

**Commissioner of Customs Vs. Sona Casting (P) Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-01-2006

**Judge :** M Ravindran

**Appellant :** Commissioner of Customs

**Respondent :** Sona Casting (P) Ltd.

**Judgement :**

1. These two appeals are directed against the Order in appeal dated 25.2.2005 wherein the Commissioner (Appeals) has allowed the appeals of the respondents in respect of two orders in original which demanded duty, interest, confiscation of goods and imposed redemption fine and personal penalty.

2. The relevant facts that arise for consideration are the appellant imported heavy melting scrap and filed two bills of entry availing the benefit of Notification No. 11/97-Cus dated 1.3.1997 cleared the goods on the basis of assessed amount of duty. The said notification requires an undertaking to be given by the respondents for consumption/end use of the heavy melting scrap as per the provision of the notification.

The respondents filed end use certificate for the consumption of heavy melting scrap in their factory for a quantity of 203.950 MT and 109.055 MT. The department issued a show cause notice demanding duty on the differential quantity of the heavy melting scrap which was not consumed by the respondents in their factory i.e. 6.823 MT and 3.750 MT. The said show cause notice was

adjudicated and the adjudicating authority vide order in original confirmed the demand of duty, interest and confiscated the goods and also imposed penalty. On appeal, the Commissioner (Appeals) set aside both orders in original and allowed the appeals of the respondents. Hence these appeals.

4. The learned DR submits that the issue involved in these case is that the respondents have not adhered to the conditions of the notification.

They were required to submit the end use certificate of the goods which they cleared under concessional rate of duty. In the absence of end use certificate for the quantity of 6.823 MT and 3.750 MT, the department was right in demanding duty, interest, confiscation of the goods, and personal penalty on the appellant. It is his submission that the respondents themselves filed a bill of entry for the clearance of the goods and they cannot now say that they received the quantity less after clearing the same from warehousing corporation.

5. Considered the submissions of learned DR and perused the case record. I find that the bill of entry in both cases indicate the actual weight cleared from the customs authority as 210.773 MTs and 112.805 MTs. I find that the respondents have not filed any submission nor they have submitted any evidence regarding short receipt of the goods from the customs authority. From mere perusal of the order in appeal, I find that the Commissioner has come to the conclusion based on the documents i.e. photocopies of the gate passes loaded in the truck from the premises of Punjab State Warehousing Corporation who was the custodian of the goods and has come to the conclusion that the respondents have received only 109.055 MTs and 112.805 MTs. To my mind, this would be incorrect conclusion inasmuch as, that, the custodian of imported goods, Punjab Warehousing Corporation should have pointed out the shortage of goods when they received the goods in the warehouse. The said consignment when collected by the respondents, as was given to them by warehousing corporation, the respondent should have brought to notice of the authorities the shortage as soon as they took the possession of the goods from the warehouse. Since no evidence is produced, it is to be considered, the shortage of goods between the warehoused of the goods and receipt of goods might have taken place in the warehousing

corporation, for which the customs authority have got every right to demand duty. Since in these cases, the goods have been imported by the respondents for which they have to furnish an undertaking as provided in the notification, it was for them to take due care to discharge their obligation. Since they have not done so, duty has correctly been demanded from the respondents.

6. Orders in appeal which set aside the demand of duty on the respondents is improper and is liable to be set aside and I do so.

7. In respect of redemption fine and penalty, to my mind, the respondents have not acted in any manner which would render the goods liable for confiscation under Section 111 of the Customs Act, 1962, inasmuch as that they have produced end use certificate for the quantity of the goods which they received and consumed for manufacturing, as this is the quantity they received from the warehouse. Having produced end use certificate for the quantity received by them, to my mind, they have not erred in any manner to make goods liable for confiscation under Section 111. Confiscation of the goods ordered by the authority under Section 111(d) of the Customs Act, 1962 in both the cases are set aside. Since, I have set aside the confiscation of the goods under Section 111(d) no penalty is imposable on the respondents. The penalty imposed on the respondents is set aside.

8. In view of the above, the orders in appeal are allowed partly to the extent as indicated in above paragraphs.

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