CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85370 of 2024

(Arising out of Provisional Release Order No. VIII(Cus)25-71/SIIB/2023/Pt.I/8094 dated 31.01.2024 passed by the Commissioner of Customs, Nagpur)

Al Udai Exim LLP **.... Appellant**
92/50CC, Gautam Budh Marg,
Lucknow, Uttar Pradesh – 226 018

Versus

Commissioner of Customs, Nagpur **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

WITH

Customs Appeal No. 85371 of 2024

(Arising out of Provisional Release Order No. VIII(Cus)25-78/SIIB/ 2023/7767 dated 26.12.2024 passed by the Commissioner of Customs, Nagpur)

Ramabors Exim LLP **.... Appellant**
92/50CC, Gautam Budh Marg,
Lucknow, Uttar Pradesh – 226 018

Versus

Commissioner of Customs, Nagpur **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

Appearance:

Shri Vineet Kumar Singh, Advocate for the Appellants
Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85754-85755/2024

Date of Hearing: 26.04.2024
Date of Decision: 05.08.2024

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellant M/s Al Udai Exim LLP had filed fifteen numbers of Bills of Entry (B/Es), describing the imported goods as 'End Cut rejected CR Strips in coil form' (of width less than 600mm and thickness less than 1.2mm), falling under Customs Tariff

Item (CTI) 7220 2029. The Customs department had examined the goods imported by the appellant and reported that the same were appeared to be Stainless Steel strips in coil form of prime quality (not old and rejected as declared by the importer) having different width, different thickness mounted on pallets. On the basis of such examination, the department had entrusted the task to the Chartered Engineer for inspection/examination of the imported goods and for ascertainment of the correct determination of the declared value. Further, samples were also drawn from each container, under proper panchnama and the same were sent to Central Revenue Control Laboratory (CRCL), Mumbai for testing, in order to ascertain the nature of the product and its composition. Pending investigation into the imports made by the appellant, the department had seized the imported goods. For the purpose of provisional release of the seized goods, the appellant had made the representations before the department and since the request made for such provisional release was not considered favourably, they had filed Writ Petition before the Hon'ble High Court of Bombay (Nagpur Bench), which was disposed vide judgement dated 17.01.2024, in directing the respondent Commissioner of Customs to decide the application for provisional release by 31.01.2024. Pursuant to the judgement dated 17.01.2024 (supra), the learned Commissioner of Customs, Nagpur has disposed of the request made by the appellant for provisional release of the impugned goods vide his letter dated 31.01.2024 (for short, referred to as 'the impugned letter'). In the impugned letter, the learned Commissioner of Customs has stated that the appellant had imported the goods without BIS and had also not produced the clarification from the Ministry of Steel, Government of India by applying on TCQCO portal and thus, has failed to comply with the mandatory requirement provided under the Steel and Steel Products (Quality Control) Order, 2020 dated 22.12.2020. It has further been stated in the impugned letter that the appellant is at liberty to apply for provisional release of subject goods, whenever they submit certification of BIS compliance as per the Order dated 22.12.2020 (supra). Feeling aggrieved with the impugned letter dated 31.01.2024, the appellant has filed this appeal before the Tribunal.

1.2 Similarly, the other importer-appellant M/s Ramabors Exim LLP had also filed the B/E, mentioning the product as the same, as described in the B/Es filed by M/s Al Udai Exim LLP. The request made for provisional release of the imported goods was not considered favourably by the competent authority (Commissioner of Customs), which was communicated by the

Assistant Commissioner (SIIB), Nagpur to the appellant in the letter dated 26.12.2023 (impugned letter). Feeling aggrieved with such letter issued by the department, the appellant has also preferred this appeal before the Tribunal.

2. Since the issue involved in both these appeals is identical, the same are taken for hearing together and a common order is being passed.

3. Heard both sides and examined the case records.

4. The manner of import of various steel and steel products, are governed under the orders issued by the Ministry of Steel. Periodically, the said Ministry issues such orders to cover more grades of steel and related products. In the present case, the Ministry of Steel by superseding of the earlier order(s), has issued the 'Steel and Steel Products (Quality Control) Order, 2020' (for short, referred to as 'QCO') dated 22.12.2020, in terms of the powers conferred by Section 16 of Bureau of Indian Standards Act, 2016 (11 of 2016). The said order has provided that every steel and steel product shall conform to the corresponding Indian standards, specified in the Table appended to such order. The appended table, has provided various columns therein viz., the Indian Standards, description of products, ITC (HS) codes and the date of implementation of the order. The Ministry of Steel, Technical Division in the Circular dated 20.10.2023, has provided that all the steel importers, importing steel without BIS license to mandatorily apply and seek clarification from the Ministry of Steel, through QCO portal for each and every imported steel consignment.

5. It is an admitted fact on record that the B/Es in question, were filed by the both the appellants during the months of July, 2023 to September, 2023 for clearance of the imported consignment for home consumption. The B/Es have provided the description of the imported goods as 'End cut rejected CR strips in coil form', classifying the same under CTI 7220 2029. The table appended to the Order dated 22.12.2020 issued by the Ministry of Steel has only provided the primary stainless steel products. However, there is no mention about the non-prime metals in the said order dated 22.12.2020. On perusal of the import documents, it is made clear that the goods imported by the appellants are not prime grade stainless steel items, but 'End cut rejected CR strips in coil form'. In absence of any specific mention of such goods in the table appended to the order dated

22.12.2020, it cannot be inferred that the BIS certification is required even for the non-primary steel items. The said prohibitions were specifically brought into effect vide Circular dated 20.10.2023 issued by the Ministry of Steel, clarifying that all the steel importers are mandatorily required to apply and seek clarification on the dedicated portal for each and every steel consignment, which is imported in the country without BIS license or certification. On careful examination of the said circular dated 20.10.2023, it transpires that the Order dated 22.12.2020 only provided for the certification by BIS with regard to the 145 items listed in the table appended thereto; and those restricted items were further enlarged in the circular dated 20.10.2023 for consideration of all the imported steel items, for which the importer has to apply and seek clarification for each and every single import consignment. Since, the appellants in the present case, have filed the B/Es prior to the date of issuance of the circular dated 20.10.2023 by the Ministry of Steel, in our considered view, the scope enlarged with regard to '*all the steel items*' therein shall have the prospective effect. In this context, para 1.05 in the Foreign Trade Policy (FTP), 2023 has mandated that in case of change in import policy, the imports already made before putting such prohibition / restriction will not be affected. Further, it has also been clarified in the said policy that whenever the Government brings about a policy change of a particular item, the change will be applicable prospectively, from the date of notification, unless otherwise provided for. In other words, for ascertaining the effective date of implementation of the changed policy, the basic criteria to observe is the date of bill of lading; and if such date is prior to the date of issuance of any clarification on the policy, then that would not have any effect, for which the B/Es were already filed.

6. We find that considering the circular dated 20.10.2023 vis-à-vis the FTP 2023, the Chief Commissioner of Customs, Mumbai Customs Zone-II, JNCH, Nhava Sheva in his letter dated 01.12.2023, addressed to the Chief Commissioner of Customs, Ahmedabad has stated that the goods imported through JNCH were released without insisting for the NOC. Since, one Customs Zone has taken such view, that cannot be altered or contradicted by the other Customs Zone, without specifying any valid reasons thereof as to why, the view taken by other Zone cannot be considered for release of the goods.

7. We find that the jurisdictional Commissioner of Customs had sent the samples of the impugned goods for testing at the CRCL, Mumbai. In the test reports submitted by the said agency, with respect to the query, as to whether the same is 'end cut, rejected CR strip in coil form or not', it has been answered that the same could not be ascertained by them, and accordingly returned the sealed remnant samples to the department. By referring to the report submitted by CRCL, the Chartered Engineer had confirmed the estimated market rate of the impugned goods and also stated that the goods do not match / fall in the standard chemical composition range of any one specific grade of SS. On examination of the reports submitted by CRCL and the Chartered Engineer, we find that no definitive inference was drawn, so as to conclude about the exact nature/composition of the product and the true market value of such products.

8. In view of the foregoing discussions, we are of the considered opinion that the appellants should be entitled for provisional release of the goods in question, without insisting for submission of the BIS certificate. It is made clear that this order has been passed only in context with provisional release of the impugned goods. However, this order will not have any bearing on the further proceedings, if any, to be conducted by the department against the appellants.

9. The appeals are disposed of in above terms.

(Order pronounced in open court on 05.08.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha