CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 284 OF 2010

[Arising out of Order-in-Original No: 21//2010-Commr Appg.(Adj) dated 4th March 2010 passed by the Commissioner of Customs and Central Excise, Goa.]

Rukminirama Steel Rollings Pvt Ltd
Cuncolim Industrial Estate, Cuncolim, Salcete,
Goa – 403703 ...***Appellant***

versus

Commissioner of Customs & Central Excise
ICE House, EDC Complex, Patto Plaza
Panaji, Goa ***...Respondent***

APPEARANCE:

Shri V M Doiphode, Advocate for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85917 / 2022

DATE OF HEARING: 25/04/2022
DATE OF DECISION: 29/09/2022

PER: C J MATHEW

The controversy in this appeal of M/s Rukuminirama Steel Rolling Pvt Ltd, a manufacturer of mild steel (MS) ingots and by-products thereto from mild steel (MS) scrap, pig iron and heavy melting scrap (HMS), is the determination of the appropriate rate of duty on 'used mild steel (MS) plates' imported upon

procurement of these after demolition of six 'petrochemical tanks' in the United Kingdom by M/s GK Middle East FZC, Ajman. Customs authorities chose to classify the impugned goods against tariff item 7208 2510 of First Schedule to Customs Tariff Act, 1975 corresponding to products in prime condition instead of the declaration against tariff item 7204 4900 corresponding to 'waste and scrap' in First Scheduled to Customs Tariff Act, 1975. In addition, order-in-original no. 21/2010-Commr Appg (Adj) dated 4th March 2010 of Commissioner of Customs and Central Excise & Service Tax, Goa held the goods, imported *vide* bills of entry no. 113029/30.04.2009, 103030/30.04.2009 and 113031/ 30.04.2009 and valued at ₹ 77,77,300, to be liable for confiscation under section 111(d) of Customs Act, 1962 but offered to be redeemed under section 125 of Customs Act, 1962 on payment of fine of ₹ 7,70,000 besides imposing penalty of ₹ 1,00,000 under section 112 of Customs Act, 1962 on the appellant herein.

2. From the records, it appears that 310.96 MT of 'used mild steel (MS) plates' with value of ₹51,98,524 consigned to the appellant, along with 102.47 MT and 48.76 MT of 'used mild steel (MS) plates' valued at ₹ 17,47,320 and ₹ 8,31,456 respectively obtained by them in 'high seas sale' transaction from M/s Karthik Alloys Ltd, had been procured by the supplier in the United Arab Emirates (UAE) from M/s CL Processor & Co, Middlesborough, a contractor engaged for demolition of petrochemical tanks, and for which 'pre-shipment inspection

(PSI)' certificate had been furnished to customs authorities. The appellant, informing the customs authorities of their intent to use the goods in their furnaces for manufacture of 'ingots' and, citing the prohibitive cost of mutilation at port of shipment as well as the lack of facility at the port of discharge, had sought permission for conversion into 'metal scrap' under customs supervision after clearance as such.

3. It is, therefore, common ground that the goods at the time of import were yet to assume the form of 'metal scrap' fit for feeding the furnaces of the importer and that, of the three consignments all sourced from the same supplier, only one had been procured directly by the importer. At the same time, there is no aspersion cast on the intended 'end use' or any suspicion that the metal plates are of 'prime' material. Indeed, the proceedings have culminated in confiscation and imposition of penalty on the finding that these are 'used' and, hence, permissible for import only against a valid licence; licence was being insisted upon as 'used' goods, other than 'capital goods', is not permitted to be imported without such authority. The sole plea of the importer has been that mutilation of the impugned goods, being a pre-requisite for commercial deployment, should be deemed to have been so presented for assessment and clearance under section 17 and section 47 of Customs Act, 1962 respectively.

4. Mutilation is not a discretionary option in customs procedure related to import; section 24 of Customs Act, 1962

enables notification of rules appropriate to each commodity. The existence of any rules for 'scrapping' of plates has not been brought to our notice. The request of the importer is, thus, of no consequence even though it may evince that no material fact had been concealed from the assessing authority.

5. The show cause notice, leading to the impugned order, rests upon the proposal for re-classification and, to the extent that revision is called for in accordance with the General Rules for Interpretation of Import Tariff appended to Customs Tariff Act, 1975, attendant penal detriment for contravention of import restrictions. Before turning to the rival classifications that both sides assert as the correct determination for the impugned goods, it would be appropriate for us remind ourselves of the principle laid down by the Hon'ble Supreme Court in ***HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh***[1] thus

> *'29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not*

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1. *2006 (197) ELT 324 (SC)*

shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'

and, in ***Hindustan Ferodo Ltd v. Collector of Central Excise, Bombay***[2] that

'3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.

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7. Learned Counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappreciated. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the matter. '

6. Learned Counsel for appellant urges that

'8. In this Section, the following expressions have the meanings hereby assigned to them:

(a) waste and scrap:

metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.

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2. 1997 (89) ELT 16 (SC)

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in section XV of First Schedule to Customs Tariff Act, 1975 would, save for controverting of their declaration by customs authorities on submission of their explanation of the origin of the impugned goods, mandate application of the rate of duty corresponding to tariff item 7204 4900 of First Schedule to Customs Tariff Act, 1975 and, particularly, eligibility for exemption afforded by notification no. 21/2002-Cus dated 1st March 2002 (at serial no 200) as claimed in the bills of entry.

7. Learned Authorized Representative, relying upon the report on examination of the goods, insisted that 'plates' of 'a thickness of 4.75 mm or more:' within sub-heading 7208 25 of First Schedule to Customs Tariff Act, 1975, as held by the adjudicating authority, should prevail as more specific description of the form in which the goods were presented for import.

8. On scrutinising heading 7208 of First Schedule to Customs Tariff Act, 1975, within which the impugned order has placed the goods imported by the appellant, it is seen that the description

> *'Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated'*

has been sub-classified at the eight digit level for one item and, for all other items, as seven enumerations 'in coils' and four enumerations for those 'not in coils', at six digit level and the adopted item lies with the first of these but, nonetheless,

comprising ‘flat-rolled products’ ‘hot rolled’ in ‘coils’ without any explanation for concluding that the plates were presented as coils. Clearly, the classification adopted in the impugned order does not relate to the description of the product as imported and presented.

9. Not only is the revised classification inappropriate but there is also no reason for the classification sought for in the bills of entry to be substituted in view of its appropriateness; the impugned goods have industrial significance only as ‘waste and scrap’ which is the feedstock for melting in furnaces. Consequently, the eligibility for the benefit of the exemption notification as well as not being subject to the restriction prescribed in the Foreign Trade Policy on the import of used goods is established.

10. Appeal is, accordingly, allowed and the impugned order set aside

(Order pronounced in the open court on 29/09/2022)

(JUSTICE DILIP GUPTA)
President

(C J MATHEW)
Member (Technical)

**/as*