

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

CUSTOMS APPEAL No.87021 OF 2024

[Arising out of Order-in-Appeal No.767/Gr.IV/IVA/2024(JNCH)/Appeals dated 31.05.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II]

VOESTALPINE HIGH PERFORMANCE

METALS INDIA PVT LTD

Survey No.14 13 17 13, Takai Adoshi Road, Village
Honad, Khopoli, Raigad-410203

Appellant

Vs.

COMMISSIONER OF CUSTOMS, NHAVA

SHEVA-III

JNPT, Custom House, Nhava Sheva, Raigad-400 707

Respondent

Appearance:

Present for the Appellant: Shri J.C.Patel, Advocate

Present for the Respondent: Shri C.S.Vinod (AR)

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 86889/2025

Date of Hearing: 15.07.2025

Date of Decision: 04.12.2025

PER:AJAY SHARMA

This appeal has been filed against the Order-in-Appeal dated 31.5.2024 whereby the learned Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II modified the Order-in-Original dated 13.2.2024 while upholding the confiscation of the impugned goods u/s. 111(d) of the Customs Act, 1962 with option to redeem them for home consumption on payment of redemption fine of Rs.4 lakhs and reduced the penalty imposed u/s. 112(a)(i) ibid to Rs. 4 lakhs and set aside the penalty imposed u/s. 11AA ibid.

2. The facts in brief are that the appellant filed two Bills of Entry dated 27.9.2023 & 30.9.2023 respectively through their Customs Broker for clearance of 'Alloy Tool Steel' classifying it under Tariff Heading 7222 & 7228. 'Alloy Tool Steel' falls under the purview of BIS standard 3748:2022. Under the B/E dated 27.9.2023, 17 items of alloy tool steel were imported, of which 16 items were accompanied with BIS NOC certificate however one item, at Sr.No.6 corresponding to invoices dated 16.8.2023, though covered under the BIS certificate, did not bear the required BIS marking. Similarly, under the B/E dated 30.9.2023, 11 items were imported, out of which only 3 were accompanied with BIS NOC certificate. The remaining 8 items, although covered under the BIS certificate IS 3748:2022, did not have BIS marking printed or embossed. Para (6) of Scheme (1) of BIS Notification dated 4.6.2018 mandates that imported goods on which BIS standard is applicable must necessarily bear BIS marking. When explanation was sought from the appellants, they admitted the lapse and requested permission to affix BIS marking prior to clearance, vide letter dated 17.10.2023 relying on Tribunal's decisions.

3. The adjudicating authority rejected the request of the appellant and vide Order-in-Original dated 13.2.2024 held that the absence of BIS marking rendered those 9 items, liable for confiscation u/s. 111(d) ibid. The goods were ordered to be re-exported. Aggrieved, the appellant preferred appeal before the 1st Appellate Authority, which resulted in the order impugned herein.

4. The issue is whether the absence of BIS marking printed/embossed on the imported goods 'Alloy Tool steel' as required under para (6) of Scheme (1) of BIS notification dated 4.6.2018, render the goods liable for confiscation u/s.111(d) ibid despite the fact that permission was granted to affix the BIS

marking prior to clearance and the goods were cleared after affixing the mark?

5. Learned counsel for the appellant submits that in similar situation the Hon'ble Bombay High Court, in the matter of *Ganesh Benzoplast Ltd. vs. UOI; 2020(374) ELT 552 (Bom.)* has held that where the foreign manufacturer/exporter has obtain BIS registration and the goods conforms to BIS standards, the objection raised by customs department about absence of mark on the goods at the time of arrival in India, is more of form than of substance and the said defect is curable by affixing the IS mark prior to clearance, hence confiscation or fine/penalty are unsustainable. He further submits that such deficiencies are curable and can be rectified by fixing the marking prior to its clearance. Thus, the confiscation u/s. 111(d) ibid is not sustainable. Per contra learned Authorised Representative appearing for revenue supported the findings recorded in the impugned order and prayed for dismissal of appeal.

6. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of revenue and perused the case records including the written submissions/synopsis and case laws placed on record. Admittedly the foreign manufacturer-supplier of the imported goods holds a valid BIS license in respect of the subject imported goods. As per the Test Certificate, these goods conforms to the prescribed IS standards. The said foreign supplier has authorised the appellant-importer to affix the mark on the goods prior to their clearance from customs. The appellant was ready to affix the marking on those goods under Customs supervision before clearance which has been acknowledged in the impugned order also.

7. After the passing of the impugned order, the appellant affixed the IS mark on the goods under the supervision of customs authorities and have cleared the goods. Section 2(33) of the Customs Act, 1962 defined *prohibited goods* as under:-

"2(33) "Prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

The latter part of the aforesaid provision specifically mentioned that *it does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported have been complied with.* In the present case, admittedly the appellants have affixed the required mark on the goods in issue under the supervision of customs authorities prior to clearance. It is also admitted position that before the export of the goods, the foreign supplier had obtained BIS registration but somehow failed put the mark on the goods. As per the Test Certificate these goods conformed to IS standards.

8. The object of the rules, relied upon by the authorities below, is to ensure that only the goods of prescribed standard enter the Indian market and that object stands satisfied. It is neither the department's case that the goods fail BIS standard nor the test report raises any doubt about its standard. Any *mala fide* also cannot be attributed to the appellant on the given set of facts. Once the required marks have been affixed under the supervision of the customs authorities, the condition stands satisfied and confiscation cannot survive.

9. The facts herein are stronger in favour of the importer. In *Ganesh Banzeplast Ltd. (supra)*, the BIS registration was granted to the foreign manufacturer after the goods have reached India,

yet confiscation was held unjustified by Hon'ble Bombay High Court. The same can be gathered from the following paragraphs of the decision: -

"22. From the above it is evidence that the foreign manufacturer obtained licence on 30.9.2019 from BIS for the standard specification IS 252:2013 for its manufactured goods i.e., caustic soda which was imported into India by the petitioner on 1-11-2018. Post the order-in-appeal, test report of the sample of the goods of BIS accredited laboratory showed that the goods conform to BIS standard IS 252:2013 specification. Objection of the respondents is that at the time of arrival on import on 1-11-2018 the goods did not have the BIS standard specification IS 252:2013 marking. Therefore, seizure and subsequent confiscation is justified.

22.1 According to us, this objection of the respondents is more of form than of substance.

22.2 In so far substance is concerned, appellate authority has held the view taken by the respondents to be pre-mature as well as erroneous. According to the appellate authority, though the licence was granted subsequently to the foreign manufacturer, the same covered the goods in question as the marking fee for use of the standard mark was paid from 14-8-2018. This was held to be sufficient compliance to the registration requirement. While setting aside the order-in-original, appellate authority directed the original authority to draw fresh samples of the goods and get those tested in BIS accredited laboratory, with the further direction that if the result proved that the goods conform to BIS standard IS 252:2013, the goods should be released....."

In the instant matter, the foreign manufacturer has been granted BIS license on 18.7.2023, prior to import in August/ September, 2023. Therefore, applying the aforesaid ratio, the confiscation is not sustainable.

10. Similarly, in the matter of *Prostarm Info Systems Ltd. vs. UOI through the Chief Commr. Of Customs, Mumbai Zone-II; 2023(8) TMI 569-Bombay High Court*, wherein also the imported items did not have BIS standard mark and the goods were ordered to be confiscated by the adjudicating authority and penalty was imposed, the Hon'ble Bombay High Court while allowing the Writ Petition filed by the importer, directed the customs authorities to

forthwith permit the clearance of the goods after the completion of labeling exercise by the importer.

11. In the given facts, the absence of BIS marking was a curable defect and has already been cured as stated earlier. Therefore, in view of the settled legal position, the impugned order is not sustainable and is accordingly set aside to the extent of challenge herein. Resultantly the appeal allowed with consequential relief in accordance with law.

(Pronounced in open Court on 04.12.2025)

(Ajay Sharma)
Member (Judicial)

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