
(2024) 12 CESTAT CK 1238

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No. 648 of 2010

**M/s Addi Alloys (P) Ltd. @APPELLANT @Hash The Commissioner,
Customs @RESPONDENT**

Date of Decision : 17-12-2024

Acts Referred:

Customs Act, 1962 — Section 112

Citation : (2024) 12 CESTAT CK 1238

Hon'ble Judges : Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Nagendra Yadav

Final Decision : Dismissed

Judgement

Dilip Gupta, J

1. M/s Addi Alloys (P) Ltd., the appellant has sought the quashing of the order dated 07.09.2010 passed by the Commissioner of Customs (Appeals) by which the order dated 15.01.2010 passed by the Additional Commissioner has been confirmed with certain modification.

2. The Additional Commissioner, by the order dated 15.01.2010, confiscated the goods imported under the Bill of Entry dated 28.07.2003, but as the goods were not available, imposed redemption fine of Rs. 1,00,000/-. The Additional Commissioner also assessed the imported goods at Rs. 7,02,625/- and confirmed the differential customs duty with penalty under section 112 of the Customs Act, 1962, the Customs Act.

3. It is against this order that an appeal was filed by the appellant before the Commissioner (Appeals).

4. The department believed that the imported goods were not eligible for concessional rate of duty applicable to melting scrap and, therefore, 100% physical examination of the goods was conducted in the presence of two independent witnesses. The samples were then subjected to market enquiry and the report dated 25.09.2003 describes the goods as ingots and flats of alloy steel

and not heavy melting scrap. Thus, the declared value of the goods was not accepted and a show cause notice dated 10.03.2004 was issued to the appellant. The Additional Commissioner found, after rejecting the certificate dated 15.06.2004 produced by the appellant and after accepting the physical examination report and other documents on record that the appellant mis-declared ingots and flats of alloy steel as heavy metal scrap. The Additional Commissioner, therefore, re-determined the assessable value and confirmed the demand of differential customs duty.

5. The appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) found no good reason to interfere with the findings of the Additional Commissioner. The relevant portion of the order passed by the Commissioner (Appeals) is as follows :-

"6.1 I find that the entire case has been based on 100% physical examination of the imported goods i.e. HMS vis-à-vis the documents namely Bill of Entry, Invoice, Packing list under reference. The proceedings were drawn vide Panchnama dated 17.09.2003, in the present of two independent witnesses, Appellant 2 representing the Appellant 1 & representative of CHA Samples were also drawn and were subjected to Market Enquiry as well as to Chemical examination by CRCL, Pusa, New Delhi. Now, with this basic information on hand, the imported goods were re-classified & re-assessed. It is, thus, a matter of fact that, all these facts were known to the Appellants since the filing of BE and receipt of impugned order. However, I have not come across any rebuttal to these facts by the Appellants. The impugned order was passed after giving fair opportunity to the Appellants on the Principles of Natural Justice. The relevance of the end use Certificate produced by the Appellants was also discussed at length in the said order.

6.2 Presently, the Appellants now intended to dig out a case by terming the proceedings, Show Cause Notice, the seizure thereof, and the impugned order to be illegal. However, there is nothing on record put forward by them as to how the proceedings, resulting into issuing of the Show Cause Notice and the impugned order were illegal. I find that the submissions made by the Appellants are superfluous and are devoid of legal aspects. Nothing has been said about why the ingots and flats of Alloys steel, which were actually found physically, should be considered as HMS. Similarly, nothing has been said about as to why the Market Enquiry and the Chemical Examiner's report conducted based on the sample drawn from the imported goods are not to be accepted. The averments they were not given the due documents in this regard is not acceptable at this stage, as this issue was not a matter of dispute at the time of adjudication. Even otherwise, I find that, vide their own letter dated 8.4.2004, Annexure-9 to their appeal memo, all the records and the documents along with the Show Cause Notice were received by them. Hence, the plea that Principles of Natural Justice were violated is sans evidence. Such plea is only a myth and referred to only for the sake of making plea without any kind of corroborative evidence or

substantiation on record.

7. Hence, I do not find any valid reason vis-à-vis the stated grounds to interfere with the impugned order read with the corrigendum dated 18.1.2010 in respect of Appellant 1”.

(emphasis supplied)

6. Case has been called out, but no one has appeared on behalf of the appellant.

7. We have perused the memorandum of appeal and have heard learned authorized representative appearing for the department.

8. One of the grounds taken in the appeal is that the Additional Commissioner had no authority in law to change the classification of the imported goods from heavy melting scrap to ingots and flats.

9. It is not possible to accept this submission. Apart from the fact that the appellant failed to substantiate this ground, the Additional Commissioner does have the power to determine the classification of the imported goods. In the present case, 100% physical examination of the goods was conducted and thereafter reports were also called from the examiner. This finding of the Additional Commissioner has been confirmed by the Commissioner (Appeals). Apart from making a bald statement that the Commissioner (Appeals) failed to appreciate the contention raised by the appellant, this finding has not been seriously disputed by the appellant.

10. There is, therefore, no infirmity in the order passed by the Commissioner (Appeals). The appeal is, accordingly, dismissed.

(Dictated and pronounced in open court.)