Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 22 of 2009

(Arising out of OIO-08-COMMISSIONER-2008 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

M/s. Ambuja Cement Limited **.......Appellant**
P.o & At Ambujanagar,
Taluka : Kodinar, Junagadh,
Gujarat -362715.

VERSUS

C.C.-Jamnagar(prev) **......Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat.

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Jamnagar, Gujarat.

APPEARANCE:
Sh. Anand Nainawati, Advocate for the Appellant
Sh. T.K. Sikdar, Authorised representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11460-11461 /2019

DATE OF HEARING: 24.07.2019
DATE OF DECISION:24.07.2019

RAMESH NAIR

Brief facts of the case are that the two ships M/s. Ambuja Shakti & M/s. Ambuja Keerti having registration of Mouritius at the behest of M/s. Cement Ambuja International Ltd. The aforesaid two ships are charted from M/s. Cement Ambuja International Ltd to appellant vide Bareboat Charter-cum-demise basis agreement dated 08.08.1996. The said ships were converted from foreign run vessel to coastal run vessel at Muldwarka port on 29.01.97 and 18.02.97 respectively, after completion of all the necessary formalities. Further, at the time of conversion, IGMs were also filed in compliance to the procedure under Customs Act, 1962. Since, both the ships were exclusively engaged in the transportation of cement as costal run vessel loading costal cargo from Muldwarka port & unloading at Surat port (Magdalla) and Panvel Port, hence these ships regularly arrived at Muldwarka port. In the month of April 2003, the ownership of these ships was transferred to the appellant as per BBCD Agreement and both the ships were registered in India with the Registrar of the Indian Ships under Merchant Shipping Act on 24.04.2003. A SCN notice was served to the appellant, according to which it was alleged that on the date of import of the ships got registered in the name of appellant, there is an import of ships and date of import to be taken on 24.04.2003. Accordingly, the appellant should have filed the Bill of Entry at the time of import and failing to obtain the registration ships were proposed to be confiscated. The adjudicating authority confiscated vessel and imposed redemption fine of Rs. 8,70,000/- and Rs. 8,60,000/- respectively and also penalty imposed Rs. 2,00,000/- under Section 112 (a) and 30,000/- under Section 30 of the Customs Act, 1962. Being aggrieved by the Order-In-Original, the present appeal was filed.

2. Sh. Anand Nainawati, Ld. Counsel appearing on behalf of the appellant at the outset submits that even as per SCN the date of import was taken as 24.04.2003 and the SCN was issued on 27.08.2008 which is after a period of five years, therefore, the SCN is time bar. In support, He placed reliance on the judgment:-

- Usha Stud & Agricultural Farms (P) Ltd.-2011 (274) ELT 365 (Tri.-Del.)

He submits that this Tribunal decision was given relying on the earlier Tribunal decision in the case of Collector Vs. Whirlpool Ltd-1996 (86) ELT 144 (Tribunal) which was upheld by the Hon'ble Supreme Court which was reported at Commissioner Vs. T.V.S. Whirlpool Ltd.-2000 (119) ELT A177(S.C).

3. Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I Heard both the sides and perused the records. I find that the case can be decided on limitation itself without going into the merit of the case. In this regard, I observed that there is no dispute on the date of import which has been admitted by Revenue and recorded in the SCN i.e. 24.04.2003, the SCN was issued on 27.08.2008 and it is clearly after five years. In the judgment of this Tribunal in the case of Usha Stud & Agricultural Farms (P) Ltd (Supra) this Tribunal relying on the decision of T.V.S. Whirlpool Ltd (Supra) which was upheld by the Hon'ble Supreme Court held that even there is no time-limit is prescribe for issuance of SCN in the matter on confiscation of the goods, the time period provided under Section 28 can be invoked. According to under Section 28 the maximum time limit for the issuance of the SCN is five years. In the present case, admittedly the SCN was issued after the period of five years, therefore, relying on the decision of Usha Stud & Agricultural Farms (P) Ltd (Supra), I am of the view that the since SCN has not been issued within a period of five years, the SCN itself is time bar and adjudication of such time barred SCN will not sustain.

5. Accordingly, impugned order is set aside and appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Prachi