

Madhya Pradesh High Court

Uwas Recyclers Llp vs Customa Authority Of Advance ... on 12 May, 2022

Author: Vivek Rusia

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE ANIL VERMA

HEARD ON THE 7th OF APRIL, 2022

ORDER PASSED ON THE 12th OF MAY, 2022

OTA No. 3 of 2021

Between:-

UWAS RECYCLERS LLP 207, RAFAEL
TOWER, 8/2, OLD PALASIA, INDORE 452001
THROUGH PARTNER NEERAJ KUMAR JAIN
S/O MOHANLAL Jain

.....APPELLANT

AND

CUSTOMA AUTHORITY OF ADVANCE
RULLING MUMBAI NEW CUSTOMS HOUSE,

1. BALLARD ESTATE, MUMBAI
(MAHARASHTRA)
COMMISSIONER OF CUSTOMES. CUSTOMS
3RD FLOOR 12/2/7 AND 12/2/8, B ZONE.
2. BUSINESS SPACE, VILLAGE PIPLIYA
KUMAR NIPANIA, INDORE (MADHYA
PRADESH)
PRINCIPAL CHIEF COMMISSIONER OF
CUSTOMS MUMBAI CUSTOMS ZONE. 1
3. BALLARD ESTATE. MUMBAI
(MAHARASHTRA)

.....RESPONDENTS

Shri T Vishwanathan Charanya alongwith Ms.Anjali Hirawat,
learned counsel for the appellant.

Shri Prasanna Prasad, learned counsel for the Respondent

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Nos. 1 to 3.

The appellant has filed this appeal under Section 28 KA of the Customs Act, 1962 against the order dated 27.08.2021 passed by Customs Authority for Advance Rulings, Mumbai whereby classification of "mill processed non-allow ferrous waste metal goods wound in a coil" (hereinafter referred to as "the Goods in Question") has not been treated as waste material under the Tariff item 72044900 of the First Schedule to the Customs Tariff Act, 1975.

The facts of the case in short are as under:

[2] The appellant is a limited liability partnership firm duly incorporated on 14.06.2021 and also registered in India under the Companies Act, 1956. The company has obtained registration with the Directorate General of Foreign Trade (DGFT) with a valid Importer-Exporter Code (IEC) Number AAGFU9198K. The appellant intended to import the goods in question from South Africa, and submitted an application under section 28H before the Custom Authority for Advance Rulings (in short "CAAR") seeking the classification of the goods in question as "waste and scrap" under Custom Tariff Item (CTI) 72044900 as defined as waste and scrap under the Note 8(a) of Section XV. The appellant has applied for obtaining the order from CAAR in order to get exemption under Serial No. 368 of Notification No.50/2017-Cus dated 30.06.2017 as amended vide notification No.02/2021-Customs dated 01.02.2021. [3] In terms of 13 of CAAR, the Customs Authority for Advance Rulings vide letter dated 18.06.2021 appointed respondent No.2 as Jurisdictional Commissioner for providing relevant

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records/comments on the application filed by the appellant. Respondent No.2 vide letter dated 07.07.2021 approved the classification of "the goods in question" in support of the appellant. The appellant was given an opportunity for a personal hearing on 05.08.2021 by respondent No.1, thereafter, sought certain clarification vide email dated 10.08.2021, to which the appellant replied vide email dated 17.08.2021. Respondent No.1 vide impugned order dated 27.08.2021 has held that the goods in question cannot be classified as waste and scrap as the same is classifiable under Tariff Item 7209 90 00 assigning reasons:

[i] The definitions of " hot rolling" and " cold rolling" were noted and it was also observed that "hot rolling" and " cold rolling" are mechanical processes used in the production of flat-rolled products. The goods in question intended to be imported in the form of coils conform to the parameters specified in Chapter Note 1(k) to Chapter 72. Therefore, the goods in question are flat rolled products.

[ii] IS 7226:1974 has been referred to observe that the cold rolling operations require subjecting hot rolled products to cold rolling. Further, the General Explanatory Note IV (B) (1) to Chapter 72 also specifies that the cold rolling is carried out at ambient temperatures i.e. below recrystallisation temperatures and hot rolled products are used as raw materials in the said cold rolling process. In this context, the appellant's contention that the goods in question are neither hot-rolled or cold-rolled products was rejected and the classification of the same was confirmed under Heading 7209.

[iii] The goods in question cannot be considered as prime cold rolled sheets or strips as there are various other operations that can be carried out on the strip or sheet such as shearing, blanking, stamping, embossing and spinning roll forming etc. However, goods in question can still be used for other purpose as cold rolled sheets or strips. [iv] The goods in question are not used for recovery of metal by re- melting. Further, the repair, renovation and re-rolling of the goods in question make them capable of being adapted for other uses and hence, the same cannot be treated as metal waste and scrape and are not classifiable under Heading 72.04. Consequently, the benefit of Sr. No.369 of Notification No.02/2021-Cus dated 01.02.2021 is not available.

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[v] Further, it is difficult to obtain a high length (10-20 meters) of scrap from crop of a coil. Therefore, the goods in question cannot be considered as re-rollable steel scrap as specified under IS 2549:1994. [vi] The goods in question are essentially cold-rolled products as the hot rolled coils are used as raw material to manufacture cold rolled products by rolling them at ambient temperatures and thus, classifiable under heading 72.09. Therefore, given the uneven thickness of the goods in question, they are appropriately classifiable under Tariff Item 72099000.

[4] Being aggrieved by the aforesaid order, the appellant has preferred this Other Tax Appeal under Section 28 KA of the Customs Act, 1962 before this Court.

[5] The appellant has filed this appeal contending that the goods in question are indeed metal waste and scrap which are obtained from the mechanical working of metals. The Hot rolled coil is made to pass between two reels and the hydraulic force is gradually applied is initially low and is elevated to the desired level. While the intensity of the hydraulic force applied is low, uneven gauges i.e. thickness, width and elongations are created on the coil. The length of the coil with uneven gauges is cut at both ends and disposed of as scrap. These cut-ends from the main roll are not treated as a finished product, instead, they are generally an unavoidable by-product of the cold rolling process. It is further submitted that during the cold rolling process certain significant characteristics of the goods in question are (i) non-uniform gauges at indefinite intervals in the same coil. (ii) weight of the coils ranges from 200-800 Kgs. (iii) length of the product varies from 15 to 20 meters. The goods in question generated during this process of cold rolling cannot be used as prime cold roll products. Hence, they are being sold as a waste product. It is further submitted that a hot-

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rolled coil is wound onto an entry reel and allowed to pass between 4 HI or 6HI steel rolls in single stand cold rolling to achieve the desired thickness of the coil. The length of the coil on which hydraulic force has been unevenly applied is rendered neither hot rolled nor cold rolled with varying gauges i.e. thickness, tensile strength and elongations.

It is further submitted by the learned counsel that the impugned ruling has been passed without proper appreciation of the nature of the goods in question as well as the legal position involved in this case. Learned counsel argued that goods in question are nothing but waste and scrap of steel, therefore they are classifiable under CTI 72044900 i.e. Ferrous Waste and Scrap; Remelting Scrap Ingots of Iron Or Steel. Note 8 (a) of Section-XV of the Customs Tariff defines waste and scrap and according to which metal waste and scrap from the manufacture or mechanical working of metals, and metal goods are not usable as such because of breakage, cutting-up, wear or other reasons. Respondent No.1, learned authority has decided the issue on the basis of the aforesaid definition of waste and scrap, however, w.e.f. 01.01.2022, section 8 has undergone change and according to which all metals are defined as waste and scrap therefore, now the authority is required to reconsider the claim of the appellant in view of the change in the definition of waste and scrap note 8 (a) (ii) Section-XV, hence, liberty may kindly be given to the appellant to apply again in order to seek an advance ruling, in view of the change of circumstances. In support of his contention, the learned counsel has placed reliance on the order passed by the Division Bench of this Court in the case of Bharat Heavy Electricals Ltd. Vs. CC & CE reported in 2015

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(316) ELT 413 (M.P.) in which it has been held that any circular issued by C.B.E. & C. Circular has to be followed by departmental officers unless shown to be contrary to any law laid down by Supreme Court or High Court. The departmental officer cannot be refused to follow the same in the garb of being an administrative circular, advisory in nature. Hence, the impugned order be set aside and the goods in question be classified as waste and scrap. [6] The respondents have filed a reply opposing the admission of this appeal on the ground that waste and scrap are generally used for the recovery of metal by re-melting or for the manufacture of chemicals. The goods in question are not used for recovery of metal by re-melting with repair, renovation or re-rolling these goods can be adapted for other use, hence same cannot be treated as metal waste and scrap and are not classifiable under item 72.04. It is further submitted that the appellant has declared that the length of the coil will be 10-20 meters but it is difficult to get such a high length of scrap from the crop end (front and back end cuttings) of a coil. Hence, goods in question cannot be classified as remelting scrap attracting NIL rate of duty. The Advance ruling authority had exhaustively dealt with the issue and passed an elaborative order with reasoning and the same is not liable to interfere.

It is further submitted by the learned counsel Shri Prasad that now the Office of Commissioner, Customs Indore has issued show- cause notices under Section 28(4) read with 124 of Customs Act to the appellants and other similar importers who are dealing with the import of M.S. Coil Bundle End Cuts were being misclassified under the Customs Tariff Item 72044900 of Customs Tariff Act, 1975 instead of Customs Tariff Item 72099000 and also the

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imported goods are undervalued to evade customs. Shri P Prasad learned counsel prays for dismissal of this Other Tax Appeal.

We have heard learned counsel for the parties and perused the record.

[7] The appellant being an importer intends to import mill processed non-alloy ferrous waste metal goods wound in coil from South Africa and placed a purchase order for a supply of 200 MT of the product in an 8x20 feet container. According to the appellant, it is a "RE-ROLLABLE WASTE" unavoidably obtained as a result of the manufacturing of " Cold Rolled Coils" from " Hot Rolled Coils". Such a coil which is neither a Hot rolled nor a cold-rolled is having multiple thicknesses, tensile strength etc. These coils are thus generated at the initial stage, and are cut out at ends and would in coil form, which is nothing but mill waste and does not serve the purpose for which they are meant. The thickness is between 0.30 mm to 4 mm which is a non-uniform thickness likewise the width is from 900 mm to 1400 mm. Accordingly, weight ranges from 200- 800 kgs and length are 15 to 20 meters. The goods for which the advance ruling is being sought by the appellant are mill processed non-alloy ferrous metal goods wound in a coil. First Schedule of Customs Tariff Act defines the Flat-rolled products as under:-

(k) Flat-rolled products :

Rolled products of solid rectangular (other than square) cross- section, which do not conform to the definition at (ij) above in the form of:

- coils of successively superimposed layers, or
- straight lengths, which if of a thickness less than 4.75 mm, are of width measuring at least ten times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness.

Flat-rolled products include those with patterns in relief derived directly from rolling (for example, grooves, ribs, chequers, tears,

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buttons and lozenges) and those, which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings.

Flat-rolled products of a shape other than rectangular or square, of any size, are to be classified as products of a width of 600 mm or more, provided that they do not assume the character of articles or products of other headings.

[8] The goods in question are having a thickness between 0.30 mm to 4 mm, width is from 900 mm to 1400 mm with weight ranging from 200-800 kgs and lengths between 15 to 20 meters has rightly been categorized as flat-rolled products not waste and scrap. As per item No.7204, Ferrous waste and scrap; remelting scrap ingots of iron or steel and the appellant is claiming under the item No.7204 49 00 i.e. other because same is not falling in any of the items from 7204 10 00 to 7204 50

oo. Learned Authority has considered the product in question under heading 7209 i.e. Flat- Rolled Products of Iron or Non-Alloy steel, of a width of 600 MM or More, Cold-Rolled (Cold-reduced), Not Clad, plated or coated. In this category, only the width or thickness was mentioned irrespective of the length of the roll. The appellant is intending to import coils having a thickness ranging from 0.30 mm to 4 mm and a width of 900 mm to 1400 mm, these physical parameters satisfied the explanation given in the above chapter is Flat-rolled products. The authority in para 10 has elaborately discussed how the cold- rolled products are manufactured. In general terminology the waste and scrap materials are not liable to be used in the same form, they are treated as waste and scrape unless melted but Flate products are being used in manufacturing sectors like automobiles, railway, shipping, pressure vessel, boiler pipe, domestic appliances etc. It might be waste and scrap to the manufacturer but purchasers or

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manufacturers of any other product can use this by cutting or finishing as these goods in question can be used as raw material to make a new finish product. The learned authority has considered IS 2549:1994 i.e. code for classification of processed ferrous scrap which provides the standard for classification of processed ferrous scrap and found it does not apply to the product in question. As per the appellant, the goods in question are not used for recovery of metal by re-melting by way of repair, renovating or re-rolling these goods can be adapted for other use, hence, it is not wholly metal waste and scrap and is not liable to be classified under subheading 7204. Even otherwise the appellant is an importer and does not intend to use the product for himself, the appellant will sell the product after import to various other manufacturers, therefore, it can not be decided on an application by the importer that the goods in question are being purchased as waste and scrape. [9] Learned counsel has submitted that even if an advance ruling is given in favour of the appellant for the goods in question as "RE- ROLLABLE WASTE" even then in terms of Section 17, 18 and 46 of the Customs Act, the authority has excess to the imported good. It is correct that these sections give them wide power in the assessment of imported goods by physically examining them at the port but once the advance Ruling has been given by the superior authority the subordinate authorities posted at the Port will not examine for the purpose of classification in the appropriate category. As per section 28J (2) of the Customs Act, if there is any change in the facts the ruling would not apply but it would be an issue for adjudication by the competent authority. The metal waste is invariably subject to physical examination, as there are various

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factors to be considered to conclude that particular good is a waste product or not, it depends on who is purchasing and how it would be used therefore, an advanced ruling cannot be treated as blanket permission to the importers to import the goods of all kinds of waste and scrap.

In view of the above discussion, we do not find any grounds to interfere, hence OTA is hereby dismissed.

(VIVEK RUSIA)
JUDGE

(ANIL VERMA)
JUDGE

praveen/-

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