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

REGIONAL BENCH-COURT NO. 3

CUSTOMS APPEAL NO. 11412 OF 2013 - DB

(Arising out of OIA-174-2013-RAJ-CE-AK-COMMR-A-AHD dated 04/04/2013 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Shail Shakti Impex ....**Appellant**
Bbz-s-9/10,
Station Road, Near Khavda Seeets, Gandhidham,
Kutch, Gujarat

Versus

C.C.E. & S.T.-Rajkot ......**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:

Shri K J Kinariwala, Consultant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

Final Order No. 11589/2024

DATE OF HEARING: **02.04.2024**
DATE OF DECISION: **22.07.2024**

RAMESH NAIR

Brief facts of the case are that the appellant was 100% EOU. LOP was granted on 21.06.2000 and commercial Production started from 30.09.2000. The appellant was importing mixed scrap, used motors and secondary core and wiring of transformer and was claiming exemption of import duties in terms of the Notifications 53/1997-Cus dated 30.06.1997 & 52/2003- Cus dated 31.03.2003. The appellant was carrying such segregation activity till 31.03.2006. Different types of metal scrap recovered from the such activities were removed for DTA sale on payment of appropriate central excise duties. The appellant was under bonafide belief that the segregation is considered as "Manufacture" then DGFT under its Public Notice 45/2005 dated 31.08.2005 clarified it’s not manufacture. However, as per the subsequent amendment the Segregation activities are not covered under the definition of "Manufacture" w.e.f. 01.04.2002, this activity will, however, be allowed to continue in respect of units set up prior to 01.04.2002 for a period of 5 years from the date of commencement of commercial production. The necessary inputs would be allowed with exemption benefits as per the existing policy. However, the facility of DTA sale under para 6.8 or 6.9 of Foreign Trade Policy shall not be allowed.

Accordingly, the activity of the segregation during the relevant time was considered as manufacture, show cause notice was issued for demanding custom duty as if the imported goods cleared under DTA. As such the said show cause notice was adjudicated by the Adjudicating Authority whereby demanding of Customs Duty of Rs. 12,58,258/- under Section 28 of Custom Act, 1962 along with due interest thereon and for imposition of penalty under Section 112 and 114A of Custom Act, 1962 was confirmed. Being aggrieved, the appellant filed an appeal before Commissioner (Appeals) which came to be rejected. Therefore, the present appeal filed by the Appellant.

2. Shri K.J. Kinariwala learned Consultant appearing on behalf of the appellant submits that activities under taken by the appellant were not limited to merely segregation of mix scrap. The appellant had imported used motors and secondary core and wiring of transformers also. Recovery of metal scrap from used motors and wiring of transformers involved several processes like breaking and cutting with the aid of machine tools as well as with gas cutter. It is well established position of law that breaking and cutting of goods where different goods emerge amount to manufacture. He submits that it is not in dispute that Appellant was clearing the metal scrap for DTA sale on payment of appropriate rate of duties. If the activities of segregation is not considered amounting to manufacture no duties would have been levied on the goods

cleared in DTA sale. Accordingly, the demand merely on the basis that the appellant carried out only segregation activities does not sustain.

2.1. He further submits that the appellant was 100% EOU and was paying excise duty on the segregated scrap. They were regularly filing returns and even at the time of import of clearance of the goods, the claim of exemption was mentioned in the bills of entry along with relevant details of the notification.

2.2. He submits that it is matter of fact that show cause notice was issued based on the details derived by the local audit (AG audit) from the records maintained by the department viz. returns filed by the appellant. Since the entire demand was raised by invoking extended period of limitation the same was not sustainable as there was no ingredients of suppression of facts or willful mis-statement by the appellant.

3. Shri Himanshu P Shrimali, learned Superintendent (AR) appearing on behalf of Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that considering the overall facts of the case, we are of the view that appeal can be disposed of only on the ground of limitation without going into the merit of the case. We find that as per the undisputed fact of the case the appellant is 100% EOU. They were importing the raw material under the exemption Notifications 53/1997-Cus dated 30.06.1997 & 52/2003-Cus dated 31.03.2003. The appellant's sole activity was to segregate the scrap and sale in DTA market. The appellant have been clearing that goods on Excise duty, they were regularly filing ER-2 returns wherein the sale of segregated scrap and payment of excise duty thereon has been declared. Therefore, the entire activity of the appellant i.e. import of goods, segregation thereof and sale in DTA on payment of excise duty, filing of periodical returns in ER-2 Was very much in the knowledge of department. It is also found that the issue was raised only on the basis of AG Audit which is conducted on the

records maintained by the appellant. Therefore, the same records was also with the department. With this undisputed fact, there is no suppression of fact on the part of the appellant. The demand was raised for the period 01.10.2005 to 31.03.2006 by issuing show cause notice dated 29.12.2009.

5. Accordingly, the entire demand is under extended period. Since there is no suppression of fact as discussed in detail above the demand for extended period is not sustained. Accordingly, the demand is set aside being time barred and the impugned order is also set aside only on the ground of limitation. Appeal is allowed.

(Pronounced in the open court on **22.07.2024** *)*

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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