(2013) 06 MAD CK 0285

In the Madras High Court

Case No : C.M.A. No. 989 of 2008

Commissioner of Customs (Sea) APPELLANT

Vs

Ponneri Steel Industries RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2013) 298 ELT 163 : (2013) 23 GSTR 1

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : M. Santhana Raman, for the Appellant; B. Satish Sundar, for the Respondent

Judgement

Chitra Venkataraman, J.—The Revenue is on appeal as against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai passed in Final Order No. 816/2007, dated June 29, 2007, raising the following substantial question of law: In view of the evaluation by chemical analysis of the subject goods by the scientists of NML had proved the presence of ''slag'' and ''skull scrap'' in the consignment samples tested as per the inspection report on the basis of which the goods came under Chapter 26 of the Customs Tariff Act Heading 2619 which ultimately confirmed the requirement of specific license for import and the respondents failed to declare the same in the bill of entry, whether the conclusion arrived at in the final order passed by the hon''ble Tribunal not having expertise in the subject goods and chemical analysis report submitted by NML, would be legally enforceable and tenable?

The assessee is an importer. The assessee filed a bill of entry through their customs house agent representative for clearance of 172.54 M.T.s of goods declared as "non-alloy steel melting scrap consisting of skull". The goods were purchased by the assessee on high sea sale basis from M/s. Shree Ganesh Steel Rolling Mills Ltd., Singapore. The goods were examined under first check and during visual examination of goods, the Revenue found no discrepancy as regards description of goods. On being asked by the apprising group as regards the nature and origin of the scrap consisting of skull, by a letter dated November 16, 2006, the assessee pointed out that skull was the material spilled over during the filling of the molten metal in the moulds through tundish and during such process, there would be some spillage on the ground too and also some quantity would get stuck in the tundish itself. Therefore, spillage and the material stuck in the tundish are called "skull". The skull removed from tundish as well as from the ground might include some amount of impurities in the form of refractories. The skull was again a melting scrap, which could be recycled. In support of its contention, the assessee submitted a test certificate of the supplier, viz., M/s. MSM Enterprises (P) Ltd., Singapore. The certificate indicated maximum constituents of the scrap as carbon (0.19%), manganese (1.43%), phosphorous (0.05%), sulphur (0.05%) and Si (0.03%). The Revenue held that the test certificate did not specify the presence of other materials.

2. It is a matter of record that the metallurgical inspection report pointed out that based on visual examination and chemical analysis, the material could be considered as non-alloy steel skull scrap suitable for melting and the percentage of recovery of iron from the scrap was about 80 percent. by weight. The assessee claimed that the goods declared in the bill of entry were non-alloy steel melting scrap consisting of skull and the same fall under Heading 72.04. Whereas, the Revenue sought to assess it under Heading 26.19 treating it as slag. In spite of the objection raised by the assessee that the materials were for melting purpose only, the Revenue treated the same as falling under Heading 26.19. In the circumstances, the Revenue held that the goods were liable for confiscation u/s 111(d) of the Customs Act, 1962 read with section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and also u/s 111(m) of the Customs Act. The adjudicating authority passed an order accordingly, allowing the importer to redeem the goods on payment of fine of Rs. 4,00,000 in terms of section 125(1) of the Customs Act and imposing penalty of Rs. 40,000 each, on the assessee as well as on M/s. Shree Ganesh Steel Rolling Mills Ltd., u/s 112(a) of the Customs Act.

3. Aggrieved by this, the assessee went on appeal before the Commissioner of Customs (Appeals), who upheld the order of the adjudicating authority. Aggrieved by this, a further appeal was filed by the assessee before the Customs, Excise and Service Tax Appellate Tribunal.

4. The assessee placed reliance on metallurgical inspection report issued by the National Metallurgical Laboratory, which declared the item imported as non-alloy steel skull scrap suitable for melting and contended that what was imported would fall only under Heading 72.04 and not under Heading 26.19. The assessee further pointed out that the presence of small amount of slag in the scrap would not make the scrap classifiable under Heading 26.19. In this connection, the assessee placed reliance on the Tribunal''s decision in Steel Authority of India Ltd. v. CCE [2006] 197 ELT 113 (Trib.-Delhi) wherein, cast iron skull scrap was held to be classifiable under subheading 7204 10. The assessee also drew

support from two decisions of the Government of India (Revisional Authority) reported in [1982] 10 ELT 485 (GOI) (Electrosteel Castings Ltd., In re) and [1982] 10 ELT 628 (GOI) (Texmaco Ltd., In re).

5. On going through the materials available and the decisions relied on by the assessee, the Tribunal held that the goods in question had about 80 percent. of iron along with some amount of slag as reported by NML and the presence of small amount of slag in the subject goods itself would not make the scrap classifiable under Heading 26.19. The Tribunal further pointed out that in the case of Steel Authority of India Ltd. [2006] 197 ELT 113 (Trib.-Del), this Tribunal classified cast iron skull scrap under Heading 72.04 of the Schedule to the Central Excise Tariff Act. Since the Central Excise and Customs Tariffs are aligned in respect of classification of goods and considering the data retrieved from National Informatics Data Base of the Directorate of Valuation under the Central Board of Excise and Customs that mild steel skull scrap covered under the bill of entry falls under sub-heading 7204 49 00, the Tribunal held that the goods were classifiable under sub-heading 7204 49 00 and not under Heading 26.19. Consequently, the finding of misdeclaration and misclassification of the goods and imposition of penalties were set aside. Aggrieved by this, the present appeal by the Revenue.

6. Reiterating the contention taken in the notice as well as in the order of the Commissioner of Customs (Appeals), the learned standing counsel for the Revenue pointed out that considering the presence of some amount of slag in the materials, the goods in question have to be classified under Heading 26.19 and not under Heading 72.04. Apart from that there are many materials in support of the Revenue''s case to dispute the metallurgical inspection report issued by NML. In the background of the above facts found, we do not find any justifiable ground in the Revenue''s appeal to disturb the order of the Tribunal.

7. In any event, as rightly pointed out by the learned counsel for the asses-see, in the decision reported in [2006] 197 ELT 113 (Trib.-Del) (Steel Authority of India Ltd. v. CCE), the assessee therein manufactured iron from iron ore in blast furnace. From top tap of blast furnace, slag was removed in the ladle. Along with slag, some molten iron also got removed, which was taken in ladle to slag dump yard. This molten iron got solidified and it remained in the slag dump yard. The assessee floated tender for recovery, removal and lifting of iron scrap. Thus, from tenders, it was clear that what was being recovered and cleared from the factory was iron scrap and not slag. The Tribunal, after referring to various decisions, ultimately held that iron scrap cleared from the factor)'', after recovering it from slag dump yard would fall only under sub-heading 7204 10 of the Central Excise Tariff Act. The Tribunal pointed out that cast iron scrap recovered in the slag dump yard and cast iron skull scrap obtained in the process of breaking up in the ladle breaking yard were similar and both the scraps were recovered from molten metal of blast furnace. The Tribunal further pointed out that the scrap was generated in the manufacture of iron from iron ore and the item was hence

classified under sub-heading 7204 10 of the Schedule.

8. Applying the said decision to the case on hand, when we look at the process explained by the assessee in the instant case, we find that skull scrap was obtained during the filling of the molten metal in the moulds through tundish as well as some spillage on the ground. This was imported by the importer. Going by the admitted fact that skull scrap is suitable for melting and in the absence of any material to show that the imported item was only slag resulting from the manufacture of iron and steel, classifiable under Heading 26.19, we have no hesitation in accepting the plea of the assessee that the goods in question would fall under Heading 72.04 and not under Heading 26.19. Thus, the reasoning of the Tribunal particularly based on the National Informatics Data Base of Directorate of Valuation under the Central Board of Excise and Customs does not call for any interference by this court.

9. Learned counsel for the assessee further pointed out that the order of the Tribunal was followed by the Tribunal itself in the subsequent decision reported in 2007 (123) ECC 332 and the said order has not been challenged by the Revenue on appeal. That being the case, considered in the background of facts found, we have no hesitation in confirming the order of the CESTAT. Consequently, this civil miscellaneous appeal is dismissed. No costs.