.

Appearance:

Ms. Kiran Doiphode, Advocate for the Appellant
Mr. Bhushan Kamble, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NOS. A/85409-85411/2022

Date of Hearing : 29.10.2021
Date of Decision : 28.04.2022

PER : S.K. MOHANTY

The issue involved in all these appeals is identical and arises out of common impugned order passed by the learned Commissioner of Customs (Appeals), Mumbai-II. Accordingly, these appeals are disposed of by this common order.

2. Brief facts of the case as summarised in the impugned order are that in respect of vessel URU BHU, V.W053, the person in-charge had filed the IGM being no. 23016 dated 08/09/2009 on the basis of Bills of Lading No. VCL/PKG/NSA/1492 and VCL/PKG/NSA/1491 both dated 25/08/2009 in respect of the containers said to contain stainless steel melting scrap 430 grade; that CSD Computers system installed in the Customs House have selected the same containers for scanning; that the x-ray images clearly showed that the said two containers were also containing some other things, besides SS scrap 430 grade; that the importer did not file any Bills of Entry even after two and half months from the date of import of the goods. However, in the month of December 2009, the appellant M/s. Arun Mukherjee & Co. Pvt. Ltd. as

the CHA of the main appellant M/s. Kanchan Steel & Alloys Pvt. Ltd. had filed the Bills of Entry on the basis of invoices and packing list. On examination of the import documents, the Department observed that there is complete mismatch of the description of goods mentioned therein vis-à-vis the IGM and Bills of Lading inasmuch as the description of the goods contained in the Bills of Lading was 'SS Magnetic Melting Scrap Grade 430', whereas the description provided in the Bills of Entry were 'SS melting scrap grade-430, stainless steel, secondary cold rolled stainless steel grade 316' and 'SS melting scrap grade-430, stainless steel, secondary cold rolled stainless steel grade 316 stainless steel secondary cold roll secondary cutting sheets grade 304' respectively. On perusal of the import documents filed by the appellants, the Department observed that the B/Es were filed on the basis of revised B/Ls, issued with a conspiracy with the overseas supplier to evade Customs duty/anti-dumping duty. On the basis of investigation, the Department initiated show-cause proceedings against the appellants, seeking reclassification of goods and re-determination of the value, imposition of anti-dumping duty, confiscation of goods and imposition of redemption fine. It is also proposed for imposition of penalties on the appellants. The matter arising out of the show-cause notice were adjudicated vide the impugned order dated 12/10/2010, wherein the proposals made were confirmed. On appeal, the learned Commissioner (Appeals) vide impugned order dated 28/01/2011 has upheld the original order, with modification in respect of the quantum of redemption fine and penalties imposed on the appellants. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3. Heard both sides and perused the case records.

4. I find that the appellant in this case had declared the country of origin as Malaysia, as against the actual country of origin as Europe. Thus, in this regard, mis-declaration is evident and the declared value is liable for rejection in terms of Rule 12 of the CVR, 2007. It is an admitted fact on record that the Bills of Entry were filed on 21/12/2009, much after the date of issuance of the Notification No. 38/2009-Cus. dated 22/04/2009, in imposing the anti-dumping duty. Hence, the stand taken by the appellants that such duty cannot be levied on the appellant is factually incorrect. It is also a fact on record that the appellant had not filed the IGM correctly inasmuch as there is mis-declaration of goods furnished therein. Further, no amendment of IGM had ever been sought by the person in-charge of the vessel, before filing the B/Es by the appellants. Since there is incorrect mention of dutiable goods in the IGM, the same are liable for confiscation in terms of Section 111(f) of the Customs Act, 1962. I also find that the learned Commissioner (Appeals) has elaborately discussed the role played by the appellants in respect of mis-declaration of the goods, but took a lenient view in reducing the quantum of fine and penalties imposed in the original order. Since, the appellants herein have not submitted any plausible evidence or records to prove the case otherwise, I am of the view that the impugned order passed by the

appellate authority cannot be interfered with at this juncture.

5. In view of above, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Therefore, the appeals filed by the appellants are dismissed.

(Order pronounced in the open court on **28.04.2022**)

(S. K. Mohanty)
Member (Judicial)

Sm/iss