

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40439 of 2022

(Arising out of Order-in-Appeal Seaport C.Cus. II No. 255/2022 dated 11.05.2022 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. ARS Steels & Alloy International Pvt. Ltd. : **Appellant**
(Formerly known as "M/s. ARS Metals Pvt. Ltd.")
B-1/S, SIPCOT Industrial Complex,
Gummidipoondi – 601 211

VERSUS

The Commissioner of Customs : **Respondent**
Chennai-II Commissionerate
No. 60, Rajaji Salai, Custom House, Chennai – 600 001

APPEARANCE:

Shri S. Venkatachalam, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40011 / 2023

DATE OF HEARING: 09.01.2023

DATE OF DECISION: 18.01.2023

Order :

This appeal is filed before this forum by the taxpayer against the Order-in-Appeal Seaport C.Cus. II No. 255/2022 dated 11.05.2022 passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the First Appellate Authority has confirmed the findings of the Adjudicating Authority. The Adjudicating Authority had *inter alia* held that the appellant had violated the provisions of Import Policy since the Pre-Shipment Inspection (PSI)

Certificate furnished by it was not as per Appendix-28 of the Foreign Trade Policy; that redemption of the goods in lieu of confiscation was allowed on payment of redemption fine and that a penalty was also imposed under Section 112(a) of the Customs Act, 1962.

2. Heard Shri S. Venkatachalam, Learned Advocate for the appellant and Shri M. Ambe, Learned Deputy Commissioner for the Revenue.

3. I do not see any disputes as regards the facts involved. The only issue that crops up upon hearing both the sides is: whether the PSI certificate submitted by the appellant-importer was sufficient compliance with Appendix-28 *ibid.* and that the authorities are justified in ordering confiscation and offering redemption fine in lieu of the same?

4. The Learned Advocate for the appellant defends the production of PSI certificate, which is issued by the Branch Office of the Inspection Agency whereas the Learned Deputy Commissioner for the Revenue seriously contends that the PSI certificate issued by the Branch Office is not figuring in the list in Appendix-28 *ibid.*

5.1 The appellant filed Bill-of-Entry for clearance of goods declared as 'Heavy Melting Scrap'. As per paragraph 5(iii) of Public Notice No. 152/2004 dated 19.10.2004 (as per Board's Circular No. 56/2004 dated 18.10.2004), metal scraps in un-shredded, compressed or loose form will have to be accompanied with a Pre-Shipment Inspection certificate as per the format prescribed in Annexure-I to Appendix-8 from any of the inspection and certification agencies given in Appendix-28 of the Handbook of Procedures (Vol. II) and as per paragraph 5(v) of the Board's Circular No. 56/2004 *ibid.*, any metal scrap imported in un-shredded, compressed or loose form, if not accompanied by the prescribed PSI certificate, would be subjected to 100% examination apart from stringent penal action for violation of the FTP.

5.2 Further, it is also a matter of record, *inter alia*, that when the goods in question were subjected to 100% examination, the same did not reveal any remnants of arms / ammunition or any such banned substances and that the DGFT itself vide Policy Circular No. 19/2004-2009 dated 18.02.2005 had made it clear that even a Branch Office of the Inspection Agency could get enlisted under Appendix-28 *ibid*.

6.1 The Learned Advocate for the appellant has referred to various decisions and, in particular, has relied on the decisions of the Hon'ble Gujarat High Court in the cases of:-

(i) *Commissioner of Customs v. M/s. Moolchand Steels Pvt. Ltd.* [2008 (224) E.L.T. 57 (Guj.)]; and

(ii) *Commissioner of Customs v. M/s. Senor Metals Pvt. Ltd.* [2009 (236) E.L.T. 445 (Guj.)]

to support his case.

6.2 In the case of *M/s. Moolchand Steels Pvt. Ltd.* (*supra*), the Hon'ble High Court has dismissed the Revenue's appeal, which involves an almost identical situation inasmuch as there has been the production of pre-inspection certificate though by an agency. The co-ordinate Bench of the Tribunal had held that the 100% inspection of the consignment was undertaken and nothing objectionable was found in the consignment, which consequently did not attract the provisions of the Customs Act and consequently, the order of CESTAT came to be upheld.

6.3 In the case of *M/s. Senor Metals Pvt. Ltd.* (*supra*), the Hon'ble Gujarat High Court has observed as under:-

"9. Thus, assuming there is any violation of the conditions prescribed by the Handbook of Procedures, such a violation is by the exporter in the first instance. The importer had, in fact, produced the certificate of inspection and the only dispute that was raised was that the agency not having been notified and specified on the date of inspection prior to shipment. However, once it is

found that the violation has not resulted in any specified categories of items being imported, the importer cannot be punished for the lapse on the part of the exporter considering that the legal obligation has been cast on the exporter to furnish the documents.

10. Section 11(d) of the Act permits confiscation of goods improperly imported, namely, any goods imported : (i) contrary to any prohibition imposed by or under the Act, or (ii) contrary to any prohibition imposed by any other law for the time being in force. The former is not the case of revenue. In so far as the latter is concerned, there is no prohibition against import of the goods in question "Paragraph No. 2.32 of the Handbook itself specifies this. Only, the import is subject to fulfilment of stipulated conditions which are to be complied with by the exporter. Non-compliance thereof may entail an importer to undergo 100% inspection of the entire consignment. That would not tantamount to improper import of goods as required by Section 111 of the Act."

Thereafter, the Hon'ble High Court had followed its earlier decision in *M/s. Moolchand Steels Pvt. Ltd. (supra)* and had dismissed the Revenue's appeal.

7.1 The Learned Deputy Commissioner for the Revenue has relied on the following orders of the co-ordinate Kolkata Bench of the CESTAT :-

- (i) M/s. GKW Ltd. v. Commissioner of Customs (Port), Kolkata [2009 (242) E.L.T. 280 (Tri. – Kol.)] and*
- (ii) M/s. Electrosteel Castings Ltd. v. Commissioner of Customs (Port), Kolkata [2009 (239) E.L.T. 258 (Tri. – Kol.)]*

7.2 I find that the Learned Kolkata Bench has observed that the appellants therein had taken necessary steps to obtain PSI certificate, as required, which had some defects and consequently, had upheld the confiscation ordered by the Adjudicating Authority while reducing the redemption fine, which is not the issue in the case on hand. None of the authorities below have observed that there was any defect in the PSI certificate submitted by the appellant herein; the only objection is that the same was issued by the Branch Office.

7.3 The guiding ratio from the decisions of the Hon'ble High court is that the furnishing of PSI certificate, even by the Branch, would serve the purpose. The facts before the co-ordinate Kolkata Bench were slightly different inasmuch as the certificates furnished were found to be defective.

8.1 What flows from the various decisions, therefore, is that, in the first place, there should be an improper import of goods leading to confiscation of the same. Here, there is no dispute that the PSI certificate which was furnished was complete in all respects, except the fact that the same was issued by the Branch Office. This implies that the Revenue has recognized and accepted the Branch Office of the issuing agent, but does not want to accept the certificate issued by the Branch. For this alleged violation, the goods were subjected to 100% examination by the authority, but the same did not result in detection of remnants of arms and ammunition or of any banned or objectionable substances. Thus, the goods were found to be in order and as declared in the Bill-of-Entry. Despite this, the Adjudicating Authority proceeds to hold that the import was improper and orders for confiscation of the goods in question which, according to me, is not due to any violation as described under the statute. When the question is considered in the larger perspective, it is clear that there is no violation as alleged, more so because the PSI certificate issued by the Branch was subsequently ratified by the DGFT (as reflected in paragraph 25 of the Order-in-Original), which serves the purpose.

8.2 Having considered the rival contentions and also having gone through the decisions / orders relied upon during the course of arguments, I am of the considered view that the appellant should succeed. I find that the decisions/orders (*supra*) support my view. The authorities have found that the violation, if any, has not resulted in any specified categories of items being imported or that there was any reason to hold that there has been an improper importation of the goods in question, resulting in

confiscation of the same. To put it in simple terms, the goods have not been imported contrary to any prohibition imposed by or under the Act or contrary to any prohibition imposed by any other law for the time being in force. This is because the import is subject to fulfilment of stipulated condition, failing which the only consequence prescribed is the 100% inspection of the entire consignment. This, *ipso facto*, therefore, would not tantamount to improper import of goods within the meaning of Section 111(d) of the Act. Consequently, the authorities below are not justified in demanding redemption fine and penalty under Section 112(a) of the Act.

9. In view of the above discussions and the decisions of the Hon'ble High Court (*supra*), the impugned order cannot sustain and therefore, the same is set aside.

10. Resultantly, the appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **18.01.2023**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd