

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal Nos.: C/40267, 40268 & 40270/2013

[Arising out of Order-in-Appeal Nos. 76,77 & 78/2012 all
dated 06.11.2012 passed by the Commissioner of Customs
& Central Excise (Appeals), Tiruchirapalli]

M/s. Kanam Latex Industries (P) Ltd., : **Appellant**
West Peruvilai Road,
Pullanvilai, Nagercoil,
Tamil Nadu – 629 003

Versus

The Commissioner of Customs, : **Respondent**
Custom House, Tuticorin

Appearance:-

Shri. G. Derrick Sam, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 06.12.2018

Final Order No. **43181-43183 / 2018**

Per P. Dinesha :

Aggrieved by the rejection of the appeal on refund claim as not maintainable by the Commissioner (Appeals), the assessee has filed the present appeals.

2.1 Today when the matter came up for hearing, Ld. Advocate Shri. G. Derrick Sam appearing for the assessee-appellant contended

that the appellant had filed the first appeal against the Order of assessment which came to be rejected by the first appellate authority holding that the appellant had accepted the assessment of impugned Bills of Entry under Notification No. 49/2008 – CE (NT) dated 24.12.2008 and that the appellant had not disputed the same before the adjudicating authority.

2.2 The facts in brief, as submitted by the Ld. Advocate, are as under :

- (i) The appellant imported a consignment of rubber gloves from Sri Lanka and filed Bills of Entry No. 6356336, 6563293 and 7512970 dated 26.03.2012, 10.04.2012 and 27.07.2012 respectively.
- (ii) The appellant was orally directed by the Assistant Commissioner to indicate the MRP on the packets for the purpose of assessment of additional Customs Duty in terms of the Central Excise Notification No. 49/2008 CE (NT) dated 24.12.2008.; that the appellant cleared the goods on payment of duty as suggested by the Assistant Commissioner.
- (iii) Before filing these Bills of Entry, the appellant had submitted a letter dated 10.04.2012 to the Assistant Commissioner informing him that since the appellant is importing gloves in

bulk for processing, sterilization and repacking no MRP marking is required nor is Additional Customs Duty payable on MRP assessment basis.

- (iv) The Assistant Commissioner, however, refused to heed to the appellant's request and assessed the goods on the basis of MRP on repacked goods; that the appellant paid the duty under protest and submitted a letter dated 23.04.2012 in protest thereof.

2.3 He further contended that the appellant had imported gloves in bulk which are subject to sterilization and repacking in small quantities for retail sale and it is only at that stage that the marking of Maximum Retail Price (MRP) is required. For this reason, he submitted that the provisions of Chapter II of the Legal Metrology (packaged commodities) Rules, 2011 also are not applicable. Consequently, the assessment of additional Customs Duty is not applicable.

2.4 He also placed reliance on the decision of the Hon'ble Madras High Court in the case of *Techno Doors Pvt. Ltd. Vs. The Commissioner of Customs, Chennai in C.M.A. No. 596 of 2018 dated 04.04.2018* to urge that the appeal is maintainable.

3. *Per contra*, Ld. DC (AR) Ms. T. Usha Devi appearing for the Revenue supported the findings of the lower authorities.

4. We have heard the rival contentions, perused the documents placed on record and have also gone through the decision of the Hon'ble High Court of Madras (*supra*) relied upon by the Ld. Advocate.

5. The undisputed fact is that the appellant had imported gloves in bulk and there is no denial on the part of the Revenue that the MRP is marked only when the gloves are sterilized and repacked in small quantities for retail sale. We find that on an identical circumstance, the Hon'ble High Court has held that the lower authorities had erred by declining to entertain the appeal, directed that the appeal be decided on merits by the Commissioner (Appeals) in accordance with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6. On a perusal of the impugned Order, we find that the first appellate authority has proceeded on the basis that the appellant had not questioned the assessment before the lower authority which, according to us, is not proper. We also take note of the pleading that MRP comes into the picture only after the gloves are sterilized and repacked.

7. We are therefore of the considered opinion that the matter requires to be re-adjudicated by the adjudicating authority in the light of our observations and also the pleadings of Ld. Advocate noted by us hereinabove. The adjudicating authority shall pass a *de novo* adjudication Order after giving sufficient opportunities to the assessee without being influenced by any of the findings in the earlier Orders. All the contentions are left open.

8. The appeals are allowed by way of remand.

(Operative part of the order was pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd