

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 59993 of 2013

[Arising out of Order-in-Appeal No. ASR-CUSTOM-PVR-APP-45-13-14 dated 15.07.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh-I]

M/s J S Steel Traders

Amloh Road, M.C, Disposal Road,
Mandi, Gobindgarh, Punjab-147301

.....Appellant

VERSUS

Commissioner of Customs, Amritsar

Preventive Customs House, C.R. Building, The Mall,
Amritsar, Punjab

.....Respondent

APPEARANCE:

Shri Saurabh Kapoor and Ms. Tanya Kumar, Advocates for the Appellant

Shri Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60233/2026

DATE OF HEARING: 19.02.2026

DATE OF DECISION: 09.03.2026

P. ANJANI KUMAR:

M/s J.S. Steel Traders, the importers imported 99.120 MT of cargo, declared as "Heavy Melting Scrap" (HMS), classified under Customs Tariff Heading (CTH) 72044900, vide Bill of Entry No. 9767180 dated 04.04.2013; the consignment was imported in 4x20' containers from M/s A.W. Parker's Enterprises, Australia at a

declared assessable value was Rs. 22,25,199 and duty payable of Rs. 3,75,044. Examination of the cargo was conducted on 10.04.2013, by the officers in the presence of the Customs House Agent (CHA); it was revealed that while 64.780 MT of the consignment was HMS, the remaining 35.000 MT was found to be "old and used gas cut drill pipes" of varying lengths (7 to 12 feet) and diameters (4" to 8"). It appeared to the Revenue that the imported goods i.e. "second-hand goods", are liable for confiscation being mis-declared, imported in violation of Para 2.17 of the Foreign Trade Policy (FTP) and that the appellant was liable to penalty. Additional Commissioner, vide Order-in-Original, dated 16.05.2013, confiscated the 35.00 MT of old and used pipes; gave an option to redeem the goods on payment of a fine of Rs. 1,30,000 and imposed a personal penalty of Rs. 80,000. On an appeal filed by the appellants, Commissioner (Appeals), Chandigarh, vide Impugned Order, dated 15.07.2013, upheld the decision of the adjudicating authority. Hence, this appeal.

2. Shri Saurabh Kapoor, Learned Counsel for the appellants, reiterates the grounds of appeal. He submits that the imported cargo is no drill pipes as alleged; the goods are not suitable for use as drill pipes and are fit for recovery of metal by melting; even though the photographs were shown the adjudicating authority as well as Commissioner (Appeals) accepted the conjectures of the Department; they cannot be classified as drill pipes under 7304.21 as they were not of normal length of 10 meters and were not having male and female conical heads on both ends; therefore, the

impugned goods are scrap and there is no violation of FTP. He submits that the impugned goods are HMS and not pipes; clarification by the Commissioner of Customs, Amritsar (dated 15.01.2013) supports their case; the provisions of statute cannot be assumed; more so, when the expert confirmed the declared classification. He relies on the following cases:

- Durgapur Steel – 2001 (132) ELT 784 (Tri. Kolkata)
- MTC Business Pvt. Ltd. – 2012 (275) ELT 462 (Tri. Mumbai)
- Ship Chains – 2003 (156) ELT 458 (P &H)
- Shiva Ispat Udyog
- Global Shiptrade Pvt. Ltd. – 2002 (142) ELT 152 (Tri.)
- G.H. Shaikh – 2002 (142) ELT 152 (Tri.) and 2010 (254) ELT 297 (Tri. Kolkata)

3. Learned Counsel further submits that no adverse inference could be drawn against the appellant if the goods are of the type not mentioned in ISRI Code or in VIS; every scrap which is not covered by ISRI cannot be held to be serviceable goods. Subsequent import of identical goods, declared as heavy melting scrap of drilling pipes, vide Bill of Entry No.2865033 dated 31.07.2013, by the appellants, were cleared by the authorities without any question. He would submit that as the goods are not liable for confiscation, redemption fine cannot be imposed; the appellants contend that the profit margin in HMS trade is around 6 to 7 % and therefore, redemption fine of even 10% would be very high. He relies on the following cases:

- Pushpal Exports Pvt. Ltd. – 2013 (295) ELT 424 (Tri. Ahmd.)
- International Airports Authority of India – (1995) 3 SCC 151
- Sujana Steels Ltd. – 2002 (141) ELT 343

4. Learned Counsel also submits that penalty cannot be imposed as the goods were correctly declared and there was no under-valuation; the anti-smuggling unit did not consider their requests for expert examination or trade enquiry; the value of re-rollable material cannot be taken for the reason that identical or similar goods were not available; several requests made for provisional release were not considered by the appellants and no reply was given. He submits that it only a misunderstanding of the cargo by officers and there was no intent to evade payment of duty. Hence, confiscation and imposition of redemption fine penalty is not justified. He relies on the following cases:

- Jas International – 2011 (272) ELT 282 (Tri. Del.)
- Maersk India Ltd. – 2001 (129) ELT 1105 (Tri. Del.)
- Delco Precitone Jewellers Pvt Ltd. – 2000 (124) ELT 1105 (Tri. Del.)

5. Shri Anurag Kumar, Learned Authorised Representative, for the Revenue submits that the appellants misdeclared the goods.; violated the provisions of Para 2.17 of Foreign Trade Policy (Import of Restricted Goods); the appellants did not possess the required authorization or license; the goods are rendered liable to confiscation under Section 111(d); mis-declaration of pipes as scrap was with intent to evade payment of applicable duty of Rs. 1,20,146. Hence, the goods were correctly confiscated and redemption fine and penalty was rightly imposed. He submits that HSN Explanatory Notes to Heading 72.04 clearly exclude from the definition of "waste and scrap" any article that can be re-used for its former purpose or adapted for other uses, either with or without

repair; examination and photographs confirm the goods are pipes, albeit used and cut; the fact that they are "gas cut" and have varying dimensions does not automatically render them to be scrap; they remain identifiable as pipes and could be used for fencing, structural supports, or other purposes after minor changes; the appellants did not prove that the goods are scrap. He relies on *Welkin Foods (2026) 38 Centax 104 (SC)* and submits that classification of goods should be based on the condition of import; 'Use' is relevant only if the tariff entry refers to it and intended use must be inherent in the product's objective features. He submits that therefore, the appellant's arguments are not acceptable.

6. Learned Authorised Representative submits that the appellants misread the FTP; the clarification letter dated 15.01.2013 pertains to a different context and does not cover old and used pipes. He submits that the submissions on subsequent bill of entry are misplaced; each import is a separate transaction and must be judged on its own merits; the assessment of a subsequent Bill of Entry cannot be used to justify a past mis-declaration; principle of *res judicata* does not apply to assessment proceedings.

7. Learned Authorised Representative further submits that once it is established that the goods were mis-declared and are restricted, confiscation has been correctly confiscated; penalty under Section 112(a) is automatic upon the goods being rendered liable to confiscation; *mens rea* is not an essential ingredient for impositions of penalty; penalty is a civil liability as held by Hon'ble Supreme Court in *Pushpaman Forgings 2002 (144) ELT 260 (SC)*.

8. Heard both sides and perused the records of the case. We find that the appellants imported 99.120 MT of cargo, declared as "Heavy Melting Scrap" (HMS). On examination by officers of the customs, it appeared to the department that out of the imported cargo, 64.780 MT of the consignment was HMS, 35.000 MT was "old and used gas cut drill pipes" of varying lengths (7 to 12 feet) and diameters (4" to 8"). It appeared to the Revenue that part of the imported goods was "second-hand goods", whose import is restricted under Para 2.17 of the Foreign Trade Policy (FTP) and that the appellant was liable to penalty. The question that arises is whether the quantity ascertained as "old and used gas cut drill pipes" by the revenue was used goods or HMS. It is seen that unlike in other cases, Revenue has not engaged any expert or chartered engineer to examine the cargo. We are of the considered opinion that such an examination would have thrown a certain light on the exact nature of the goods. Revenue officers are not experts to decide the same. Revenue did not put forth any documentary evidence which indicates that the cargo was used/second hand goods. It is not clear as to whether the goods could be used for the purposes they were manufactured. The importer did not accept the findings by the department.

9. We find that Revenue attempts to classify the Heavy Melting Scrap imported by the appellants as second hand used pipes for the reason that a portion of the cargo consists of drill pipes of certain lengths. We find that the original authority and the appellate authority have given a go-bye to the relevant section and chapter

notes, particularly those defining waste and scrap. We find that Section Note 8 to the Schedule 1 of Customs Tariff Act provides as follows:

8. In this Section, the following expressions have the meanings hereby assigned to them:

(a) waste and scrap:

metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.

(b) Powders:

products of which 90% or more by weight passes through a sieve having a mesh aperture of 1 mm.

10. We find that goods definitely not usable as such are to be classified as waste and scrap. We find that Tribunal in the case of Global Ship Trade (P) Ltd. - 2002 (142) E.L.T. 152 (Tri. - Del.) held that

2. *The contention of the appellant is that the appellant made import of Heavy Melting Scrap consist of old and used railways axles from Russia and filed bill of entry claiming benefit of Notification 21/2002-Cus. The contention is that the appellants are actual user as having induction furnace and as per the provisions of Notification 21/2002-Cus. the appellants filed necessary declaration to the effect that the same are to be used of melting purpose and the appellants are also liable to produce certificate by the proper officer regarding specific use. The contention of the appellant is that the impugned goods cannot be treated as second hand railways axles. The Chartered Engineer's opinion is not definite. It is also submitted that the value declared by the appellants was accepted by the Customs Authorities. The appellants also relied upon a decision of the Hon'ble Supreme Court in the case of M/s Tata Iron & Steel Company Ltd. v. Collector of Central Excise reported in [1995 \(75\) E.L.T. 3](#) (S.C.), to submit that the iron & steel scrap*

composed of arising of steel mills such as old and used rails, billets, plates, axles, channels etc. are to be classified as scrap. The appellants also relied upon the decision of the Tribunal in the case of *Global Shiptrade (P) Ltd. v. Commissioner of Customs, Kandla* reported [2002 \(142\) E.L.T. 152](#) (Tri.-Del.). The contention is that in that case, the import was made of old and used rusty pipes and the Revenue wants to classify the same as cut piece of pipes. The Tribunal held that the old and used pipes are to be treated as melting scrap as no evidence is produced by the Revenue that such pipes are serviceable. The contention of the appellants is that in the present case also there is no evidence produced by the Revenue to show that the goods in question are serviceable. Therefore, the impugned order is not sustainable.

3. The contention of the Revenue is that the goods in question are old and used goods and under the Import Policy, specific license is required, therefore, liable for confiscation. The Revenue also submitted that in the impugned order, the Commissioner (Appeals) held that it is common knowledge that no finished product becomes scrap merely on the ground that it is used. An item needs to be unusable/unserviceable to become scrap.

4. We find that the appellants made import of Heavy Melting Scrap consisting of old and used axles. We have seen the opinion of Chartered Accountant dated 29-10-2005. There is no whisper in the expert opinion that the impugned goods are serviceable.

5. Further, we find that the Hon'ble Supreme Court in the case of *Tata Iron & Steel Company Ltd. (supra)* held that the old and used rails, billets, plates, axles, channels etc, are to be treated as scrap. The Tribunal in the case of *Global Shiptrade (P) Ltd. (supra)* held that the old and used rusty pipes in the absence of any evidence are serviceable, are to be treated as melting scrap. In view of the above discussions and in view of the decision of the Hon'ble Supreme Court, we find merit in the contention of the appellants. The impugned order is set aside and the appeal is allowed.

11. We further find that Tribunal in the case of Shiva Ispat Udyog - 2010 (254) E.L.T. 297 (Tri. - Kolkata) held that

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12. We also find that the appellants relied upon the case of Lucky Steel Industries. We find that coordinate Bench at Ahmedabad held in this case, vide Final Order No. A/10801-10802 /2023 dated 06.04.2023, held that

5.4 The imported goods are correctly classifiable under Heading 7204 of the Customs Tariff Act and are eligible for exemption under Notification No. 21/2002-Cus. In the present matter the entire consignment was re-rollable and melting scrap only „scrap“ bought as stock lot is bound to contain articles in different shapes and forms including some serviceable material which are considered as scrap in the exporting country, it does not mean that the entire lot will be considered not as scrap or segregated within serviceable and scrap. In the present matter department nowhere disputed that the consignment imported has not indeed been used in the manufacturer of rolled products. In these

circumstances, it cannot be said that the appellant has mis-declared the goods and consequently the goods are not liable for confiscation.

5.5 We observed that in the present matter the revenue did not adduce any evidence except the test report and chemical examiner report to support the allegation that the goods is not re-rollable plate & pipe material scrap but an article of steel. It may be possible that the goods appear to be article of steellike plate and pipe but if it is not usable in their original form and the same has been used as re-rollable scrap / Melting Scrap, merely because the scrap is in the form of used article of steel it is not sufficient to deny the classification as Scrap. Further in the present matter, the supplier treated the same as scrap only. It is a matter of fact that the said scrap was utilised as re-rollable/ melting scrap only. Therefore, denying the classification and the exemption are bad in law.

5.6 In the present case revenue classified the disputed goods under chapter heading 7211 (Plates having width of less than 600mm), 7208 (Plates having width more than 600 mm) and 7206 (Pipes). However between the different competing chapter headings 7204 is more appropriate because the goods are more in the nature of scrap and not in the nature of Plates and Pipes. Further the disputed goods are not suitable for use as Plates and Pipes. Therefore order of both the authority classifying the disputed goods under CTH 7211, 7208 and 7206 legally not correct.

5.7 We also find that one of the issue involved in this matter was that the Kandla Port was not notified port for the purpose of import of disputed goods. However we have gone through the Public Notice No. 16/2004-2009 dated 15.10.2004 submitted by the appellant before us and noticed that import policy was amended and to permit the Kandla port for import of metallic waste and scrap in unshredded, compressed and loose form.

5.8 We also find that in the present matter the only reason for increase in value made is mis-declaration in description of goods. No evidence of additional remittance of money is

brought out. Also there is an issue that scrap is not a type of goods which can be easily compared. The appellants have also taken objection that the value adopted for assessment has no legal basis. We also find that, there is no admission of Appellant admitting to undervaluation, or any evidence of any extra financial consideration apart from the declared transaction value, paid to the overseas supplier. Further, there is no evidence that the appellant and overseas supplier are related parties or that the invoice value was not the transaction value. The Department has failed to show any contemporaneous evidence of higher price, and thus the transaction value cannot be rejected, as held by the Hon"ble Apex Court in Commissioner Central Excise v. Sanjivani Non-Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378 = 2019 (365) E.L.T. 3 (S.C.) and Commissioner of Customs v. South India Television Pvt. Ltd. - (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.). Further, in the present case, particularly, when the invoice price of the appellant was not disputed on the basis of any evidence of wrong declaration of the value, the enhancement in the present case is illegal and incorrect. We find that there is no dispute that the customs has power to reject the transaction value and enhance the assessable value in terms of Customs Valuation Rules. However, such rejection of transaction value and enhancement of assessable value has to be on the basis of some evidence on record. Contemporaneous imports have to be considered in reference to quality, quantity and country of origin with the imports under consideration. For any enhancement in assessment value, the transaction value has to be first rejected based on legal permissible ground as indicated in the valuation Rules. We find that in the present matter, Revenue has not advanced any such evidence to support their case inasmuch as, no evidence of rejection of transaction value was produced by the department.

13. We find, in view of the above, that Revenue has not made out any case of mis-declaration on the part of the appellants and

therefore, the consequent enhancement of value and seizure do not stand scrutiny of law. Therefore, we find that the impugned order is liable to be set aside. We do so and allow the appeal with consequential relief, if any, as per law.

(Order pronounced in the open court on 09/03/2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK