

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

Customs Appeal No. 40233 of 2015

(Arising out of Order in Appeal C. Cus. II No. 57 & 58/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

Greta Steels Ltd.

New No. 39, Old No. 50,
ABC Trade Centre, 4th Floor
Anna Salai, Chennai – 600 002.

Appellant

Vs.

Commissioner of Customs

Chennai – IV Commissionerate
Custom House,
60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri A. Mudimannan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Auth. Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 40733/2025

Date of Hearing: 01.05.2025

Date of Decision: 15.07.2025

This appeal is filed by the appellant against Order in Appeal C. Cus. II No. 57 & 58/2014 dated 31.10.2014 passed by the Commissioner of Customs (Appeals – II), Chennai.

2. Brief facts of the case are that M/s. Kamachi Sponge & Power Corporation Ltd. had purchased Light Melting Bundle Steel Scrap (LMS) on high sea sale basis from the appellant who had procured the impugned goods from Mauritius. The consignment was subjected to first check. The pre-shipment inspection certificate (**PSIC**) was procured by the appellant (high sea seller) from M/s. Worldwide Inspection Services Pvt. Ltd. New Delhi. On the face of it, the

certificates appeared to be not proper as the agency was not authorized to issue PSIC for the impugned goods emanating from Mauritius as per para 2.32.1 of the Handbook of Procedure and hence the certificate was not eligible to be used for the clearance of the said goods into India. After due process the Ld. Original Authority imposed a penalty of Rs.1,65,000/- on the appellant under sec. 112(a) for having rendered the goods liable for confiscation apart from other action against the importer etc. In appeal, the Ld. Commissioner (Appeals) upheld the penalty imposed. Hence the present appeal.

3. The learned Advocate Shri A. Mudimannan appeared for the appellant and Ld. Authorized Representative Smt. Anandalakshmi Ganeshram, appeared for the respondent.

3.1 The Ld. Advocate Shri A. Mudimannan submitted on behalf of the appellant that the appellant is a regular importer of re-rollable scrap and billets falling under Chapter 72:00 of Customs Tariff Act, 1975. The present dispute relates to the import of metal scrap from Mauritius. The branch offices of inspection agencies which are registered under Appendix 28 of the Hand Book of Procedures were also to be included subject to the conditions that the Branch office has the requisite inspection facility to issue such a certificate. Hence furnishing the PSI certificate not only from the Registered office but the Branch Office should also be accepted and as such there is no violation. In any case this is only a procedural infraction, there cannot be any penal action to confiscate the imported goods. It is clear that the re-rollable scrap imported by the appellant does not come under the category of prohibited item at all and what is required was only a pre-inspection certificate to the effect that the consignment does not contain any

arms, ammunition and other hazardous items. 100% examination of the goods also revealed that no arms and ammunitions were found and the goods were also released. As the imported goods do not fall under the category of prohibited goods invocation of Sec. 112(a) and consequent penalty are untenable. The Ld. Counsel stated that the Commissioner of Customs, (Appeals), Chennai has allowed the appeal of the importer vide Order in Appeal C. Cus. No. 584/2013 dated 04.04.2013 for the same issue. The said order was also accepted by the department and has attained finality. He further relied upon the following orders in support of his averments:-

- A) **Commissioner of Customs Vs Senor Metals Pvt Ltd** [2009 (236) ELT 445 (guj)]
- B) **Electrosteel Castings Ltd Vs Commr. Of Cus. (Port), Kolkatta** [2009 (238) ELT 258 (Tri-Kolkata)]
- C) **Anugraha Valva Castings Ltd Vs Commr. Of Cus. (Seaport), Chennai** [2013 (292) ELT 86 (tri-Chennai)]
- D) **M/s Kamachi Steels Ltd Vs The Commissioner of Customs (Seaport-Import), Chennai** [Final order 40570/2023, dated 17.07.2023]

The Ld. Counsel stated that the above case laws are squarely applicable to the present case on hand. He prayed that the appeal be allowed and the impugned order be set aside with consequential reliefs and thus render justice.

3.2 The Ld. Authorized Representative Smt. Anandalakshmi Ganeshram for the respondent has reiterated the findings in the impugned order. She has relied upon the judgment of this Tribunal in **M/s Kamachi Steels Ltd** (supra), which had upheld the order of the lower authority in similar circumstances, while modifying the quantum of fine and penalty and prayed that the appeal may be set aside.

4. Heard the parties to the dispute and have gone through the appeal memorandum. I find that the issue involves the import of metal scrap from Mauritius purchased on high sea sale basis. The findings against the appellant made in the impugned order is grave in as much as it is stated that the pre-shipment inspection Certificate submitted by one M/s Worldwide Inspection Services Pvt Ltd, New Delhi, which is not an authorised agency at Mauritius by DGFT, appeared to be non-genuine and appeared to have been fabricated for the purpose of clearance of goods in India. The relevant portion of the order is reproduced below;

“1. The certificates have been issued by M/s. Worldwide Inspection Services P Ltd., No.2447, Basement Floor, Judson Lines, Kingsway Camp, Delhi - 110 009. According to the certificates, the inspection was carried out at Port Louis, Mauritius on 24.10.2013 and 16.11.2013. The inspection carried out on 24.10.2013 pertains to Bills of Entry Nos.3978997 / 03.12.2013 and 3979004 / 03.12.2013. Both these inspections were varied out by one J.T. Mathews whose address is C1, One Highfield, 5 Bellingham Road, Centurion 0157, South Africa. In both these certificates, it is shown that the duration of inspection was 11 hrs and 18 hrs. respectively. It is impossible for one man shri J.T. Mathews to carry out 2 inspections of $11 + 18 = 29$ hours of inspection in a day consisting of 24 hours.

2. Who is this J.T. Mathews? What is his relationship with M/s. Worldwide Inspection Services Pvt. Ltd.? Why should he inspect the cargo for which M/s. Worldwide Inspection Services Pvt. Ltd. had issued a certification. It is seen from the statement of facts reproduced above that M/s. Greta Steels Ltd. had sent a letter to M/s. Worldwide Inspection Services Pvt. Ltd. on 10.10.2013 and the cargo with respect to bills of entry nos.3979004 and 3978997 dated 03.12.2013 were inspected on 24.10.2013. The inspection was done by a South African at Port Louis on 24.10.2013 and the PSIC was issued by M/s. Worldwide Inspection Services Pvt. Ltd. on 25.10.2013. This does not appear credible. Further, the date of cargo shipped on Board is shown as 3.11.2013 and in the bill of lading, it is 4.11.2013 whereas the invoices and the certificate of origin and sales confirmation is dated 05.11.2013. This discrepancy is also not explained. How can sale invoice be made out after the goods are loaded on board? Without sale confirmation which businessman will load cargo on the ship? At least, it does not appear to be normally sensible. Similarly, with respect to bill of entry No.4176549 dated 24.10.2013, the appellant-1 had submitted PSIC certificate No. WISE/DEL/DL-6211/F2-13 dt. 21.11.2013. Even for this consignment, the letter to M/s. Worldwide Inspection Services Pvt. Ltd. was given by the original importer M/s. Greta Steels Ltd. on 10.10.2013. The cargo was inspected on 16.11.2013 by the same

J.T. Mathews of South Africa. He conducted this examination of cargo for 17 long hours after coming all the way from South Africa. This also does not appear to be believable.

In this case also, the date of invoice is dated 29.11.2013 whereas the cargo was to be on board on 23.11.2013. Even this fact is not believable.

From the above facts, it clearly appears that the PSICs obtained by M/s. Greta Steels Ltd. and given by the shipping liner M/s. Maersk Line India Ltd. are all fabricated and made out without actually carrying out any inspections. *The allegation in the show cause notice that these certificates are fabricated ones for the purpose of clearing the goods is correct. The SIIB should have taken up those goods and should have probed deeper into this. Even now, the 3 fabricated certificates should be taken up and the company M/s. Worldwide Inspection Services Pvt. Ltd. should be thoroughly investigated for issuing such certificates and their accreditation with DGFT should be recommended for cancellation. There was no approved testing agency in Mauritius. If they had brought their cargo without a PSIC instead of bringing it with a fabricated one and got their cargo inspected in India, the appellant-1 might not have faced this kind of situation. In this case, it is very clear that the appellant-1 has produced an Inspection Certificate which is non-genuine and is trying to mislead the Department. Therefore the Order-in-Original is legal and correct. In fact, I would rate it as very mild.” (emphasis added)*

5. The issue has not been adequately responded to by the appellant in their current Appeal. The relevant portion is reproduced below;

“ALLEGATION IN PARA 3 OF SCN;

THAT PSI CERTIFICATE ISSUED BY M/S.WORLDWIDE INSPECTION SERVICES P. LTD IS FABRICATED:

Without any basis or evidence or proof, the allegations have been leveled.

When there is no authorized agency available at Mauritius by DGFT, the sincerity of the Appellant in approaching a recognized/approved agency of another country by DGFT cannot be doubted or suspected. In fact, the Dept. could have appreciated the gesture of the exporter in attempting to comply with the procedure laid down by Indian Customs while exporting the goods to India.

THE APPELLATE AUTHORITY'S FINDING IS CONTRARY TO FOREIGN TRADE POLICY AND HAND BOOK OF PROCEDURE ISSUED BY DGFT:-

These disputed bill of entries were inspected by M/s Worldwide Inspection services Pvt. Ltd., who is one of the approved agencies among the other agencies as per Appendix 5 by DGFT. Only issue is M/s Worldwide Inspection services Pvt. Ltd., is not the authorized agency at Mauritius by DGFT. Whereas the Appellate Authority without considering the bonafide attempt of the importer to comply

the procedure laid down by Indian Customs for getting certified by one of the agency who is also approved by the DGFT inspection agency, finding the fault on inspection duration and inspected person etc. As an Importer, he has requested the inspection agency to inspect the goods before exporting the goods to India and the same was carried out by the Inspection Agency, other than that the name of the Inspector and the during of inspection and other things are purely a hyper technical in nature and this aspect are not no way connected to the Importer.

The Hon'ble Appellate Authority going in to the details of the Inspection agency duties and responsibilities and finding fault on their work and that too in the Appellant's appeal and the appellant has no role to play in their work hence the appellant cannot be faulted for the inspection agencies so called dereliction of duties and responsibilities. Also it is pertinent to mention here that in this issue the Inspection Agency M/s. Worldwide Inspection Servies Pvt. Ltd., is also one the co-noticee in the Show cause notice so this aspect can be dealt by the Hon'ble Appellate authority in their appeal.

The Hon'ble Appellate Authority further observed that the goods can be brought to India without the Inspection certificate instead of producing the non-genuine certificate from the un-approved agency in Mauritius like M/s Worldwide Inspection services Pvt. Ltd. This finding of the Appellate Authority is erroneous and contrary to the Foreign Trade Policy and the Hand Book of Procedures stipulates a condition of PSI certificate for Import of metal scrap.

Hon'ble Commissioner (Appeals), Chennai has not even considered the Appellant's further bonafide attempt of request before customs for Post Inspection and after the approval of customs and the presence of the customs official, the post inspection by Local DGFT approved agency M/s. Valueguru Chartered Engineers & Valuers Pvt. Ltd and their certificate dated 04.02.2014

PSI certificate issued by M/S. ValueGuru Chartered Engineers & Valuers

wherein, it has been specifically stated that "the imported consignment does not contain any type of arms. ammunition, mines, shells, cartridges or any other explosive material in any form, either used or otherwise"

Therefore, every pre-caution was taken by the Appellant and the High seas sales Purchaser and all the procedures were strictly followed from the beginning, ie, from the loading point and as there is no illegality or irregularity committed at any point of time."

I find that the plea made by the appellant is flawed because even if the import is finally found not to have any arms, ammunition, mines, shells, cartridges or any other explosive material in any form either used or otherwise, (also referred to as '**war material**'), but during the

process of which illegal means were deployed, would not cure the illegality in the import. It may have a bearing on the quantum of penalty imposed but not on the violation of procedure. In this case the occurrence of events itself points to the illegality which would have been evident to any prudent man. Such a certificate should not have been produced before the customs authorities.

6. The whole process of certification of the scrap container by a DGFT approved inspection agency was occasioned by war / radioactive material including live bombs being found in the scrap being imported into the country. The presence of such materials causes a serious threat to the life and limb of the people and the production of a defective certificate cannot be taken as a technical or venal or mere lapse of procedure. In the case of **Competent Authority Vs. Barangore Jute Factory** [(2005) 13 SCC 477], it has been held by the Hon'ble Apex Court that where statute requires an act to be done in a particular manner, the act has to be done in that manner alone (Para 5). Similar views have been expressed in the case of **A.K. Roy Vs. State of Punjab** [(1986) 4 SCC 326] and **CIT Vs. Anjum M.H. Ghaswala** [(2002) 1 SCC 633]. Some latitude can be shown, if there is a failure to comply with certain requirements which do not affect the core intention for which the procedure was formulated i.e. by showing leniency in enforcing the provision, the direct nexus between the restrictions and the object of the action is not compromised. However, actions that nullify the procedure and pose a threat to men and material cannot be lightly dismissed.

7. I find that the case laws cited by the appellant do not relate to a similar situation and hence the decisions are distinguished on facts.

Moreover none of the judgments lay down a binding principle by which no penalty or fine can be imposed, if the Certificate is not from an approved agency but the goods on physical inspection are found to be free of war material etc. Any breach of a civil obligation under the Act is a blameworthy conduct and will invite a penalty on the person and a fine on the goods, if involved. The fact that the Commissioner Appeals allowed the appeal of the Importer vide Order in Appeal dated. 04.04.2013, would not help the appellants case, since he (Appellant) is the one who procured the defective PSIC and supplied it to the importer.

8. Secondly the appellant has stated that the re-determination of value of the goods from Rs 01,03,81,890.31 to Rs 01,34,86,175/- by the Original Authority was not a subject matter of the SCN and is hence beyond its scope. The Ld. Commissioner (Appeals) has not considered their plea in this regard. I find that a notice was issue to the appellant in his capacity as the High Sea Seller who procured the defective PSIC. Valuation of the goods is a part of assessment and payment of duty, which does not concern the appellant, who is not the importer. This averment of the appellant is all the more surprising in as much as in his submissions he has stated that the Commissioner of Customs, (Appeal), Chennai has allowed the appeal of the importer vide Order in Appeal dated. 04.04.2013 for the same issue! The value of the goods as determined therein has hence crystalised. Hence there is no infirmity in the Commissioner Appeals not taking up the issue of valuation in an appeal filed by the High Sea Seller, and the appeal on this ground fails.

9. Thirdly the appellant has stated that since section 112 refers to a 'person', hence abetment can only be done by an individual and not by a company. Hence a penalty is not warranted. I find that the word 'person' has not been defined under the Customs Act, 1962. When a word is not defined under a Central Act, its meaning can be ascertained from the definition given under clause 3 of the **General Clauses Act, 1897**, unless there is anything repugnant in the subject or context. Clause 3(42) which defines the word is reproduced below;

(42) "**person**" shall include any company or association or body of individuals, whether incorporated or not;

The definition being an inclusive one the averment of the appellant is hence without merit.

10. The appellant while submitting his written submissions during the public hearing has relied upon Final Order No. 40570/2023, dated 17.07.2023 in the case of **M/S Kamachi Steels Ltd.** (supra) which was also cited by the respondent department in their submissions. The said judgment has, after examining many of the judgments and orders relied upon by the appellant, upheld the order under appeal while varying the fine and penalty. It was held as under;

"12. Heard both sides.

13. The facts narrated above establish that the appellant has not complied with the requirement of producing a Pre-Shipment Inspection certificate as required under para 2.32 of Hand Book of Procedures. The goods have been subjected to 100% examination. There are no remnants of arms or ammunitions or any banned substances. Ld. Counsel for appellant has relied upon various decisions to argue that the goods have been subjected to 100% inspection and that the non-compliance of the requirement of production of PSI certificate would be only a procedural infraction and would not tantamount to improper import of goods. We take note of the fact that after inspection of the goods, there is no prohibited goods or banned substances. The original authority has imposed redemption fine of Rs.10,42,820/- and penalty of Rs.4,46,922/- which, in our view, is on the higher side. The decisions relied by the Ld. Counsel for appellant show that courts have been lenient to set aside the redemption fine and penalties. In the decision relied by the

Ld. A.R the redemption fine and penalty has been reduced. Taking into consideration that the goods have been subjected to 100% examination and the fact that the appellant had borne the cost of such examination as well as the delay in clearance of goods, we are convinced that redemption fine and penalties imposed are too excessive. We reduce the redemption fine to Rs.1,00,000/-- (Rupees One lakh only) and the penalty is reduced to Rs.50,000/- (Rupees Fifty thousand only)”

11. Considering the totality of the facts and circumstances of the case, I uphold the order, in as much as it relates to the appellant. I however feel a penalty of Rs 01 lakh (one lakh) would suffice. The impugned order is modified accordingly. The appellant is eligible for consequential relief if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 15.07.2025)

(M. AJIT KUMAR)
Member (Technical)