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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10829 of 2022- DB

(Arising out of AHD-CUSTM-000-APP-376-22-23 dated 29.07.2022 passed by Commissioner of Customs (Appeals)-Ahmedabad)

M/s Power Grid Corporation of India Limited ....Appellant
Saudamini Plot No. 2, Sector 29,
Near IFFCO Chowk, Gurgaon, Haryana

VERSUS

C.C. – Ahmedabad ......Respondent
Customs House,
Near All India Radio, Navrangpura,
Ahmedabad-Gujarat

APPEARANCE:
Shri Pramod Kumar Rai, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO. 11012 /2024

DATE OF HEARING: 23.04.2024
DATE OF DECISION: 06.05.2024

RAMESH NAIR

The brief facts of the case are that the appellant filed bill of entry No. 8498420 dated 09.02.2017. for import of 120 KN Composite Long Rod Insulators for 765 KV Transmission lines and 160 KV Composite Long Rod Insulators for 765 KV transmission line by classifying these goods under Chapter Tariff Heading 85469090 of Customs Tariff and by availing the benefit of concessional rate of basic excise duty vide Serial No. 350 of Notification No. 12/2012-Cus dated 17.03.2012. The department has issued a show cause notice No. VIII/10-148/ICD-KHOD/O&A/HQ/2018 dated 18.08.2020 under Section 28(4) of the Customs Act, 1962 to the importer on the ground that Serial Number 9 of List 10 of Notification under reference allows concessional rate of duty @5% for 765KV Polymer Long Rod Insulator which are required for use in high voltage power transmission as specified under the said Notification and since the imported goods appeared different from Polymer Insulator specified in the Notification, differential duty of Rs. 7,23,605/- was required to be paid by the importer. The Show Cause Notice also proposed for confiscation of goods and imposition of penalties under the relevant provisions. The adjudicating authority vide order-in-original dropped the proceedings initiated vide the said Show Cause Notice on the ground that the importer had claimed the benefit of Notification correctly as the Director (PG), Ministry of Power, Govt. Of India, New Delhi had recommended eligibility of concessional rate of duty for import of Composite Long Rod Insulators. Being aggrieved by the said order-in-original, Revenue filed appeal before the Commissioner (Appeals) though remanded the matter but conclusively held that the appellant is not eligible to the benefit of Exemption Notification No. 12/2012-Cus. Being aggrieved by the Order-in-Appeal, the appellant filed appeal before this Tribunal.

2. Shri Pramod Kumar Rai, learned counsel appearing on behalf of the appellant made detailed submission on merit as well as on limitation. He also filed a synopsis dated 18.09.2023 and relied upon various judgments.

3. Shri Sanjay Kumar, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records.

5. We find that the demand was raised invoking the extended period and on scrutiny of the records, we are of the view that this matter can be disposed of on limitation without entering into the issue on merit. As

regard limitation, we find that the appellant have filed the bill of entry on 09.02.2017 and declared the goods correctly as per the document i.e. Composite Long Rod Insulators, therefore, there is no mis-declaration. The issue was only of interpretation of the words 'composite' and 'polymer', the word 'composite' was used whether the goods imported falls under the description i.e. Polymer Long Rod Insulators as appearing in the Notification. Therefore, the issue involved is clearly an interpretation of the entry provided under the Notification. We find that the appellant have very strong prima facie case on merit also as decided by the adjudicating authority. We find that there is no change of circumstances from date of filing of bill of entry till the issue of show cause notice, therefore, nothing prevented the department to issue show cause notice within the normal period from the date of filing of bill of entry i.e. 09.02.2017. Therefore, there is no reason for invoking the extended period upto three years, when there is no change in the facts of the case. In the similar type of facts in various judgments, the Hon'ble Supreme Court has taken a view that the extended period cannot be invoked. Some of the judgments are referred below:

- **Northern Plastic Ltd. v. Commissioner [1998 (101) E.LT. 549 (S.C.)):**

  "23. We, therefore, hold that the appellant had not mis declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty."

- **Continental Foundation Jt. Venture versus Commissioner of Central Excise, Chandigarh-1, 2007 (216) ELT 177 (SC).**

  10. The expression "suppression" has been used in the proviso to Section11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. **Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full Information with the intent to evade payment of duty**. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression……….

The similar issue on limitation has also been considered in the following judgments:

- Tamil Nadu Housing Board v. Collector of Central Excise, Madras 1994 (74) ELT. 9 (SC) wherein the apex court held that limitation for extended period invokable only if existence of both situations (1) suppression, fraud, collusion etc and (2) intent toevade payment of duty proved d. Continental Foundation Joint Venture v. CC, Chandigarh (2007 (216) E.LT. 177 (S.C.)).

- O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.LT. 300 (S.C.)].
- National Radio & Electronics Co. v. Commissioner [2000 (119) E.L.T. 746),
- SIRTHAI SUPERWARE INDIA LTD. v. COMMR. OF CUS., Nhava Sheva-III-2020 (371) ELT 324 (Tri. - Mumbai)

> "5.5 When Commissioner has himself in the para 33 of his order for holding the classification under the Heading 392410, referred to description made in the Bill of Entries/invoices he cannot be justified in holding the charge of mis-declaration against appellants. For that reason we are of the view that by giving the correct description on the documents relating to import clearance appellants have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be mis-declaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside."

6. Considering the overall facts of the case which is similar to the facts of the various judgments as cited above, the suppression of fact or wilful misstatement or fraud or collusion etc., cannot be invoked in the present case. Therefore, the show cause notice issued after almost three years is clearly barred by limitation. Consequently, the demand being under extended period cannot sustain. Accordingly, the impugned order is set aside, appeal is allowed.

(Order pronounced in the open court on 06.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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