CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20355 of 2023

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-31/2021-22 dated 25.03.2022 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Nedspice Processing India Pvt., Ltd.
(Formerly Harmony Spices Ltd.)
No. 12/597-8, Jawahar Road, Koovapadam,
Cochin – 682 002 ....**Appellant(s)**

VERSUS

Commissioner of Customs,
Custom House, Willingdon Island,
Kochi – 682 009. ....**Respondent(s)**

Appearance:
Mr. Kuryan Thomas, Advocate for the Appellant.
Mr. Rajashekar. B. N. N, Superintendent (AR) for the Respondent.

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

<u>Final Order No. 22247 /2025</u>

Date of Hearing: 29.10.2025
Date of Decision: 29.10.2025

Per : P.A. AUGUSTIAN

The issues in the present appeal are:

a. whether the appellant is eligible for the benefit of Notification No. 8/97-CE dated 01.03.1997; and

b. whether demand is sustainable by invoking extended period of limitation.

2. The brief facts are the Appellant is a 100% EOU and engaged in the activity of manufacture of “sterilized black pepper”. Based on their request, de-bonding of the unit of was allowed and a final order of

de-bonding dated 18.11.1998 was passed by the Development Commissioner, Cochin Export Processing Zone. Prior to issuance of the de-bonding order, the appellant was required to pay the Central Excise duty on the stock of unused packing material, which was remitted by the appellant.

3. On 29.03.2020, the Assistant Commissioner of Customs issued a show cause notice under Section 28(1) of the Customs Act, 1962 proposing demand of duty of excise of Rs. 8,30,077/- alleging that the appellant had cleared 43,578 Kgs of pepper without payment of applicable duty of excise. The appellant objected to the proposals in the show cause notice both on merits and on the ground of limitation. After a lapse of over 3 (three) years, a second show cause notice was issued under Section 11A (1) of the Central Excise Act, invoking the larger period of limitation, on the very same issue. The appellant objected to the proposals in the second show cause notice both on merits and on issue of limitation. However, Adjudication Authority confirmed the proposals in the second show cause notice and demanded duty along with interest and imposed equal penalty. In Appeal, Commissioner (Appeals) dismissed the appeal as not maintainable. However, when the order of Commissioner (Appeals) was challenged, the Hon'ble High Court of Kerala directed the Commissioner (Appeals) to re-hear the appeal and to render a decision on merits. As directed by Hon'ble High Court, the Commissioner (Appeals) passed impugned order affirming the order of Adjudication Authority. Aggrieved by said order, present appeal is filed.

4. When the appeal came up for hearing, learned counsel submits that impugned order is unsustainable in law for the following reasons:

a. The case of the Department in Annexures-A and C of show cause notices is that the claim of exemption preferred by the appellant under Notification No. 8/97-CE dated 01.03.1997 for clearance of "sterilized black pepper" to DTA is incorrect. According to the Department Notification No. 8/97-CE dated 01.03.1997 has been amended by Notification No. 13/98-CE dated 02.06.1998. The allegation in the show cause notice being one of wrong claim of exemption, owing to the non-availability of the benefit of exemption consequent to an amendment made w.e.f. 02.06.1998, it could not be said that the claim made for the clearances effected on 12.06.1998 to 09.11.1998 attracts the conditions for invoking the larger period of limitation.

b. Further there is no dispute that Notification No. 8/97-CE dated 01.03.1997 provided for exemption for DTA clearances. The subsequent notification excluded certain items from the purview of the exemption provided under the said Notification, being goods which were wholly exempt from duties of excise, or which are chargeable to Nil rate of duty. Therefore, the eligibility or otherwise of the benefit of Notification No. 8/97-CE dated 01.03.1997 to "sterilized black pepper is a matter of interpretation of the scope of the amendment of the notification carried out w.e.f. 02.06.1998. In such circumstances, no show cause notice could have been issued invoking the larger period of limitation.

5. Learned Counsel further submits that initial show cause notice dated 29.03.2000 was issued under Section 28(1) of the Customs Act, 1962 alleging wrong claim of exemption with reference to the amendment w.e.f. 02.06.1998. The appellant had objected to the said proposal both on merits and on limitation. It is on the very same issue of wrong claim of exemption under Notification No. 8/97-CE dated 01.03.1997 that a second show cause notice dated 11.06.2003 was issued, invoking the larger period of limitation. When the facts were known to the Department at the time of issuance of the first show cause notice, the second show cause notice could not have been issued invoking the larger period of limitation.

6. Learned Counsel also submits that when the show cause notice accepts that the appellant cleared goods to Domestic Tariff Area (DTA) claiming the benefit of Notification No. 08/97-CE dated 01.03.1997,

there cannot be any allegation that goods were cleared without proper declaration. Thus, both the allegations in the show cause notice would be self-contradictory and due to that reason also impugned order is unsustainable.

7. Learned Counsel further submits that consequent to show-cause notice, the appellant produced acknowledgement for having submitted the DTA sales register and bills to the Department. Therefore, it could not be said that no documents were produced by the appellant to show that they have declared the subject DTA clearances. The non-availability of the documents after a lapse of around 5 (five) years from the date of clearance and de-bonding of the unit cannot be a reason to draw adverse inference against the appellant.

8. Learned Counsel further submits the decision relied on by the Original Authority being the decision of the CESTAT in Kapoor Lampshade Co. Vs. CCE, New Delhi reported in 2001 (136) ELT 376 (Tri.-Del), could not have been referred to by the Appellate Commissioner to justify the order of the Original Authority, in view of the later decision of the Hon'ble Supreme Court in Nizam Sugar Factory Vs. Collector of Central Excise, AP reported in 2006 (197) ELT 465 (SC).

9. Learned Counsel also submits that the finding in the impugned order that the earlier show cause notice is deemed to be withdrawn and therefore there are 2(two) show cause notices, which stems from an erroneous understanding of the legal position. The Hon'ble Supreme Court in Nizam Sugar Factory's case decided the issue based on the principle that the Department was aware of the issue involved while issuing the first show cause notice. The said principle when applied in the facts of the present case would go to show that the show cause notice dated 11.06.2003 is barred by limitation. The invocation of the larger period of limitation in the second show cause notice dated 11.06.2003 is also hit by the principles of constructive res judicata.

10. Learned Authorized Representative (AR) for the Revenue submits that the Notification No. 8/97-CE dated 01.03.1997 has been amended

by Notification No. 13/98-CE dated 02.06.1998 to deny the benefit of exemption in cases where the finished products cleared to the DTA are exempted from the whole of the duty or chargeable to nil rate and such finished goods are chargeable to an amount of excise duty equivalent to 30% of the aggregate duty of customs leviable on such goods, if imported into India. It is ascertained that the appellant had cleared 43758 Kg of sterilized black pepper claiming the exemption from payment of Central Excise duty under Notification No. 8/97-CE dated 01.03.1997. Learned AR further submits that a Notice was issued to the unit pointing out the liability to pay the duty involved of Rs. 8,30,077/- and during the adjudication proceedings, it has come to the notice of the department that the unit had suppressed the fact that the item sterilized black pepper was being cleared to DTA without the knowledge of customs authorities. They did not maintain the accounts of DTA sales properly and not submitted to customs for authentication. It is also seen that the unit has not filed the periodical reports before the Dept. showing the details of DTA sales. Inspite of repeated requests the unit could not produce any documents to show that the facts of DTA clearances were brought to the notice of Department or was any permission taken. Even at the time of debonding, the unit did not bring the fact of clearances into the DTA to the Department's notice. Thus, the demand confirmed by invoking extended period of limitation and the penalty imposed by Adjudication /Appellate Authority is sustainable.

11. Heard both sides and perused the records.

12. It is an admitted fact that Appellant is a 100% EOU and engaged in the activity of manufacture of "sterilized black pepper". The debonding of the unit of the appellant was done and a final order of de-bonding dated 18.11.1998 was passed by the Development Commissioner, Cochin Export Processing Zone after payment of Central Excise duty on the stock of unused packing material. Thus, facts of the debonding are known to the department and issue of a second show cause notice under Section 11A (1) of the Central Excise Act by invoking the larger period of limitation after a lapse of over 3(three)

years on the very same issue is unsustainable and the impugned order is liable to be set aside.

13. Accordingly, the impugned order is set aside, and Appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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