

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad-**

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10674 of 2015-SM

(Arising out of OIA-MUN-CUSTM-000-APP-044-14-15 dated 17/03/2015 passed by Commissioner of CUSTOMS-MUNDRA)

Kalpataru Transmission Ltd

101, Part Iii, Gidc Estate,
Sector-28, Gandhinagar, Gujarat

.....Appellant

VERSUS

C.C.-Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat - 370421

.....Respondent

APPEARANCE:

Shri S.J Vyas, Advocate appeared for the Appellant

Shri G.Kirupanandan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11618 /2023

DATE OF HEARING: 31.03.2023

DATE OF DECISION: 28.07.2023

RAMESH NAIR

This appeal is directed against the Order-In-Appeal No OIA-MUN-CUSTM-000-APP-044-14-15 dated 17/03/2015 whereby the Commissioner (Appeals) held the order-in-original and rejected the appeal.

2. The brief facts of the case are that the appellant had filed Bill of Entry No. 6289437 dated 31.07.2014 through their CHA for clearance of 51716.00Kgs of Hot Rolled Steel Plates having assessable value at 30,53,483/-. The cargo was examined on second check under the supervision of Customs (Docks Examination) and in presence of authorized person of CHA. During the examination of cargo the goods were found to be Hot Rolled Steel Plates as declared in the bill of entry as well in invoice and packing list. However, the total weight of cargo was found to be 53820 Kgs as against declared weight of 51716 Kgs. Thus a quantity of 2104 Kgs has

been found in excess over and above declared quantity which is excess by 4.1 % of the declared quantity. The case of the department is that the appellant have mis-declared the quantity of goods to evade the custom duty amounting to Rs.33,257/-. Accordingly, the goods is liable to confiscation under the provision of Section 111(m) of the Customs Act, 1962 and rendered themselves liable to penalty under the provision of Section 112 (a) of the customs act, 1962. Accordingly, the adjudicating authority confiscated the goods of 2104 Kgs of Hot Rolled Steel Plates and imposed redemption fine of Rs. 30,000/- under section 125 and also penalty of Rs. 15,000/- under Section 112 (a) of customs Act, 1962. Being aggrieved by the order in original, the appellant filed an appeal before Commissioner (Appeals) who rejected the appeal, therefore the present appeal.

2. Shri S.J Vyas, Learned Counsel appearing on behalf of the appellant submits that this is not a case where the appellant have mis-declared the weight intentionally to evade the payment of the duty. He submits that the number of Hot rolled steel plates are same there is only variation in the weight. It is his submission that the standard weight is adopted according to the size of the plate and it was calculated theoretically, therefore, despite the correct number of plate the weight varies as the invoicing of the material is not done on actual weight basis but on theoretical weight basis. Therefore, there is no intention of the appellant to mis – declare the quantity of goods.

2.1 He also submits that the appellant made the payment of the total invoice value in spite of the increase in the actual weight of goods. He submits that the appellant had paid the differential custom duty but since there is no mala fide the penalty and redemption fine should not be imposed.

3. Shri G.Kirupanandan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He placed reliance on the following judgment:-

- Advanced Scan Support Technologies – 2015 (326) ELT 185 (Tri. Delhi)
- Aestrik Techno Signs – Final Order No. 511146/2021 dated 04.03.2021 (Tri. Delhi)
- Jain Exports Pvt Ltd -1993 (66) ELT 537 (SC)

4. I have carefully considered the submission made by both sides and perused the records. I find that in the present case the appellant have billed the goods as per the standard theoretical weight basis as per the size of the plates. There is no difference in the number of plates, it is obvious that when the weight is calculated as per the size of plate on the theoretical basis, there has to be difference in the weight calculated and shown in the invoice and the actual weight. It is also fact that the appellant had paid the invoice value on the basis of the weight declared in the invoice irrespective that the actual weight is slightly more than the declared weight. The appellant have also discharged the custom duty on the differential weight of the goods. In this fact, I do not find any mis-declaration on the part of the appellant as there is no dispute that the weight in the invoice was mentioned as per the theoretical weight basis by taking a standard weight for particular size of the plate. Therefore, it cannot be said that the appellant have made any mis –declaration of either weight or value. We do not agree with both the lower authorities in as much as the redemption fine and penalty were imposed.

5. Accordingly, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court 28.07.2023)

RAMESH NAIR
MEMBER (JUDICIAL)