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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 27.01.2023*

\+ **CUSAA 2/2023**

M/S MOHIT INDUSTRIES ..... Appellant
Through: Mr Tej Pratap, Advocate.

Versus

COMMISSIONER OF CUSTOMS, NEW DELHI (ICD TKD) ..... Respondent
Through: Mr Satish Aggarwala, Senior Standing Counsel for Revenue with Mr Gagan Vaswani, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM Nos. 3741/2023 & 3742/2023

1. Exemptions are allowed, subject to all just exceptions.

2. The applications are disposed of.

CUSAA 2/2023

3. The appellant has filed the present appeal under Section 130A of the Customs Act, 1962 (hereafter '**the Customs Act**') impugning an order dated 06.07.2022 [Final Order No. A/50583/2022 – SM (BR)] passed by the Customs Excise and Service Tax Appellate Tribunal (hereafter '**the Tribunal**') in Customs Appeal No. 51910/2021.

4. The appellant had preferred the said appeal against an order dated 10.08.2021 passed by the Commissioner of Customs (Appeals). The order dated 10.08.2021 was passed in an appeal preferred by the appellant against an order dated 25.10.2019 passed by the Adjudicating Authority pursuant to a show cause notice dated 28.08.2019.

5. The appellant had imported Cold Rolled Grain Oriented Electrical Steel Sheets from one M/s Tamaki Sangyo Co. Ltd. The said supplier had issued an Invoice dated 11.01.2019 in respect of the said goods. The Bill of Entry (Bill of Entry No. 2136252) for import of the said goods was filed with the concerned authorities on 20.02.2019.

6. The Directorate of Revenue Intelligence initiated an investigation on the basis of the information that the said goods had been imported under forged/fake BIS Certificates. The consignment covered under the Bill of Entry No. 2136252 dated 20.02.2019 was examined by the officers of the DRI. Thereafter, the concerned Officer issued a Show Cause Notice dated 28.08.2019, *inter alia,* alleging that the BIS Certificate in respect of the said goods was forged and fake. The inspection certificate was stated to have been issued in the name of one M/s Nippon Steel and Sumitomo Metal Corporation and in turn was given to the supplier, M/s Tamaki Sangyo Co. Ltd. A copy of the said inspection certificate was forwarded to M/s Nippon Steel and Sumitomo Metal India Pvt. Ltd., which was the Authorised Representative of the manufacturer M/s Nippon Steel and Sumitomo

Metal Corporation, for conformation. In response to the same, it was confirmed that the BIS Certificate was fake and was not provided by the manufacturer to the Supplier.

7. The Adjudicating Authority found merit in the said allegation. And, further held that the appellant was responsible for importing the said goods under the fake BIS Certificate. Statements of one Mr Manoj Kumar (Accountant), was recorded on 07.03.2019. He admitted that the documents retrieved from his laptop, which was seized by the DIR Officials, were prepared by him. These documents included an excel workbook named 'BIS Certificate'. He submitted that the soft copy of the editable excel sheets had been received and the details were filled up by him. He, thus, practically conceded to filling up the format of the BIS Certificate.

8. After examining the facts obtaining in the case, the Adjudicating Authority had found that the goods imported by the appellant were covered under the fake BIS Certificate and the import did not conform to the standards as specified. The CIT (Appeals) did not disturb any of the findings of the Adjudicating Authority and by an order dated 25.10.2019, rejected the appellant's appeal. This led the appellant to institute an appeal before the learned Tribunal. The learned Tribunal, after hearing the parties, found no merit in the appellant's appeal. The findings of the learned Tribunal are set out below:

> "8.1 The impugned consignment was detained and was proposed to be confiscated for want of the proper BIS

certificate. This being a Bureau of India Standards certificate is issued by the respective Ministry in the favour of the manufacturer who further issues same to its buyers. Since the goods herein are CRGO Electrical Steel Sheet/Coils Section 17 of BIS Act, 2016 prohibit the import of goods without requisite BIS license and fulfilment of the conditions that the products should made the prescribed quality parameters/technical requirements of the relevant Indian standards and also should bear the standard mark. In the present case, it has come on record that the certificate on the impugned goods was the one bearing no. IS 3024:2006, whereas, as per Indian standards specification for CRGO the ISI marka at the relevant time, stood revised as IS 3024:2015 by the competent Authorities. Further, I observe that the employee of the appellant who was admittedly responsible for preparing the import documents including BIS certificate i.e. Mr. Manoj Kumar, Accountant of the appellant in his statement dated 7th March, 2019, admitted the recovered laptop to belong to him. He also admitted the documents retrieved there from to have been prepared by him including the excel work book named as BIS certificate saved in local disk of said laptop. Not only this, he also admitted for those excel sheets to be received in soft editable form of BIS/Mill Test certificates. Mr. Manoj Kumar could not depose about the sender of the formats of those certificates. The mail received for the same was also mentioned to have been deleted.

8.2 The proprietor of appellant Mr. Birender Prasad has admitted Mr. Manoj Kumar to be his employee and to have been involved in preparing of the import documents. The defense taken by him corroborates the admission made by Mr. Manoj Kumar that the certificates were used to be received in the form of editable formats. The proprietor could not explain about absence of revised ISI mark on the impugned goods. There is no denial that BIS certificate in the

> name of his supplier/exporter i.e. M/s. Tamaki Sangyo Co. Ltd. was issued by Nippon Steel & Sumitomo Metal Corporation, Japan. It is apparent on record that said M/s Nippon Steel & Sumitomo Metal Corporation, Japan vide e-mail dated 05.03.2019, by their Assistant Manager, Mr. Nishant Singh conveyed that after thorough examination of the BIS/MTC certificate provided by DRI Office the same was found fake and was not genuine as was not issued by their company. Not only this, he also submitted, the template of original BIS/MTC certificate issued by their company i.e. M/s. Nippon Steel & Sumitomo Metal Corporation, Japan having three pages duly signed by him. Admittedly, the certificate in the present case bears nobody's signature. The investigating team has also reached the CHA of the appellant, Mr. Bharat Bhushan, the partner thereof has denied any knowledge about the certificate to be fake. He only deposed about receiving all imported documents from Shri Birender Prasad, the proprietor of the appellant and thereafter to process the import documents for the clearance of consignment.
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> 9. With these observations, I am of the opinion that the documents on record do not support the defence taken by the appellant. The admission of Mr. Manoj Kumar, appellant's accountant, about preparing BIS certificates on their own on the editable formats procured rather stands corroborated from the email sent by the exporter about impugned certificate to be fake which otherwise does not bear signature of any competent authority. Hence, I hold that there is no infirmity in the findings arrived at by Commissioner (Appeals). Order is accordingly upheld. Consequent thereto the appeal stands dismissed."

9. We concur with the aforesaid reasoning. The statement made by Mr Manoj Kumar – which is not disputed before us – clearly indicates that the BIS Certificate was prepared by him and corroborate the

allegation that the BIS Certificate was fake. The communication received from the Indian subsidiary/agent of the manufacturer, M/s Nippon Steel and Sumitomo Metal Corporation confirms that the BIS Certificate, which purportedly issued to it, is fake.

10. In view of the above, we find no merit in the present appeal. No substantial question of law arises for our consideration.

11. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 27, 2023
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