IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/70092 & 70093/2015-EX[DB]

(Arising out of Order-in-Original No. 18/Commr/Noida-I/2015-16 dated 18/08/2015 passed by Commissioner of Central Excise, Noida-I)

M/s Ntl Electronics India Ltd. &

Shri Sanjay Gupta Divisional Manager Commercial **Appellants**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri B.L. Narshimhan & Shri Utkarsh Malviya, Advocates for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 25/07/2018
Date of Decision : 25/07/2018

FINAL ORDER NOs-72113-72114/2018

Per: Anil G. Shakkarwar

The above stated two appeals are up taken together for decision since both of them are arising out of a common Order-in-Original No. 18/Commr/Noida-I/2015-16 dated 18/08/2015 passed by Commissioner of Central Excise, Noida-I.

2. The brief facts of the case are that the appellants were engaged in the manufacture of LED lights, fixtures including

LED lamps classifiable under Heading No.94.05 of Schedule to Central Excise Tariff Act, 1985. The appellants were clearing the said goods in terms of exemption provided at Sl.No.71B of Notification No.6/2006-CE dated 01.03.2006 as amended. They were also filing ER-1 returns regularly. On the basis of scrutiny of ER-1 returns filed by the appellant for the months of April, 2011 to March, 2012. It was observed by revenue that during April, 2011 to May, 2011 appellants cleared LED lights and fittings and during the period from June, 2011 to March, 2012 appellants cleared LED lamps both classifiable under Tariff Item No.94054090. The said goods were cleared by availing exemption under the said Sl.No.71B of the said notification. It appeared to revenue that LED lamps were not covered by the said notification and therefore, appellants were not eligible for said exemption. Appellants were, therefore, issued with a show cause notice dated 07.08.2014 demanding differential Central Excise duty of Rs.2,31,85,249/- for the period from June, 2011 to March, 2012. The said show cause notice was adjudicated through the impugned Order-in-Original. The appellant contended before the original authority that extended period of limitation was not invocable since there was no suppression or mis-interpretation and that the show cause notice was based on the information submitted in the ER-1 return. Not appreciating the contention, Original authority confirmed the demand and imposed equal penalty. Further, the Original

Authority imposed personal penalty of Rs.10 lakhs on the other appellant. Aggrieved by the said order both the appellants are before this Tribunal.

3. Heard the learned Counsel for appellant, he has submitted that the appellants were regularly filing monthly ER-1 return in which it was clearly shown that LED lamps were also being cleared under the said concessional rate of duty. He has further submitted that the said Notification No.06/2006-CE was superseded by Notification No.12/2012-CE dated 17.03.2012 and the earlier exemption continued at Sl.No.331 through Notification No.12/2012-CE. The description against Sl.No.331 was "LED lights or fixtures including LED lamps falling under Chapter No.85 or 94". He has further submitted that in view of the said entry it appeared to revenue that notification under Sl.No.71B was not admissible for LED lamps and therefore, the differential duty was demanded. He further explains that both LED lights or fixtures and LED lamps are stated to be classifiable under same heading no.94.05 in the said two notifications and therefore they are the same commodities. He further argued that the show cause notice was issued by invoking the provisions for extended period and the same was issued on 07.08.2014 for the period from June, 2011 to March, 2012 and show cause notice very clearly indicates that the show cause notice was based on scrutiny of ER-1 returns. He,

therefore, argued that there was no suppression on the part of the appellant and therefore the demand is hit by limitation.

4. Heard the learned A.R. who has supported the impugned order.

5. Having considered the rival contentions and on perusal of records, we find that the basis for issue of show cause notice was scrutiny of ER-1 returns. Therefore, we find that there was no evidence for revenue to alleged suppression. Therefore, revenue did not have extended period for raising the demand. We, therefore, hold that the demand is hit by bar of limitation.

6. We, therefore, set aside the impugned order and allow both the appeals. Appellants shall be entitled for consequential relief, as per law.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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