CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 465 of 2008

PREMIER FOOTWEAR PRODUCTS (P) LTD
13/578-A, CALICUT TIMES COMPLEX,
KAMMATH LANE,
CALICUT – 673 002.

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax CALICUT
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE - 673001
KERALA

Respondent(s)

(Arising out of Order-in-Appeal No. 1/2008-CE dated 17.03.2008 passed by the Commissioner of Central Excise & Customs, Calicut.)

WITH

Central Excise Appeal No. 466 of 2008

KERALA FOOTWEAR PRODUCTS
13/578-A, CALICUTTIMES COMPLEX,
KAMMATH LANE,
CALICUT – 673 002.

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax CALICUT
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

(Arising out of Order-in-Appeal No. 1/2008-CE dated 17.03.2008 passed by the Commissioner of Central Excise & Customs, Calicut.)

AND

Central Excise Appeal No. 467 of 2008

(Arising out of Order-in-Appeal No. 1/2008-CE dated 17.03.2008 passed by the Commissioner of Central Excise & Customs, Calicut.)

KERALA RUBBER PRODUCTS
13/578-A, CALICUT TIMES COMPLEX,
KAMMATH LANE,
CALICUT – 673 002.

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax CALICUT
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

APPEARANCE:

Shri M.S. NAGARAJA, Advocate for the Appellant.

Shri P. Saravana Perumal, Addl. Commissioner and Shri K. A. Jathin, Deputy Commissioner, Authorised Representatives for the Respondent

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20263-20265 / 2023

Date of Hearing: 24/02/2023
Date of Decision: 24/02/2023

Per : DR. D.M.MISRA

These three appeals are filed against Orde-in-Original No.01/2008-CE passed by the Commissioner of Central Excise, Calicut.

2. Briefly stated the facts of the case are that all the appellants were made parties to the show-cause notice issued to them on 12.12.2003 alleging that the turnover of all the three units needs to be clubbed being one and the same "manufacturer", as they were manufacturing the same foot-ware, uses common brand name viz. 'Premier', possessing mutual interest in the business of each other for the period from 1.4.1999 to 31.3.2003,etc. Consequently, demand notice was issued to them proposing recovery of excise duty of Rs.1,22,46,631/- with interest and penalty. Subsequently, the said demand notice was confirmed with interest and penalty. On an appeal, the Tribunal by its order dated 30.04.2007 remanded the matter to the adjudicating authority for *de novo* consideration. Pending the said *de novo* adjudication, another notice was issued to them on 30.03.2006 for subsequent period on the same ground proposing recovery of excise duty and penalty. *De novo* proceedings as well as show-cause notices issued subsequently culminated into passing of the present impugned order confirming the demand. Aggrieved by the said order, the appellants preferred appeal before this Tribunal.

3. After considering the grounds of appeals, this Tribunal passed an order dated 21.04.2009 summarized conclusions at paragraph 20 of the order. It is observed at clause (iii) of the said para-20: "The classification Strap Plaps is to be decided by a Larger Bench..". Consequently, the Larger Bench was

constituted and the Larger Bench ultimately held that since the Division Bench has already taken a view that all the demand notices were barred by limitation, hence deciding the issue of classification of "Strap Plaps" would only be academic. Accordingly, they returned the file to the Division Bench for disposal. Hence, all Appeals are taken up for hearing and disposal.

4. Learned advocate Shri M. S. Nagaraja for the appellant submits that since this Tribunal has already decided the issue in its order dated 21.04.2009 and the issue which was referred to the Larger Bench is now being returned holding as academic, therefore, the Appeals may be disposed of in the light of the Larger Bench decision dated 19.3.2010.

5. The learned AR for the Revenue has agreed to the said submission of the learned advocate for the appellant.

6. Heard both sides and perused the records.

6.1 We find that this Tribunal in its Order dt. 21.04.2009 (2009 (248) ELT 749 (Tri.-Bang.) has discussed at length all the issues raised in the grounds of appeal and summarized its conclusion as follows:

> "20. Summing up:-
>
> (i) We hold that SRMB is classified under 4005.20 carrying nil rate of duty. Hence the total duty liability is to be re-worked taking into account. (Para 14 above).
>
> (ii) The differential duty on CMB is set aside. (Para 15 above).

(iii) The classification of strap plaps is to be decided by the Larger Bench. (Para 16 above).

(iv) The longer period is not sustainable. The demand should be confined to normalperiod. All penalties are set aside. The de novo order should confine only to re-calculation of duty demand based on the Larger Bench decision. (Para 17 above).

(v) The second show-cause notice dated 30.03.2003 is completely time barred. Hence all demand pertaining to it is set aside. (Para 18 above)."

Except the observation at (iii) all other issues have reached finality, since no Appeal was preferred against the said findings. Now, since the Larger Bench has also returned the issue to the Division Bench considering its discussion becomes academic, hence in our view, the conclusion reached by this Tribunal at para 20 becomes final.

7. Appeals are thus disposed off accordingly in above terms.

(Dictated and pronounced in open court on **24/02/2023.**)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv...