

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

1st Floor, WTC Building, FKCCI Complex, K. G. Road,

BANGLORE-560009

Regional Bench COURT-2

CUSTOMS Appeal No. 1926 of 2010

[Arising out of the Order-in-Appeal No.63/'10 dated 13.07.2010 passed by the Commissioner of Customs (Appeals)Cochin.]

A.P. STEEL RE-ROLLING MILLS LTD.

VIII/635, Phase 1,
New Industrial Development Area,
Kanhikode P.O. Palakkad 678621.

....Appellant

Vs.

COMMISSIONER OF CUSTOMS

Customs, Customs House,
Cochin - 682 009

....Respondent

Appearance:

Mr. Asher Revi Job, Advocate for Appellant

Mr. P. Saravana Perumal, AR for Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

Date of Hearing: 06.07.2023

Date of Decision: 05.01.2024

FINAL ORDER No. 20029 of 2024

Per P. A. AUGUSTIAN:

1. The Appellant had imported Heavy Metal Scrap (HMS) and filed B/E for clearance of the same on 19.01.2010. On examination, it is found that

the goods are of assorted size and cannot be considered as HMS scrap. However Appellant vide letter dated 10.02.2010 stated that the goods imported as scrap which can be used for the purpose of melting only. They have requested for release of the goods or allow mutilation of the goods so as to use them as scrap. However the request was denied on the ground that request for mutilation was made only after the offence was detected. Thereafter SCN was issued proposing confiscation of the same, rejecting the declared value and goods were assessed as per Rule 5 of the Customs Valuation Rules, 2007. The Appellant submitted that the goods were imported as per the Import Policy conditions prevailed at the time of import and to support the declaration, they produced certificate from accredited agency. However the Adjudication authority rejected their request vide Order-in-Original dated 06.05.2010, adopted value as proposed in the SCN and allowed Appellant to redeem the goods on payment of Rs.3,00,000/- as fine and Rs.1,50,000/- as penalty. Aggrieved by the said Order, appeal was filed before the Commissioner (Appeals) who rejected their appeal. Aggrieved by the impugned order, present appeal is filed.

2. When the appeal was taken up for hearing, Learned Counsel for the Appellant drew our attention to the documents including sale contract dated 23.12.2009, invoice issued by overseas supplier dated 31.12.2009, relevant pages of the Hand Book of Procedure related to import of metallic waste, Scrap etc; Appendix file showing the list of inspection & certification agency including the agency **M/s. World Wide Logistics**, Pre-shipment certificate etc; showing that the goods imported by the Appellant are Heavy Melting Scrap and it was subject to 100% visual inspection during loading process.

3. It is further submitted that even as per the order of the Adjudicating authority, it was recorded that the goods were imported based on the pre-inspection certificate from the port of export and the agency is registered under DGFT, India. Learned Counsel also drew our attention to the judgment of Hon'ble High Court of Kerala dated 14.10.2010 in RP No. 836/2010 W.P (c) No. 31185/2010 where in this case the Hon'ble High Court provisionally allowed release of the goods subject to payment of 50% of the duty demanded and furnishing Bank Guarantee for the balance. Learned Counsel also drew our attention to the judgment of the Hon'ble Supreme Court in the matter of **Collector of Customs Vs Harthik Industries (1998 (97) E.L.T 25)** where the Hon'ble Apex Court while restoring the file, upheld the order of Adjudication authority regarding denial of the request for mutilation after detention of goods. However in the said matter, Hon'ble Supreme Court observed that "the order noted that correspondence between the respondent and the foreign supplier, statement that and been made and other material of records, found that respondent had sought to clear serviceable material as scrap". In the above circumstances, only request for mutilation was denied whereas in the present case, the goods were imported as per the Import policy supported by the certificate issued by accredited agency. Learned Counsel also drew our attention to the findings of this Tribunal in the matter of **M/s Mangalam Alloys (2020 (374) E.L.T 810 (Tri. Mumbai)** reproduced below:

4. Heard both sides and perused the records of the case. Brief point to be decided in this case is as to whether heavy melting scrap HMS imported by the appellants can be classified as serviceable parts and thus, exemption availed needs to be denied. On the basis of the examination conducted at the time of clearance, department opined that the impugned goods were secondary/defective/rejected stock, comprising of stainless-steel U and C channels of grade 410 (magnetic) and HR coils/strips of grade 410 (magnetic). The appellants submit that the examination report was not given to them. Learned AR submits that as the show cause notice was waived by the appellants, the examination report could not be given to them. The appellants further submitted that no examination by a Chartered Engineer was conducted; pre-shipment inspection certificate and certificate issued by M/s. Alloys and Metal Test Services, Mumbai were ignored. Also, the request of the appellants for mutilating the goods before clearance was also not allowed. It is the contention of the appellants that by nature steel melting

scrap is likely to have some defective secondary parts or articles. However, the supplier treated the same as scrap only. It is a matter of fact that the said scrap was utilised in their factory for melting only. Therefore, denying the classification and the exemption are bad in law.

5. We find that the appellants have a point in their favour. We find that the adjudicating authority has not explained as to why various certificates submitted by the appellants were not accepted. It is not known as to why the department has not allowed the request for mutilation of the goods before clearance. Chartered Engineer's examination was also not ordered. This being the factual milieu, we find that department cannot reclassify the goods unilaterally on the basis of the examination report of officers alone. Technical opinion given by the pre-inspection certificate and by M/s. Alloys and Metal Test Services, cannot be disregarded. Also the fact that all the shipping documents describe the goods as steel melting scrap only cannot be denied. Under such circumstances, denying the classification and the benefit of exemption are not tenable. For the same reason, the department has not made its case for redetermination of the value of the impugned goods for the purpose of assessment. We find that declared classification and valuation cannot be rejected only on the basis of examination report of the officers, more so, when technical reports were not in favour of the view taken by the Revenue, Therefore, taking recourse to LME prices is also not acceptable. It is not the case of the department that to value over and above the price declared in the invoice was paid to the overseas supplier. It is also not the case of the department that the said scrap was not utilised as scrap. Therefore, we find that department has not given forth any evidence to support the allegation. We find that the impugned order is not maintainable.

4. Ld Counsel also drew our attention to the finding of this Tribunal in the matter of **Chandan steel vs. Commr.of Customs (Export Nhava Sheva)2019-369 ELT-1262, CC Chennai Vs Kamatchi Sponge & Power Coprn. Ltd. (2016 (337) E.L.T 73), and Prince Fortified Vs CC Tuticorin (2019 (369) E.L.T 1228 (Tri.Chennai)).**
5. Learned Counsel drew our attention to the finding of this Tribunal in the matter of **M/s PAB Traders Vs CC, Cochin(2010(261)ELT 260(Tri. Bangalore)**, this Tribunal has considered the details of contract and after considering the certificate issued by the very same agency **M/s. World Wide Logistics**, allowed the appeal.
6. Learned AR reiterated the finding in the impugned order. Heard both sides. It is an admitted fact that as per the Import Policy, import of scrap is permissible by complying with certain conditions and the Appellant had complied with the prescribed conditions is not in dispute. The allegation regarding presence of assorted size of scrap were

brought to the notice of the Appellant only when it was subject to inspection by the proper officer and there is no allegation that the Appellant had knowledge regarding presence of assorted size of panel having length between 1.5 m to 5.5 m. Immediately when the above fact was brought to the notice of the Appellant, they have requested for mutilation of the same as per Section 23 of the Customs Act, 1962. Moreover in such imports from overseas sources, Appellant can only verify the conditions in the Import Policy and there is no opportunity for the Appellant to verify the content of the goods before its shipment. Considering the same, denial of the request for mutilation is unsustainable. The authorities also do not dispute the fact that pre-shipment certificate from the port of export as certified the goods as Heavy Metal Scrap (HMS) and the certificate has been issued by the agency registered with DGFT. All other documents like invoice, packing list, etc., also describe the goods as heavy metal scrap.

7. In the case of **Prince Fortified Vs CC Tuticorin (2019 (369) E.L.T 1228 (Tri.Chennai))**, the Tribunal has observed as follows:

5. Keeping aside this controversy which is of technical nature, we proceed to consider the merits of the case. The facts reveal that appellant is a regular importer of HMS. The Purchase Order was for supply of HMS for use in their factory. The proforma invoices described the goods as HMS. Again the invoices issued by supplier described the goods as HMS/Re-Rollable scrap. The pre-shipment test reports by the internationally accepted agency M/s. Worldwide Inspection Services - SARL certified that the imported goods are metallic scrap as per internationally accepted parameter for such classification. The said agency is approved by DGFT. The appellant had filed Bill of Entry based on these documents. On examination, the Chartered Engineer has opined that out of 232.85 MTs, only 34.91 MTs of twisted rods were having less than 5 ft. Length and balance quantity of 197.915 MTs was cut/end pieces of TMT rods. Thus quantity of 34.91 MTs having less than 5 ft. alone was treated as HMS by department and the balance quantity was reclassified as CTH 7214 99 90 and thereby denied the benefit of notification. The basis for the Chartered Engineer to arrive at such conclusion is that in common parlance the length of TMT rods in the market is from 11 to 12 mtrs (33 to 36 ft.) and the length of the rods imported range from 3 ft. to 15 ft. and are cut end pieces of assorted sizes. Since the cut ends do not have proportionate size they have very limited usage. When we fail to understand how this can be the basis for concluding that the goods are not HMS, we are not able to find any cogent reason for discarding the pre-inspection certificate *in toto*. The jurisdictional High Court in the case of *CC, Chennai v. Kamatchi Sponge & Power Corpn. Ltd.* - [2016 \(337\) E.L.T. 73](#) (Tri.-Chennai) in similar set of facts had upheld the order passed by Tribunal, which set aside confiscation and penalty. The relevant portion is reproduced as under :

"We also find that the Revenue preferred CMA against the Tribunal's order before the Hon'ble High Court of Madras and the High Court of Madras in their order reported in [2014 \(305\) E.L.T. 377 \(Mad.\)](#) upheld the above Tribunal's order and dismissed the CMA filed by Revenue. The relevant paragraphs of the Hon'ble High Court of Madras order are reproduced as under :

7. As pointed out earlier, the only point that has to be decided in the present Civil Miscellaneous Appeal is as to whether the respondent is liable to pay duty on the basis of scrap materials or on the basis of usable things.

8. The entire argument put forth on the side of the appellant hinges upon the report filed by the Commissioner as well as the statement alleged to have been given by one of the partners of the respondent.

9. It has been conceded on the part of the appellant that the Commissioner has not noted down the features of the things which are in question. Of course, it is true that one of the partners of the respondent has given a statement, wherein, he has admitted about the existence of some wires, etc.

10. At this juncture, the Learned Counsel appearing for the respondent has contended that those wires are not in cable forms and it is nothing but small wires. Under the said circumstances, the authority has permitted the respondent, to get the goods in mutilated form and therefore, the contention put forth on the side of the appellant cannot be accepted.

11. Even in the statement alleged to have been given by one of the partners of the respondent, complete description as well as length and breadth of the things which are in question have not been mentioned. In fact, in the statement alleged to have been given by one of the partners of the respondent, only small quantity as well as length of wires have been mentioned. Under the said circumstances, the Court can come to a conclusion that the things which are in question cannot be couched as usable things.

12. The Appellate Tribunal, after considering the available materials on record, has rightly found that the things in question are nothing but scrap materials. Under the said circumstances, the respondent has been directed to pay duty on the basis of scrap materials and in view of the discussions made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.

13. In fine, this Civil Miscellaneous Appeal deserves dismissal and accordingly is dismissed without costs."

The ratio of the High Court decision and this Tribunal's decision (supra) is clearly applicable to the present case as the issues are identical and also considering the fact that there is no misdeclaration by appellant as seen from the purchase order/sales contract and sales confirmation report and pre-shipment inspection certificate, wherein appellants have placed orders for supply of 1000 MTs of HMSS, and imported the said goods and cleared in terms of purchase order. The Commissioner (Appeals) has discussed the issue and given detailed findings. We also find that the test report relied by Revenue in a private laboratory is not the competent authority approved by CRCL or Customs. Further, even as per the test report, the goods were found to be 'secondary pipes' which clearly confirms that they are 'scrap'. We find that Commissioner (Appeals) taking into consideration of the goods clearly directed the department to mutilate and allow clearance as scrap. Therefore, Revenue's relying on Punjab and Haryana High Court decision in *Aman Alloys Ltd.* (supra) is distinguishable and not applicable for the reason that this jurisdictional High Court of Madras order which upheld the decision of this Bench of the Tribunal is binding on the Tribunal and prevails over. We also find that the appellants are registered Central Excise assessee having foundry for manufacture of billets, TMT bars as evident from the Central Excise registration and paying Central Excise duties on the final products. It is confirmed that appellant is not a trader of imported goods in the guise of scrap for trading purpose. Therefore, *bona fide* of the appellant is justified being actual user. We also find that pre-shipment inspection certificate clearly indicates that HMSS supplied was 'unshredded'.

Therefore, by respectfully following the ratio of the Hon'ble Madras High Court decision and this Tribunal decision (supra), we uphold that the goods

imported are "Heavy Melting Steel Scrap" and we do not find any infirmity in the order of LAA. Accordingly, the impugned order is upheld and we direct the Customs to allow clearance after mutilating the goods under Customs supervision as per LAA's order. Accordingly, the Revenue's appeal is rejected.

8. In view of the above and various other decisions relied upon by the appellant, if the goods are yet to be cleared, we direct that the goods may be released to the appellants after effective mutilation under the Customs supervision (as per the request of the appellant), thereby rendering them as scrap. Scrap so generated after mutilation will be cleared on payment of appropriate Customs duty as per the values declared by the appellant in the documents presented before the authorities. In view of this, we hold that the impugned order is set aside along with confiscation and imposition of penalty and redemption fine. The appeal is allowed in the above terms.

(Order pronounced in open court on ...05.01.2024)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)