CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Custom Appeal No. 441 of 2011

(Arising out of Order-in-Appeal No. 90/MCH/ADC/GR-IV/2011 dated 08.03.2011 passed by the Commissioner of Customs (Appeals), Mumbai)

M/s. Prabhat Steel Traders P. Ltd. **…..Appellant**
Plot no. 398, Disma Complex
Kalamboli, Navi Mumbai

Vs.

Commissioner of Customs (Import), **…..Respondent**
New Custom House, Ballard Estate,
Mumbai

APPEARANCE:

Shri S N Kantawala, Advocate for the appellant
Shri Ram Kumar, AC (AR) for the respondent

With

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Shri S N Kantawala, Advocate for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: 85479-85480/2024

DATE OF HEARING : 08.11.2023
DATE OF DECISION : 07.05.2024

PER: C J MATHEW

All that remains in this dispute, that can be traced to import of 503.41 metric tons and 523.05 metric tons of ‘non-alloy steel slabs-seconds and defectives’ by M/s Prabhat Steel Traders P Ltd against bills of entry no. 890392/15.04.2009 and no. 890395/15.04.2009 respectively, is the cavil of Committee of Commissioners, in appeal of Commissioner of Customs (Import), Mumbai, that order[1] of Commissioner of Customs (Appeals), Mumbai Zone – I has erred in absolving the importer of liability to differential duty of ₹ 22,52,521 from recourse to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 even as the consignments, declared to be valued at ₹ 1,02,89,645 and ₹ 1,06,91,229 respectively, were held as liable to confiscation under section 111(m) of Customs Act, 1962 for containing ‘alloy steel’ and the grievance of the appellant-importer that the finding of benefit not having accrued to them did not deter the retention, albeit with reduction to, of fine ₹ 20,00,000, in lieu of confiscation of of 122.42 metric tons of ‘alloy steel’ products under section 111(m) of Customs Act, 1962, and of penalty of ₹ 5,00,000 under section 112 of Customs Act, 1962.

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[1] [order-in-appeal no. 90/MCH/ADC/GR-IV/2011 dated 8th March 2011]

2. In the meanwhile, the goods had gone through testing, provisional assessment and adjudication that was challenged, with partial success, before the first appellate whose order, now impugned before us, is under challenge from both sides. The initial problem arose from dissonance with description of goods as ‘slabs’, classifiable against tariff item 7207 1990 of First Schedule to Customs Tariff Act, 1975, which was finally determined as classifiable against tariff item 7225 of First Schedule to Customs Tariff Act, 1975. Three-fourths of the imported goods, *i.e.* 264 pieces, were, on request of importer, permitted to be ‘provisionally’ assessed for clearance against ‘declared’ value and, with only one-fourth available till conclusion thereto for issue of notice on receipt of report of test by National Metallurgical Laboratory carried out on two out of the 87 pieces that were subjected to examination by customs authorities, the entirety of goods were held to conform to the declaration only to the extent of 47.117 metric tons, the remaining were held to be 489.67 metric tons of ‘plates and sheets’ of ‘non-alloy’ steel, classifiable against heading 7208 of First Schedule to Customs Tariff Act, 1975, and 489.6745 metric tons of ‘plates and sheets’ of ‘non-alloy’ steel classifiable against heading 7225 of First Schedule to Customs Tariff Act, 1975. In consequence, the original authority held that the declared value for 979.349 metric tons was not acceptable and, upon re-determination, arrived at differential duty liability of ₹ 22,52,521 besides confiscating the goods with detriment arising therefrom *supra*.

3. The first appellate authority found it unconscionable to confiscate 'plates and sheets' of 'non-alloy' steel as it had not been convincingly established that the test reports could be relied upon to make the substantial distinction between the two but found the test report distinguishing 'alloy' and 'non-alloy' to suffice for upholding the 'technical liability' to confiscation with fine limited to 122.42 metric tons remaining uncleared and consequent re-determination of penalty.

4. According to Learned Counsel for appellant, the sole relief sought for in appeal of jurisdictional Commissioner of Customs is levy of differential duty for goods having been, as set out in impugned order, misdeclared, at least, as far as presence of 'alloy' is concerned but that, notwithstanding the vigorous defence by Learned Authorised Representative, the claim for ₹ 22,52,521 was below the threshold prescribed for pursuit of litigation by the Central Government in instruction dated 2nd November 2023 of Central Board of Indirect Taxes & Customs (CBIC) from file[2] of Judicial Cell to subordinate offices. Learned Authorised Representative urged us to disregard this ground as one of the exceptions is an aspect of the appeal.

5. Though the order impugned before us did take note of misdeclaration of 'alloy steel' articles as those of 'non-alloy steel', the appeal of Revenue refers to descriptional deviation solely to reinstate

[2] [F no. 390/Misc/30/2023-JC]

the upward valuation that had been resorted to by the original authority. In the circumstances, we find that the exception in the instructions *supra* does not guide the handling of this appeal. The appeal of Commissioner of Customs is dismissed for not being in compliance with threshold qualification in the litigation policy of the Central Government.

6. The finding on confiscability is limited to 'alloy steel' articles lying uncleared. That these were liable to confiscation is based on test report of sample which was extrapolated to the entirety of the consignment. The extent of misdeclaration has, thus, not been quantified. It is conceded in the impugned order that the goods are only 'technically' offending. It is also clear that the extent of alleged misdeclaration is limited and, with no consequence to value or rate of duty, hardly qualifies to be of relevance in disposal of the declaration under section 46 of Customs Act, 1962. We see no reason to sustain the confiscation.

7. Appeal of importer-appellant is allowed. Appeal of Revenue is dismissed.

(Order pronounced in open court on 07.05.2024)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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