CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 12614 of 2019

[Arising out of OIA-AHD-CUSTM-000-APP-269-19-20 dated 19/08/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

KARNAVATI CAR AIR CONDITIONERS PVT LTD .....Appellant
Plot no. 427/4, Steel Township, Behind HOF,
Sarkhej- Bavla Highway, Changodar
Ahmedabad
Gujarat

VERSUS

C.C.-AHMEDABAD .....Respondent
Custom House,
Near All India Radio, Navrangpura,
Ahmedabad,
Gujarat

APPEARANCE:
Shri K. J. Kinariwala, Advocate for the Appellant
Shri A. R. Kanani, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A/ 10120 /2024

DATE OF HEARING: 18.10.2023
DATE OF DECISION: 09.01.2024

RAJU

This appeal has been filed by the Karnavati Car Air Conditioners Pvt. Ltd against change of classification of goods imported by the appellant.

2. The Learned Counsel for the appellant pointed out that their imported goods and sought classification under heading 8708 and filed bill of entry No. 6422284 dated 19.08.2016. The RMS system raised a query seeking the MRP of the goods as that was considered mandatory under the provisions of section 4A of the Central Excise Act, 1944 for the purpose of levy of CVD. The Central Excise had issued notification No. 49/2008-CE (NT) dated 24.12.2008, whereby abatement has been provided in respect of goods covered by MRP. This bill of entry filed by the appellant was recalled for amendment under section 149 of the Customs Act, 1962 and reassessment under section 17 of the Customs Act, 1962. The bill of entry was thereafter,

reassessed and countervailing duty was demanded on the basis of MRP. After noticing the above, the revenue sought reassessment of similar bill of entries cleared by the appellant in the past without declaring the MRP. Accordingly, the past bills of entries were sought to be reassessed and a demand of Customs duty was raised by the appellant. The provisions for demanding interest and penalty were also invoked. The Learned Counsel for the appellant argued that the items imported by them are not part of vehicles but are parts of AC.

2.1 The Learned Counsel argued that the part of AC cannot be considered as parts of vehicles. The argument was that since notification No. 49/2008 the Sr. No. 108 covers only the parts of vehicles. It did not cover the parts of AC imported by the appellant. The Learned Counsel argued that while the Annexures 1 to 5 and Annexure E6 of the show cause notice show calculation on the basis of MRP, it does not indicate how the MRP has been obtained. It was argued that the revenue must show the basis for determination of MRP and that must be in accordance with the provisions of Rule framed under section 4A of the Central Excise Act, 1944 i.e. under Central Excise (determination of retail sale price of excisable goods) rules, 2008.

2.2 The Learned Counsel further argued that since the goods classified by them under section 87 then mere non-mention of MRP can at the best be a mutual mistake of department as/has been an importer. There was no suppression on the part of appellants.

2.3 The learned Counsel argued that mere non-mention of MRP cannot be bar is for proposed confiscation of goods especially when the MRP could also have been asked for by the revenue. The Learned Counsel argued that mere non-mention of MRP based assessment cannot be an offence under section 111(m) of the Customs Act, 1962. It was further argued that the goods are no longer available for confiscation and therefore no proposal for confiscation could have been made.

2.4 The Learned Counsel further argued that for penalty section 114(AA) has been invoked. The argued that the said section applies only when a person "knowingly or intentionally" makes a false declaration.
The learned Counsel argued that mere non-mention of MRP based assessment for the purpose of CVD cannot be called mis-declaration within the meaning of said section.

2.5 The Learned Counsel further argued that the goods imported by them are accessories and not parts. They relied on the decision of Tribunal in the case of Banco Products Ltd. 2009 in 25 ALD 636.

3. The Learned AR relied on the impugned order.

4. We are considered rival submission. We find that the issue pertains to import of following goods.

Serial No.	Bill of Entry No.	BE date	CTH declared	Description
1.	6133862	26.07.2016	84159000	Cooling Coil
2.	6306887	09.08.2016	87089100	Radiator
3.	6309092	10.08.2016	87089100	Radiator
	6309092	10.08.2016	87089900	Evaporator
4.	6336824	11.08.2016	87089100	Radiator
5.	6351876	13.08.2016	87089900	Condensor/Compressor

3.1 The appellant had imported these goods and had not declared the MRP on the said goods. Subsequently, the order in original notes in para 48 that MRP was later declared by the appellant and on that basis a demand show cause notice was issued seeking to demand the countervailing duty on the basis of MRP.

3.2 Notification 9 of 2010 CE (NT) dated 27.02.2010 which amends notification no. 49/2008 Central Excise NT dated 24.12.2008 inserts following in the table.

(1)	(2)	(3)	(4)
"108	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716	30"

After introduction this entry the parts components and assemblies of vehicles specified in this entry became chargeable to Central Excise Duty on the basis of Section 4A of the Central Excise Act, 1944. Consequently, for the purpose of charging CVD also, the MRP based assessment became applicable. The goods in respect of which the show cause notice was issued were cleared in the situation where the importer had not declared MRP though there was no mis-declaration in description of goods or classification. This show cause notice was issued after obtaining MRP from the importer. The Learned Counsel for the appellant pointed out that the goods are accessories and not parts. He relied on the decision of Tribunal in the case of Banco Products India Pvt. Ltd. This argument was that accessories will not be covered under Sr. No. 108 of notification no. 49/2008 CE (NT) and therefore, MRP based assessment cannot be applied on passed imports made by the appellant. On perusal of the nature of goods show that radiator, evaporator, condenser or compressor or all essential ingredients refrigeration system and can by no means the called accessories. The decision of Banco Products India Ltd. is different sides of facts. In the said case the goods in dispute were not essential ingredients of the final product.

3.3 The next issue raised by the appellant is that, it was not a case of any suppression as the fact regarding classification under section 87 was known to revenue. There was no mis-declaration of description. He argued that in these circumstances, penalty should not be imposed. We find that penalty of Rs.50,000/- has been imposed under section 114 AA of the Customs Act, 1962. The penalty of Rs. 50,000/- has been also imposed under section 112(a) of the Customs Act, 1962.

4. We find that extended period of limitation has been involved to raise this demand. The show cause notice has been issued on 13.04.2018 whereas, the bill of entries are dated 26.07.2016 to 13.08.2016. It is seen that all the data required for the notice except the MRP was available in the bill of entry filed by the appellant. In these circumstances, we do not find any reason to hold that anything was suppressed by the appellant for the purpose of evasion. The description of the goods the heading in which classification has been claimed and the rate of duty for the purpose of CVD and the value for the purpose of CVD are all available on the bill of entries. In these circumstances, we do not find that revenue has been able to establish the case for revocation of extended period of limitation.

5. In view of above, we hold that the extended period of limitation could not have been involved in the instance case. This appeal is therefore allowed on the ground of limitation.

(Pronounced in the open Court on 09.01.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Dharmi