CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 27308 of 2013

(Arising out of Order-in-Appeal No. 247-248/2013 dated 30.04.2013 passed by Commissioner of Customs (Appeals), Bangalore).

Sri Ganesh Diamonds Jewellery
369, Vidya Varddhaka School Road,
10th Cross, 1 'n' Block, Rajajinagar
Bangalore- 560 010. **.......... Appellant(s)**

VERSUS

The Commissioner of Customs
P.B. No. 5400, CR Building,
Queens Road
Bangalore - 560 001. **....... Respondent**

WITH

Customs Appeal No. 27309 of 2013

(Arising out of Order-in-Appeal No. 247-248/2013 dated 30.04.2013 passed by Commissioner of Customs (Appeals), Bangalore).

Sri Ganesh Diamonds Jewellery

369, Vidya Varddhaka School Road,
10th Cross, 1 'n' Block, Rajajinagar
Bangalore- 560 010.

Appearance:

Shri N. Anand, Advocate for the Appellant
Shri K. A. Jathin, Authorised Representative for the Respondent

CORAM:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20734-20735 /2024

Date of Hearing: 26.02.2024

Date of Decision: 23.08.2024

Per : P.A. Augustian

The issue in the present appeal is regarding classification of spectrometers. The Appellant had imported spectrometers and at the time of import, Appellant declared the item under Customs Tariff Heading (CTH) under 90273010 and availed the benefit of exemption Notification No. 24/2005 dated 01.03.20005 and the goods were allowed customs clearance as per the declaration. However, after considerable time, a Show Cause Notice was issued alleging that since the apparatus/ equipment imported by the Appellant is based on use of X-rays, the declaration made by the Appellant at the time of import is not proper and the Respondent re-classified the goods as falling under CTH 90221900 and would attract Basic Customs Duty of 7.5% as this heading is not covered by the Notification No 24/2005-Cus dated 01.03.2005. Accordingly, demand was raised for differential duty amounting to Rs. 40,929/- for the goods imported under Bill of Entry No. 325535 dated 01.02.2010 and a demand of Rs. 40,716/- against Bill of Entry No. 712110 dated 29.03.2008.

2. In reply to SCN, Appellant submits that at the time of import, they have produced the catalogue issued by the manufacturer and made proper declaration. Further, the goods were subject to assessment by proper officer of Customs and only after considering the details of the goods, the goods were allowed to be cleared as per the declaration made by Appellant. The Appellant further submits that the issue of demanding duty at the belated stage is barred by limitation, since there is no

evidence regarding suppression of facts at the time of import. The matter was adjudicated and as per the impugned order, the Adjudication Authority confirmed the demand of duty and also imposed equal amount of penalty under Section 114A of the Customs Act, 1962. Aggrieved by the order, an appeal was filed before the Commissioner (Appeals) and the Commissioner (Appeals) also upheld the Order-in-Original issued by the Adjudicating Authority. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, Learned Counsel for the Appellant submits that; the demand of duty is barred by limitation; Show Cause Notice was issued after more than 3 years and 9 months for the goods imported against Bill of Entry No. 712110 dated 29.03.2008, and for the goods imported under the Bill of Entry No. 325535 dated 01.02.2010, Show Cause Notice is issued after 1 year and 10 months. Learned Counsel to substantiate the said submission, drew our attention to the Judgment of the Hon'ble High Court of Bombay in the matter of Commissioner of Customs (Import), Mumbai Vs. Signet Chemicals Pvt. Ltd. (2022) 1 Centax 27 (Bom.), where it is held that:-

> "*14. The principle laid down in the judgments Supra was followed in Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur [(2013) 9 SCC 753 = 2013 (288) E.L.T. 161 (S.C.)] which essentially is that with a view to invoke the extended period of limitation, there ought to be a positive act and not merely a failure to pay duty which is not on account of any fraud, collusion or willful misstatement or suppression of facts. The CESTAT, in the*

present case, has clearly held that the respondent had been importing the goods under CTH 1702, which the Learned Counsel for the parties agree, attracted the same rate of duty, as the goods imported and falling under CTH 1704 and held that the department was very well aware of the said classification and that in the past, assessments were completed based thereupon. It was, thus, held that only because there was a change of view by the department, the respondent could not have been said to have either mis-declared or suppressed facts in classifying its goods at the time of its import under CTH 1702."

4. Learned Counsel further submits that; at the time of import, they have produced the invoice and product catalogue and based on the same, declaration was made, moreover, at the time of assessment proper officer accepted the same after considering the issues in detail; there was no investigation conducted, no statement recorded from the Appellant, though it is alleged that there is suppression of facts at the time of import; thus the extended period of limitation cannot be invoked in such cases.

5. Regarding the issue on merit, Learned Counsel also drew our attention to the Judgment of the Hon'ble Supreme Court in the matter of Northern Plastics Ltd., Vs. CC & CE (1998 (101) ELT 549 (SC)**,** where in it held that "*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."

6. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and also drew our attention to the classification of goods. The Learned AR further submits the issue is covered by the decision of the Tribunal in the matter of Commissioner of Customs Vs. M/s Sterlite Industries (India) Ltd (2007 (7) TMI 52- Cestat, Chennai**.**

7. Heard Both Sides and perused the records. The first issue is regarding limitation, we find that there is no allegation of suppression of facts in the impugned orders. Appellant had made declaration as per the invoice/details provided by overseas supplier and there is no allegation of any fraud, collusion or willful misstatement or suppression of facts to invoke the extended period of limitation. Thus, we find that the demand made against the goods imported against Bill of Entry No. 712110 dated 29.03.2008 by issuing a Show Cause Notice after 3(three) years and 9(nine) months and for the goods imported under the Bill of Entry No. 325535 dated 01.02.2010 by issuing SCN after 1(one) year and 10(ten) months is barred by limitation and impugned orders are unsustainable. Further, the issue of classification of the impugned imported goods is not decided as we have considered the issue of limitation, and it is found that the impugned order is unsustainable on limitation.

8. In view of the above discussion and the decisions cited by the appellants the appeals are allowed with consequential relief, if any in accordance with law.

(Order pronounced in open court on 23.08.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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