(2021) 08 CESTAT CK 0108

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 51766 Of 2015

M/s Prime Steel Processors — APPELLANT

Vs

Commissioner Of Customs, Ludhiana — RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:
Customs Act, 1962 — Section 24, 28

Citation : (2021) 08 CESTAT CK 0108

Hon'ble Judges : Ashok Jindal, J;P. Venkata Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The appellant is in appeal against the impugned order wherein a demand of duty has been confirmed and redemption fine and penalty were also imposed on the appellant.

2. The brief facts of the case are that the appellant imported 128.720 MT of Heavy Melting Scrap (HMS) from Dubai and filed a Bill of Entry claiming the benefit of exemption from basic customs duty in terms of Notification No. 012/12 dated 17.03.2012 (Sr. No. 332). The assessing officer gave an examination order and the goods were examined by the import Shed Staff in the presence of CHA/ appellant's representative under the supervision of the Superintendent (Import) and it was found that the consignment had also 10 MT of hollow profiles (channels) and 5 MT of pipes (secondary and defective) along with HMS. The total weight of the consignment was 127.80 MT as against the declared weight of 128.720 MT, i.e. short by 1.640 MT.

3. The appellant sought re-examination and the re-examination confirmed the previous examination report. The appellant accepted the mis-declaration vide letter dated 8.5.2013 and waived the requirement of issue of the Show Cause Notice and requested for spot adjudication. On such adjudication, the appellant paid the differential duty, the redemption fine and penalty imposed in the spot

adjudication order and cleared the goods. Thereafter, the appellant challenged the said order before the Learned Commissioner (Appeals) who dismissed the appeal by the impugned order. Hence, this appeal before us.

4. Learned Counsel for the appellant submits that although the appellant requested for spot adjudication with regard to confiscation and redemption fine but the appellant never accepted the classification and valuation of the goods. Therefore, the adjudicating authority was required to issue a show cause notice under Section 28 of the Customs Act, 1962. Further, no proper opportunity of hearing was given while adjudicating the bill of entry. It is submitted that the appellant is a bonafide importer of the waste and scrap for melting but the foreign supplier has sent some defective hollow profiles and pipes in the Heavy Melting Scrap. These profiles and pipes are not meant to be used as such in India but are only meant for melting. To save his own cost of cutting them into scrap, their overseas supplier has dispatched them in the consignment of scrap which they had imported. These goods are old and used and were going to be used only for melting. Therefore, classification of these goods as pipes and profiles is not appropriate and differential duty cannot be confirmed accordingly. Therefore, he prayed that the impugned order may be set-aside.

5. As an alternative submission, learned Counsel submits that as duty involved in the matter is only 1,35,823/-, a redemption fine of Rs. 1,30,000/- and penalty of Rs. 2,25,000/- are excessive. As the appellant is a bonafide importer, the same may be reduced.

6. On the other hand, the Learned AR supported the impugned order and submitted that as the appellant has waived the issuance of the show cause notice and sought spot adjudication, and hence the classification done by the adjudicating authority is appropriate.

7. Heard the parties and considered the submissions.

8. On careful consideration and submissions made by both sides, we find that the question which needs to be addressed is whether the hollow profiles and pipes weighing about 10 MT found in the consignment were actually pipes and profiles and to be classified as such or merely as part of scrap. The only documents on the basis of which a decision can be made in this regard are the examination reports and the letter given by the appellant to the Customs authorities both of which confirm that they were indeed hollow profiles and pipes and not scrap as declared. The appellant accepted that the mis-declaration, waived the Show Cause Notice by asking for a spot adjudication. If the appellant had contested the nature of the goods, a Show Cause Notice would have been issued and the remaining procedures followed. The argument of the Learned Counsel is that although they accepted mis-declaration on their part and requested for spot adjudication, they never accepted the classification and valuation and a Show Cause Notice should have been issued. We find this argument without any force. Once the appellant gave in writing that they have mis-declared the goods, they

should be classified as profiles and pipes only and duty should be charged accordingly. It is worth noting that the goods were examined and on the request of the appellant, re-examined and after both these reports confirmed that the goods were hollow profiles and pipes, the appellant also accepted the mis-declaration in writing. If the pipes and profiles were indeed old, the appellant could have, instead of accepting a mis-declaration, requested for mutilation of these goods as per Section 24 so that they can no longer be used as pipes or profiles but need to be used as scrap only. However, the appellant made a request for spot adjudication accepting the mis-declaration and the order was passed accordingly. The appellant cannot now say that although they wanted a spot adjudication, the department should have still issued a Show Cause Notice. Therefore, we uphold the demand of duty in the adjudication order.

9. However, considering the fact that the differential duty is only 1,35,823/-, we find a case reduce the redemption fine and penalty imposed on the appellant. Therefore, the redemption fine is reduced to Rs. 50,000/- and the penalty is reduced to Rs. 15,000/-.

10. The appeal is disposed of as above.

(Pronounced on 10.08.2021)