

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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 11483 of 2016-DB

(Arising out of OIA-AHD-CUSTOM-000-APP-012-16-17 Dated-10/05/2016 passed by Commissioner of CUSTOMS-AHMEDABAD)

Navratan Speciality Chemicals

Llp, Block No. 400, Village Chharodi,
Taluka- Sanand, Ahmedabad
Gujarat

.....Appellant

VERSUS

C.C.-Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

None appeared for the Appellant

Shri. Anand Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)**

Final Order No. A/ 10782 /2023

DATE OF HEARING: 24.03.2023

DATE OF DECISION: 03.04.2023

SOMESH ARORA

Brief facts of the case are that the Appellant imported Knitted Polyester Fabric classifiable under Sub-heading 6006 3100 of the First Schedule to the Customs Tariff Act, 1975 under the cover of Bills of Entry dated 17-01-2013 and 22-01-2013 by availing the benefit of Sr. No. 12 of the Notification No. 21/2012-Customs dated 17-03-2012 without paying 4% SAD on the said goods. All goods, specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 are exempted from the levy of Special Additional Duty of Customs in terms of Sl. No. 50 of Notification No. 20/2006-Customs dated 01-03-2006 till 16-03-2016 and thereafter in terms of Sl. No. 12 of Notification No. 21/2012-Customs dated 17-03-2012. The First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957, was amended vide Section

78 of the Finance Act, 2011 to the extent as indicated in the Thirteenth Schedule to the said Finance Act. Consequently, with effect from 08-04-2011, the Impugned goods became chargeable to Special Additional Duty of Customs @ 4% ad-valorem in terms of Notification No. 19/2006-Customs dated 01-03-2006 in as much as the said goods ceased to be 'goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) for purposes of Sl. No. 50 of the table annexed to Notification No. 20/2006-Customs dated 01-03-2006 or Sl. No. 12 of Notification No. 21/2012-Customs dated 17-03-2012, as the case may be. It, therefore, appeared that the appellant wrongly claimed exemption from payment of Special Additional Duty under Notification No. 21/2012-Custom which resulted in short levy of duty of the 4% Special Additional Duty of Customs amounting to Rs. 2,92,612.00. Consequently, a Show Cause Notice F. No. VIII/32-08/CERA/ICD-Sanand dated 08-01-2014 was issued to the appellant. Party also made application for amendment and re-assessment of the subject Bills of Entry for availing APTA benefit under Notification No. 72/2005-Customs dated 22-07-2005 (Sr. No. 188A) which they missed at the time of filing the said Bill of Entry, though they were having the requisite documents for availing such benefit. Both the issues were decided, vide impugned order, wherein, the adjudicating authority held as under:

"2. Re-assessed the impugned Bills of Entry, filed and self assessed by the appellant under Section 17(1) of the Customs Act, 1962, under Section 17(4) of the Customs Act, 1962 and allowed benefit of Notification No. 72/2005-Customs dated 22-07-2005;

2.1 Consequent to such re-assessment, determined the Special Additional Duty of Customs payable as Rs. 2,87,163.00, which was short paid by them, by incorrectly availing the exemption of Notification No. 21/2012-Customs dated 17-03-2012 under Section 28(8) of the Customs Act, 1962 and ordered recovery of the same and dropped the demand of Rs. 5449.00;

2.2 Ordered recovery of interest at the applicable rate on the amount confirmed at (b) above under Section 28AA of the Customs Act, 1962 and

d) imposed penalty of Rs. 5,000.00 under Section 117 of the Customs Act, 1962”.

3. Aggrieved by the order of adjudicating authority, department preferred appeal before Commissioner (Appeals) as the APTA benefit was allowed by him 10 months after clearance, even going beyond show cause notice by doing re-assessment Commissioner (Appeals) accepted appeal of the department on the point of APTA benefit. Aggrieved party has filed the present appeal.

4. The appellants have desired decision on merits on the basis of written submissions made by them in this matter. Show cause notice was initially issued demanding duty of SAD which as per department was not available and at the relevant time, therefore the same was recoverable from the party. At the time of adjudication, the party demanded APTA benefit under Customs Notification No. 72/2005-Cus dated 22.07.2005 Serial No. A-188 which as per them they could not avail while doing self-assessment of fabrics at the time of import. The benefit was claimed after approximately 10 months of clearance.

5. The original adjudicating authority allowed re-assessment of Bill of Entry and after considering both the above issues demanded the SAD but allowed APTA benefit by doing re-assessment of bill of entry at his own level of the self assessed Bill of Entry. The Commissioner (Appeals) on appeal having been made by the revenue seeking denial of the APTA benefit to the appellant, on the ground that the same was never an issue in the show cause notice and re-assessment done in the proceeding relating to demand of SAD was illegal and improper, allowed the department's appeal. Party in appeal, *inter alia* seeks to rely on the decision their own case and Order No. A/11327-11351/2014 dated 09.07.2014 allowing APTA benefit under Notification No. 72/2005-Cus on re assessment. In the aforesaid order, the Commissioner (Appeals) as well as this Tribunal took the considered view

that the first appellant authority had correctly done the re-assessment of the party (the present appellants), on their own notice that they had not claimed the benefit of Notification No. 72/2005-Cus and approached first appellate authority in statutory right of appeal. The Commissioner (Appeals) directed consideration by the assessing authority of Notification No. 72/2005-Cus and same order was upheld by this Tribunal.

6. Learned AR pointed out that filing of re-assessment, after 10 months of final assessment was improper and illegal and that too in a proceeding which was relating to show cause notice having been issued seeking levy of SAD. Therefore, the adjudicating authority not only travelled beyond show cause notice but also that even against the order of self-assessment. Re-assessment for the purposes of refund even in the self-assessment proceeding should have been done by going in for appeal as per law. As was also upheld by the Commissioner (Appeals) that the party (the present appellant), never challenged the assessment order before the Commissioner (appeals), as is the requirement, as per the settled law.

7. We have considered the rival submissions, we find that the issue is no more *res-integra* and has already been settled in ITC Ltd. VS. COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV 2019 (368) E.L.T 216 (S.C), in which the Apex Court while dealing with the procedure after introduction of self-assessment, has held that the order of self-assessment is also an order within the meaning of section and therefore would be appealable by any person aggrieved by it. In this context, following paras are reproduced below, being relevant for the purpose:-

"43. *As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any*

person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In *Hero Cycles Ltd. v. Union of India* - [2009 \(240\) E.L.T. 490](#) (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in *Priya Blue Industries Ltd.* (supra).

45.....

46.....

47. *When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

7.1 From the above, we find that any person who is aggrieved by an order of self-assessment has to seek remedy either by going in an appeal or the

re-assessment can be done as per sub-section (4) and (5) of Section 17 of the Customs Act, 1962 reproduced below:-

"SECTION 17. Assessment of duty. (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re- assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self- assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed."

7.2 If on verification, examination, testing or otherwise, the self-assessment was not found to be done correctly by the Proper Officer, the same could be subjected to re-assessment, it appears there is no room in the provision of Section 17(4), for the assessee to seek re-assessment of his

own self-assessment which is a course available only to the proper Officer, based on his own verification, examination, testing of the goods or otherwise.

8. We are of the view that the expression "or otherwise" when read in conjunction with expressions like "verification, examination or testing" of the goods would lead to conclusion that it is the Proper Officer who has to come to the conclusion in some conditional or may be provisional assessment or investigation etc, that self assessment was incorrect. Nothing in the expression of Section 17(4) indicates that re-assessment of duty can be done at the request of party which has self-assessed its Bill of Entry and after clearance wants another benefit. Therefore, construing the expression "or otherwise" in Section 17 (4) by the rule of 'Noscitur a Sociis', we are of the considered opinion that material has to be of the nature found out on verification, examination or testing of the goods or otherwise (which expression) can include on investigation etc., indicating to the Proper Officer only that the self assessment was not done correctly. We also find that the expression, "without prejudice to any other action which may be taken under this Act", Clause indicates that Clause 17 (4) has been worded, *inter alia*, as an enforcement provision and cannot be construed liberally in favour of assessee so as to allow it to change its own self assessment. This also fortifies and supports our interpretation. Since, the re-assessment at the request of party under Section 17 (4) is not as per the outcome of any appeal filed by the party, as was the case in Order-In-Appeal No.510 to 534/2013/Cus/Commr(A)/Ahd. Dated 03.12.2013 as mentioned in para 36 of the Order-In-Original, we find that it was improper on the part of adjudicating authority to re-assess bill of entry at the request of the party under Section 17(4). The party should have either availed appellate remedy, (if aggrieved) or could have sought timely modification of bill of entry as per applicable provisions.

9. In view of forgoing, we uphold the order of Commissioner (Appeals) and find the present appeal to be devoid of merits. Accordingly, appeal is dismissed.

(Pronounced in the open court on 03.04.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI