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ANNEXURE - B

2019 (367) E.L.T. 301 (Tri. - Mumbai)IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
S/Shri C.J. Mathew, Member (T) and Ajay Sharma, Member (J)**BALEX PVT. LTD.***Versus***COMMISSIONER OF CUS. (IMPORTS), NHAVA SHEVA***Final Order No. A/85806/2019-WZB, dated 14-3-2019 in Appeal No. C/32/2011*

Import of aluminium alloy billet - Country of origin - Exemption - Appellant purchasing said goods on High Sea Sales basis and benefit of Notification No. 85/2004-Cus. applicable to imports from Thailand being denied on the ground that retroactive certificate of origin did not contain name of importer - Said ground for disallowing benefit of aforesaid notification not sustainable - It is because of confidentiality of High Sea Sales transaction that name of actual importer may have been withheld from exporter abroad, on whose application Certificate of Country of Origin is issued by competent authority abroad - Since goods imported are in conformity with goods mentioned in said certificate, benefit of Notification No. 85/2004-Cus., admissible - Impugned order set aside. [para 6]

Appeal allowed

REPRESENTED BY : None, for the Appellant.

Shri Bhushan Kamble, Assistant Commissioner (AR), for the Respondent.

[Order per : C.J. Mathew, Member (T)]. - This appeal lie against Order-in-Appeal No. 300 (GR.IV)/2010 (JNCH)/IMP-280, dated 20th October, 2010 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II.

2. We have heard Learned Authorised Representative. None appeared for appellant and it is seen from the records that there has also been no representation from the appellant in the past. However, considering the narrow compass within which the appeal is to be decided, we proceed to do so with the assistance of Learned Authorised Representative and on consideration of the records.

3. Appellant filed Bill of Entry No. 601867/25-7-2009 for clearance of 24.62 MTs of 'aluminium alloy billet' claimed to be of Thai origin and entitled to benefit of concessional rate of duty in Notification No. 85/2004-Cus., dated 31st August, 2004.

4. It appears that the goods had been procured on 'high sea sale' from the original importer, M/s. Agrawal Metals and it has been held by the lower authorities that the details in certificate of origin, attesting to origin from Thailand, was not sufficient to allow the claim leading to recovery of differential duty. It is the confirmation of that which is in appeal before us.

5. According to the first appellate authority, the issue of retroactive certificate of origin which did not contain the name of the actual importer was not acceptable. Relying upon the rules of origin for preferential tariff concessions in trade between India and Thailand, it was held that the discrepancy was of such nature as warranted the rejection thereof with the consequential demand of concessional rate of duty.

6. There is no bar on the issue of retroactive certificate of origin. Certificates of origin are issued by the competent authority in the country of origin on an application by the exporter of the goods. It is but natural that, irrespective of 'high sea sale' or otherwise, the maintenance of confidentiality of further transaction with another buyer may deter the original importer from disclosing the details of ultimate importer to the exporter. Furthermore, there is no allegation of omission of any relevant particulars nor are the goods themselves lacking in conformity with that referred to in the certificate of origin. In the absence of such, the rationale adopted by the lower authorities is not in order.

7. Accordingly, we set aside the impugned order and allow the appeals.

(Pronounced in Court)