

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL BANGALORE**
REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20424 of 2023

(Arising out of Order-in-Original No. COC-CUSTOM-000-15/2022-23 dated 22.03.2023 passed by the Commissioner of Customs, Cochin.)

M/s. Dolphin Wires Pvt. Ltd.,
AP 11/722, Industrial Estate Aroor,
Alleppey, Kerala – 688 534,
Represented by its Managing Director,
Shri. Jabir Ashraf

Appellant(s)

Versus

The Commissioner of Customs
Customs House, Willingdon Island,
Cochin 682 009.

Respondent(s)

Appearance:
Mr. M. Balagopal, Advocate
Mr. K.A. Jathin (AR)

For the Appellant
For the Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20130 /2024

Date of Hearing: 08/09/2023
Date of Decision: 07/03/2024

Per : R. Bhagya Devi

The appellant M/s. Dolphin Wires Pvt. Ltd., is engaged in the export of various frozen seafood like Leather Jacket Fish, Cuttle Fish, etc. The appellant was availing the benefit of Merchandise Export from India Scheme (MEIS). The Directorate

General of Foreign Trade (DGFT) vide Public Notice No. 27/2015-2020 dated 14.07.2015 deleted 42 items from the list of items under MEIS benefit. One of the items deleted was falling under Customs Tariff Heading (CTH) 03038999. The exporters exporting 'Frozen Leather Jacket Fish' under CTH 03038999 were availing 5% reward under MEIS scheme. After the above Public Notice was issued by DGFT, many of the exporters started classifying the product 'Frozen Leather Jacket Fish' under different heads of Chapter 3 such as 0303 1900, 0303 4900, 0303 6900 on which the benefit of 5% on Free on Board (FOB) value of exports continued, while some of the exporters continued classifying the Leather Jacket Fish under Chapter Heading 0303 8999 and not claiming MEIS benefit. Investigations undertaken by Directorate of Revenue Intelligence (DRI) revealed that the appellant had exported Leather Jacket Fish since 01.04.2015 under Chapter Heading 0303 1900. The export had taken place under MEIS benefit for the period from 14.07.2015 to 21.09.2016. Since the above goods are rightly classifiable under Chapter Heading 0303 8999, the appellant had mis-declared the classification under Chapter Heading 0303 1900 to claim the benefit of MEIS. The appellant had suppressed the facts with the authorities concerned and availed the benefit under MEIS and the benefit which was earned as scrips was sold to other buyers/importers for defraying duties on imports made by them. Accordingly, notices were issued to the appellant and all those importers who had bought the scrips from the appellant. The Commissioner in the impugned order observed

that the appellant had misclassified the export goods to avail ineligible MEIS benefits as Leather Jacket Fish which was rightly classifiable under Chapter Heading 03038999 and therefore, for the period 14.07.2015 to 21.09.2016 the appellant was not eligible for the benefits of MEIS. Accordingly, the Commissioner confirmed the demand of Rs.1,34,51,498/- against the appellant along with interest and imposed penalty of Rs. 13,50,000 under Section 114AA.

2. The Learned Counsel on behalf of the appellant submitted that they exported various kinds of marine products including Leather Jacket Fish which is the impugned product under dispute. It is submitted that when the MEIS scheme was introduced by DGFT with effect from 1.4.2015 both the Chapter Headings 0303 1900 and 0303 8999 were given the benefit of 5% on the FOB value of the exports undertaken. Later, while issuing the Public Notice No. 27/2015-2020 dated 14.07.2015, the Chapter Heading 0303 8999 was deleted from the MEIS schedule. By another Public Notice No.32/2015-2020 dated 22.9.2016, Chapter Heading 03038999 was again added back to the schedule with the benefit of 5%. It is submitted that the impugned order is vague and not specific and it is stated that the appellant is consistent in classifying the goods under Chapter Heading 0303 1900 from 2014 onwards and therefore, the question of wilful misdeclaration or suppression of facts did not arise. There is no evidence to show that the MEIS scrips were obtained with the intention of defrauding the Revenue. The

Managing Director of the appellant in his statement had categorically explained that they are exporting Leather Jacket Fish from 2014 onwards adopting the HSN code 0303 1900 under the *bona fide* belief that the same was classifiable under 0303 1900. It was also a fact that all the exporters were also classifying under 0303 1900 and claiming the MEIS benefit. Therefore, there cannot be any allegation of misdeclaration as the particulars were correctly declared in the shipping bills neither the Customs nor the Foreign Trade (Development and Regulation) Act, 1992 (FTDR) mandates for the declaration of the ITC HS code by the exporter in the export documents as per Rule 11 of the FTDR Act. Moreover the description of the goods in the shipping bill was accepted at the time of export and the and the MEIS scrips were applied on the basis of the shipping bills and other documents verified by the customs and the same was issued by the DGFT after verification of the documents and these scrips where registered with the customs after necessary verification, therefore invoking the provisions of Section 28AAA of the Customs Act, 1962 is bad in law unless the elements of collusion/wilful statement or suppression of facts are proved. Relying on the decision of the Supreme Court in the case of **Northern Plastic Limited vs. Collector of Customs and Central Excise: 1998 (101) E.L.T 549 (S.C.)**, it is submitted that unless suppression or wilful statement is proved, the question of invoking the provisions of Section 28AAA is not sustainable. They also relied on the following decisions:

- Graphite India Limited versus Commissioner of Customs (Port), Kolkata: 2015 (325) ELT 777 (Tri.-Kol.)

- S.S. Enterprises versus Commissioner of Customs, Hyderabad: 2019 (366) ELT 332 (Tri.-Hyd.)
- John Deere India Pvt. Ltd. vs. Commr. of Cus. (Preventive), Amritsar: 2018 (363) ELT 509 (Tri.-Chan)
- Saint Gobain Glass India Ltd. vs. Commr. of Cus. (Air), Chennai: 2014 (313) ELT 680 (Tri.-Chennai)
- International Exim Agency vs. Commissioner of Customs, Chennai: 2009 (242) ELT 267 (Tri.-Chennai)

3. The learned Authorised Representative on behalf of the Revenue reiterated the findings of the authorities and stated that for the period from 14.7.2015 to 21.9.2016, the appellant was not eligible for the benefit of MEIS scrips in view of the DGFT Public Notice No.27/2015 dated 14.07.2015.

4. Heard both sides. The only issue to be decided is whether the appellant is eligible for the benefit of MEIS scrips. MEIS is a scheme designed to provide rewards to exporters to offset infrastructural inefficiencies and associated costs. The Duty Credit Scrips and goods imported/ domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

(i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DOR Notification, except items listed in Appendix 3A.

(ii) Payment of Central excise duties on domestic procurement of inputs or goods,

(iii) Payment of Basic Customs Duty and Additional Customs Duty specified under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 and fee as per paragraph 3.18 of this Policy.

Objective of the Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/ products.

5. The relevant provisions of the MEIS as laid down at Chapter 3 of the Foreign Trade policy and the specific provisions relevant to the instant case are extracted below:

Chapter 3 Exports from India Schemes

3.00 Objective: The objective of schemes under this chapter is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field.

3.01 Exports from India Schemes: There shall be following two schemes for exports of Merchandise and Services respectively:

- (i) Merchandise Exports from India Scheme (MEIS).
- (ii) Service Exports from India Scheme (SEIS).

3.02 Nature of Rewards Duty Credit Scrips shall be granted as rewards under MEIS and SEIS: The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

- (i) Payment of Customs Duties for import of inputs or goods, including capital goods, as per DOR notification, except items listed in Appendix 3A. (Amended vide Notification No 8/2015-20 dated 4th June, 2015)
- (ii) Payment of excise duties on domestic procurement of inputs or goods, including capital goods as per DOR notification.

(iii) Payment of service tax on procurement of services as per DOR notification.

(iv) Payment of Customs Duty and fee as per paragraph 3.18 of this Policy. Merchandise Exports from India Scheme (MEIS)

3.03 Objective: Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

3.04 Entitlement under MEIS: Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

3.06 Ineligible categories under MEIS: The following exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS

- (i) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption.
- (ii) Supplies made from DTA units to SEZ units
- (iii) Export of imported goods covered under paragraph 2.46 of FTP;
- (iv) Exports through trans-shipment, meaning thereby exports that are originating in third country but transhipped through India;
- (v) Deemed Exports; (vi) SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units;
- (vii) Items, which are restricted for export under Schedule-2 of Export Policy in ITC (HS), unless specifically notified in Appendix 3B.
- (viii) Service Export.
- (ix) Red sanders and beach sand.
- (x) Export products which are subject to Minimum export price or export duty. 61
- (xi) Diamond Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-

precious stones. (xii) Ores and concentrates of all types and in all formations.

(xiii) Cereals of all types.

(xiv) Sugar of all types and all forms, unless specifically notified in Appendix 3B. (xv) Crude / petroleum oil and crude / primary and base products of all types and all formulations.

(xvi) Export of milk and milk products, unless specifically notified in Appendix 3B.

(xvii) Export of Meat and Meat Products, unless specifically notified in Appendix 3B.

(xviii) Products wherein precious metal/diamond are used or Articles which are studded with precious stones.

(xix) Exports made by units in FTWZ.

(xx) Items, which are prohibited for export under Schedule-2 of Export Policy in ITC (HS).

(Para 3.06 amended vide Notification No 8/2015-20 dated 4th June, 2015)

3.12 Effective date of schemes (MEIS and SEIS): The schemes shall come into force with effect from the date of notification of this Policy, i.e. the rewards under MEIS/SEIS shall be admissible for exports made/services rendered on or after the date of notification of this Policy.

3.13 Special Provisions:

(a) Government reserves the right in public interest, to specify export products or services or markets, which shall not be eligible for computation of entitlement of duty credit scrip.

(b) Government reserves the right to impose restriction / change the rate/ceiling on Duty Credit Scrip under this chapter.

(c) Government may also notify goods in Appendix 3A which shall not be allowed for debiting through Duty Credit Scripts in case of import.

(d) Government may prescribe value cap of any kind for a product(s) or limit total reward per IEC holder under this chapter at any time.
Common Provisions for Exports from India Schemes (MEIS and SEIS)

3.14 Transitional Arrangement: For the goods exported or services rendered up to the date of notification of this Policy, which were otherwise eligible for issuance of scrips under erstwhile Chapter 3 of

the earlier Foreign Trade Policy(ies) and scrip is applied / issued on or after notification of this Policy against such export of goods or services rendered, the then prevailing policy and procedure regarding eligibility, entitlement, transferability, usage of scrip and any other condition in force at the time of export of goods or rendering of the services, shall be applicable to such scrips.

3.19 Risk Management System:

(a) A Risk Management System shall be in operation whereby every month Computer system in DGFT Headquarters, on random basis, will select 10% of cases for each RA where scrips have already been issued, under each scheme. RA in turn may call for original documents in all such selected cases for further examination in detail. In case any discrepancy and/ or over claim is found on such examination, the applicant shall be under obligation to rectify such discrepancy and/or refund over claim in cash with interest at the rate prescribed under section 28AA of the Customs Act 1962, from the date of issue of scrip in the relevant Head of Account of Customs within one month. The original holder of scrip, however, may refund such over claim by surrendering the same scrip whether partially utilized or fully unutilized, without interest.

(b) Regional Authority may ask for original proof of landing certificate, annexures attached to ANFs or any other document, which has been uploaded digitally at any time within three years from the date of issue of scrip. Failure to submit such documents in original would make applicant liable to refund the reward granted along with interest at the rate prescribed under section 28AA of the Customs Act 1962, from the date of issuance of scrip. It would be the responsibility of applicant to maintain such documents, certificate etc. for a period of at least three years from the date of issuance of scrips.

6. From the above provisions, it is seen that none of these provisions have been violated by the appellant and there is no such allegation that facts were misrepresented before the DGFT. As seen from the documents placed before us, the appellant has been exporting Leather Jacket Fish from June 2014 under the Chapter Heading 0303 1900 under various

licenses and this export has continued under the same Chapter Heading up to 18th July 2016 and thereafter, it has been classified under Chapter Headings 0303 6900 add 0303 8999. It is also seen that from June 2016, scrips have been issued and utilised up to July 2016. Only after the investigations have begun by the DRI, the benefit of these scrips was kept pending. It is an admitted fact that the appellant had exported the goods by classifying them under Chapter Heading 03031900 and the same was accepted by the Customs at the time of export. The investigations began only when the Public Notice which is reproduced below was issued deleting 42 items from the benefit of the MEIS scheme. One of the items was the item classifiable under CTH 3038999 which states "Other Excl. Edible Fish maws and Shark fins" as seen from Sl.No.56 of the Public Notice reproduced below.

Government of India Ministry of Commerce & Industry
Department of Commerce Directorate General of Foreign Trade
Public Notice No. 27 /2015-2020
New Delhi, dated: July 14, 2015

Subject: Merchandise Exports from India Scheme (MEIS)—Additions/amendments in Table 1 (containing list of country groups) and Table 2 [containing ITC (HS) code wise list of products with reward rates] of Appendix 3B

In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy 2015-2020, the Director General of Foreign Trade hereby makes the following additions/amendments in Table 1 and Table 2 of Appendix 3B notified through Annexure to Public Notice No.2 dated April 1, 2015 with immediate effect:

I-Amendments in Table 1[containing list of country groups]
A-Norway, Switzerland, Iceland, and Liechtenstein shifted from country group C to country group A
B-Hong Kong shifted from country group C to country group
II- Additions/amendments in Table 2 [containing ITC (HS) code wise list of products with reward rates under MEIS]
A-The following 42 lines are deleted from the MEIS Schedule

Sl. No.	ITC(HS) Code	Description of goods
25	3028930	Pomfret
50	3038950	Pomfret (White or Silver or Black)
54	3038991	Edible Fish maws of Wild Life
55	3038992	Edible Shark Fins Of Wild Life
56	3038999	Other Excl. Edible Fish maws And Shark Fins
87	3057100	Shark Fins
90	3061100	Rock Lobster and other Sea Crawfish (Palinurus Sp Panulirus Sp Jasus Sp)Frzn
91	3061210	Whole Cooked Lobsters(Homarus Spp) Frozen
92	3061290	Other frozen Lobster
101	3062100	Rock Lobster And Other Sea Crawfish Not Frozen
102	3062200	Lobster(Homarus Spp) Not Frozen
119	3075100	Octopus (Octopus Spp) Live Fresh/Chilled
120	3075900	Octopus Other Than Live Fresh/Chilled
142	5021010	Pigs,Hogs/Boars Bristls And Hair

7. Let’s examine the relevant chapter headings. While the appellant classified under 03031900, the department classified them under 03038999. From the entries given below there is no specific entry for ‘leather jacket fish’ as such and the appellant had been claiming under CTH 03031900 as per their understanding.

Chapter 0303 Fish, Frozen, excluding fish fillets and other fish

meat of heading 0304.

-Salmonidae, excluding livers and roes:

03031100 – Sockeye salmon red salmon

03031900- -other

-Tilapias, cat fish-----

- - - other

03038991 - - - - edible fish mask of wild life

03038992 - - - - edible shark fins of wild life

03038999 - - - - others

8. As seen above the appellant had classified the impugned items under chapter heading 03031900 while the department classified under others of Chapter Heading 03038999 only after the issuance of the Public Notice referred above. Therefore the re-classification by the department after the issuance of the Public Notice dated 14.07.2015 cannot be detrimental to the interest of the appellant who had legally claimed the benefits of

MEIS as per the approved shipping bills especially when the description of the product remains the same.

9. One of the items deleted by the above Public Notice No. 27/2015 is not Leather Jacket Fish but other Excl. Edible Fish maws and Shark fins falling under CTH 03038999 and till then the same Leather Jacket Fish was being exported under Chapter Heading 03031900 and based on these exports, the scrips were issued by DGFT. As per para 3.19 reproduced above the DGFT has a Risk Management System in place where on random basis, 10% of cases may be selected by each Regional Authority where scrips have already been issued, under each scheme for verification of the genuineness of the benefits being claimed and a time frame of 3 years from the date of issue of the scrip has also been specified to examine the correctness of the claims made and availed. In the instant case, we do not find any such verification done by the DGFT or found any irregularity with regard to the documents filed before the authorities concerned for the benefits of MEIS, the question of the Customs Authorities cannot deny the benefit as has been held by the Supreme Court in the case of **Titan Medical Systems Pvt. Ltd. Versus Collector of Customs, New Delhi 2003 (151) E.L.T. 254 (S.C.)** dated 12-11-2002 as reproduced below:

"13. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and

their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

10. While dealing with the demand against the importers who have utilised the scrips, the Commissioner dropped the demand against all the importers on the ground that *"these MIES scrips were purchased by the importers from open market and these have changed hands in the open market in a manner sanctioned under law. Besides on the date of importation of the goods, the said scrips were valid, legal and subsisting and the same were used for covering up the duty payable as per law. It is not the case of the investigating agency that scrips were utilised by these importers to defray the duty payments or stood cancelled or suspended at the time of import. Neither has the investigation adduced any evidence against these importers to merit the allegations related to collusion, misstatement or suppression of facts on their part"*. Based on various judicial decisions, he holds that all these importers had genuine scrips in their hand which were required to be honoured as legally valid instruments having been issued by the competent authority. When the scrips are found to be legally valid in the hands of the importers; how can the same scrips be invalid and illegal in the hands of the exporter who has obtained them based on approved shipping bills by the authorities concerned? Moreover there is no evidence placed on record that they had availed the MEIS benefit by changing the classification only after the Public Notice is issued. In fact, it is admitted by the Commissioner that the appellant

had been classifying the product under CTH 03031900. As seen above, the CTH 03038999 has been deleted for the items specified therein and not Leather Jacket Fish specifically. The Department cannot by reclassifying the product under CTH 03038999 and then allege mis-classification and mis-representation of facts before DGFT in order to avail MEIS benefit. It is also an admitted fact that this CTH was again reintroduced for the benefit of MEIS and therefore, denying the benefit for the interregnum period is not valid for the reasons discussed above.

11. It is also pertinent to mention that the Seafood Exporters Association of India vide their letter dated 11.2.2017 referring to the issues with regard to the MEIS benefits represented to the DGFT and the DGFT vide letter dated 8th March 2017 stated:

"6. On the issue of Leather Jacket Fish both ITC HS codes 03031900 and 03038999 carried MEIS at 5% till 14th July 2015. From 14. 7. 2015 to 21.9.2016 HS 03038999 was excluded from MEIS and hence leather jacket fish will not be eligible for benefit during the period exported under HS 03031900 as well as HS 03038999. The HS 0303 8999 was again included in the MEIS since 22.9.2016. Hence for exports made during the periods when leather jacket fish was eligible for MEIS, such cases of exports may be regularised by Customs/DRI even if these were exported under HS 0303 1900."

12. The show cause notice was issued to the appellant on 15th March 2018 nearly after almost 3 years after the issue of the Public Notice No.27/2015 dated 14.7.2015 by the DGFT wherein 42 items were deleted from the benefit of the reward scheme under MEIS. The notice was issued under Section 28AAA the relevant provisions are reproduced below:

[Section 28AAA. Recovery of duties in certain cases.

(1) Where an instrument issued to a person has been obtained by him by means of-

- (a) collusion; or
- (b) wilful misstatement; or
- (c) suppression of facts,

For the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or ² [any other law, or any scheme of the Central Government, for the time being in force, by such person] or his agent or employee and such instrument is utilised under the provisions of this Act or the rules ³ [or regulations] made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under Section 28.

Explanation 1 - For the purposes of this sub-section, "instrument" means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), ⁴ [or duty credit issued under Section 51B, with respect to] a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

Explanation 2 - The provisions of this sub-section shall apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at

the rate fixed by the Central Government under Section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

13. As seen from the above provisions, unless the appellant has colluded or suppressed or misrepresented the facts, the question of invoking the above provisions does not arise. The Commissioner in the impugned order states that the goods were misclassified to avail the benefit of MEIS but the fact remains that the goods were clearly described as 'Leather Jacket Fish' classified under Chapter Heading 03031900 which was eligible for MEIS during the relevant period. And only an account of reclassification, the Revenue alleges wilful mis-classification without any evidence on record to prove that the appellant had suppressed any facts or wilfully misclassified their products. On the other hand, the classification by the appellant was accepted and the exports were allowed based on these approved documents and on verification of the export documents the scrips were issued by DGFT. There is no allegation by the DGFT that there had been any suppression or mis-declaration of any of the facts for the issuance of the scrips. Moreover, when the authorities hold that the scrips were valid scrips in the hands of the importers, the question of them becoming invalid in the hands of the exporter appears to be too farfetched. The letter which has been reproduced above categorically states that the exports even though have taken place under chapter heading 03031900 during the relevant period need to be regularised, therefore, since the scrips issuing authority has no objection to

accept these shipping bills for the benefit of MEIS the question of denying the benefit by the customs only for the reason that the change in classification is not sustainable. None of the elements in Section 28AAA have been adduced by the Revenue to invoke these provisions after nearly 3 years of the issue of the Public Notice No.27/2015 dated 14.7.2015.

14. The Supreme Court in the case of **Northern Plastics Ltd. Vs. Collector of Customs and Central Excise: 1998 (101) ELT 549 (SC)**, wherein in para 21 and 22 held as follows:

“22. As the goods imported by the appellant were being used and intended to be used as Cinematographic Film, the appellant had described them as Cinematographic Films covered by sub-heading 3702.20. No attempt was made by the customs authorities either before the Collector or before CEGAT to show that the goods imported by the appellant were ordinarily not used as Cinematographic Films or were not intended by the appellant for such a use. Moreover, looking to the Heading 3702 and its sub-heading, it does not appear that such goods were intended to be covered by sub-heading 3702.90. As regards the claim for exemption in payment of countervailing duty the appellant had stated that it was entitled to the benefit under Notification No. 50/88-C.E. The declaration made by the appellant has been found to be wrong by the Collector and CEGAT on the ground that there was a separate exemption notification in respect of jumbo rolls for Cinematographic Films. While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. We, therefore, hold that the appellant had not misdeclared 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.”

15. The Tribunal in the case of **Graphite India Ltd. vs. Commissioner of Customs (Port) Kolkatta: 2015 (325) ELT 777** wherein the Tribunal held that:

“8. Besides, we find force in the contention of the Id. CA that the demand notice is o barred by limitation, inasmuch as the appellant had imported the goods by filing Bill of Entry No. 377676, dated 26-11-2007 and the show cause notice was issued to them under proviso of Section 28(1) of the Customs Act, 1962. We find from the record that the appellant had clearly stated the description of the goods in the Bill of Entry “Electrode Grade Calcined Petroleum Coke”, which has been assessed to duty after allowing the benefit of exemption Notification. As such, in view of judgment of the Hon'ble Supreme Court in *Northern Plastic Ltd.*, case (supra), there cannot be an allegation of misdeclaration of imported goods or suppression of facts in claiming the benefit of exemption Notification. In these circumstances, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.”

16. In the instant case, admittedly in all the relevant documents “Leather Jacket Fish” is the description of the products and therefore, the allegation of mis-declaration does not sustain.

17. For the reasons discussed above, we do not find any reason to uphold the impugned order and therefore, the impugned order is set aside. The appeal is allowed with consequential benefits if any.

(Order pronounced in Open Court on 07.03.2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv