CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21443 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-273-13-14 dated 06/01/2014 passed by Commissioner of CUSTOMS , COCHIN)

Agappe Diagnostics Ltd
Agappe Hills,PattimattamP.o,kolenchery
COCHIN - 683562
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

AND

ii. Customs Appeal No. 21444 of 2014 (Agappe Diagnostics Ltd
)(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-271-13-14 dated 06/01/2014 passed by Commissioner of CUSTOMS , COCHIN)
iii. Customs Appeal No. 21445 of 2014(Agappe Diagnostics Ltd
)(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-275-13-14 dated 06/01/2014 passed by Commissioner of CUSTOMS , COCHIN)
iv. Customs Appeal No. 21446 of 2014(Agappe Diagnostics Ltd
)(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-274-13-14 dated 06/01/2014 passed by Commissioner of CUSTOMS , COCHIN)
v. Customs Appeal No. 21447 of 2014 (Agappe Diagnostics Ltd
)(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-272-13-14 dated 06/01/2014 passed by Commissioner of CUSTOMS , COCHIN)

APPEARANCE:
Shri G. SUBRAMANIAN, Advocate for the Appellant
Shri K.B. Nanaiah, Asst. Commissioner(AR) for the Respondent

CORAM:
HON'BLE MR. RAJU, TECHNICAL MEMBER
HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No. 20765-20769 / 2021

Date of Hearing: 24/09/2021
Date of Decision: 24/09/2021

Per : RAJU

These appeals have been filed by M/s. Agappe Diagnostics Ltd. against the confirmation of payment of customs duty.

2. The issue involved is whether demand can be raised for a period of one year in case of clearances made before 08.04.2011.Prior to 08.04.2011, the period of limitation prescribed under Section 28 of the Customs Act was 6 months. The said section was amended and w.e.f. 08.04.2011 and the period of limitation was enhanced to one year. In these cases, the demands under Section 28 were raised after expiry of 6 months in respect of clearances made before 08.04.2011. Tribunal vide Final Order No.20902 to 20912/2015 dt. 31/03/2015 has already granted relief in identical cases of the same appellant. In the said order, the Tribunal observed as follows:-

> *2. The appellant during adjudication as also before Commissioner (A) did not contest the classification but submitted that the demand having been issued beyond the normal period of limitation of six months, as was available during the relevant period, was barred by limitation. On the other hand, the Revenue contended that the provisions of Section 28 of the Customs Act were amended w.e.f. 8.4.2011, enlarging the period of limitation from six months to one year as the show-cause notices have been issued subsequent to amendment of Section 28. The period of one year would be available to the Revenue.*
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> *3. As such, the only issue required to be decided in the present appeals is as to whether the period of six months, as was available prior to 8.4.2011 would be applicable or the period of one year, as was available in terms of the amended Section 28 would be applicable. Learned advocate has drawn our attention to Explanation 2 to the said Section 28(10) of the Customs Act, 1962. The same reads as under:*
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> > *"Explanation 2: For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received."*
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> *As it is seen from the above, the said Explanation clarifies that the any non-levy, short-levy, or erroneous refund before receiving the assent of the President in*

respect of Finance Bill, 2011 shall continue to be governed by the provisions of Section 28 as it stood immediately before receipt of the assent. The language of the said Explanation is unambiguous and clearly stating that all the demands which has arisen before the amended Section 28 of the Customs Act would be governed by the earlier Section 28. The unamended Section 28 had admittedly period of six months for raising the demand but in all the present cases, the demand has been raised beyond the period of six months. We are of the view that the demands are barred by limitation.

3. Revenue has argued that the change of the period of limitation under Section 28 would apply in such cases. Revenue relied upon the decision of Hon'ble Apex Court in the case of Mysore Rolling Mills Private Limited [1987(28) ELT 50 (SC)]. In the said decision, Hon'ble Apex Court has observed as under:-

3. *Two contentions are advanced in support of the appeal : firstly, Rs.60/- which was collected as handling charges was not to be taken into account for computing duty and secondly, the notice dated 13th of October, 1978 had been issued more than a year after the last date of the period in question and was barred by limitation. Prior to 6.8.1977, Rule 9 which corresponds to Section 11-A of the Act provided a period of one year for taking of proceedings while Rule 10 corresponding to the present Section 11 of the Act prescribed a period of 3 months for such purpose. With effect from 6.8.1977, when the rules were amended, the period of six months was substituted for the period of three months and the period of five years substituted for the period of one year. The Tribunal has held that the period of five years was applicable to the facts of the case on the basis that it is a case of suppression. It is the case of the appellant that for convenience the arrangement between the appellant and its customers was that instead of the customers collecting the ingots on the basis of allotment at their respective factories and then transporting the same to the appellant situated at Belgaum in the State of Karnataka, the appellant was being permitted to lift the allotted ingots directly and after carrying out the manufacturing process it used to deliver the same to the customers. The handling charges were intended to cover the appellant's expenses in lifting the ingots. The*

> *Tribunals has, therefore, come to the right conclusion in holding that the handling charges represented premanufacturing cost. We agree that the Tribunal came to the appropriate conclusion in holding that the handling charges became a part of the value for computation of duty.*
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> ***4.*** *The Tribunal has recorded a finding that the appellant had suppressed the disclosure of receipt of handling charges and, therefore, the longer period of limitation applied. The same view had been taken by the departmental authorities. We see no justification to take the different view on the facts.*
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> ***5.*** *The only other submission of the appellant which remains for consideration is the tenability of the contention that the period of limitation under the old provision having expired the five year rule which has been applied was not available to be applied. Undoubtedly, the rule is intended to relate back and cover a period of five years from the date jurisdiction under the rule is invoked. The provision is, therefore, retrospective in operation. It is not the stand of the learned Counsel for the appellant that only when a period of five years has elapsed from the date of introduction of the rule, jurisdiction under the rule can be exercised in respect of that preceding period of five years. Once the rule comes into existence and jurisdiction under the rule is invoked, it has got to cover a period upto five years preceding the date of issue of notice. The Tribunal has endorsed such action of the departmental authorities. The plea of limitation has no force.*

Learned AR is relying upon the aforesaid decision to assert that the period of limitation of one year would apply to all clearances made prior to the amendment dt. 08.04.2011.

4. We find that the provision regarding invocation of extended period of limitation in the new provision introduced w.e.f. 06.08.199. The said provision was a new provision introduced in the act, as the said provision did not amend an existing similar provision. The said provision was only applicable in the cases involving suppression, misinterpretation etc.In the instant case the existing provision was amended and the period of limitation was enhanced from 6 months to one year.Thus the

facts of the case are different from the facts of the instant case and therefore the ratio of the decision of the Hon'ble Apex Court does not apply to the in the instant case. Moreover Explanation 2 to the section 28(10) also clarified as follows

> *"Explanation 2: For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received."*

This also makes it amply clear that the intention of government at the material time was not to apply the new provision to old cases.

5. Respectfully following the decision of the Tribunal in the appellant's own case, we set aside the impugned order and allow the appeals.

(Dictated and pronounced in open court on **24/09/2021**)

(RAJU)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

Raja...