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

Appeal No.: E/40728/2013

[Arising out of Order-in-Appeal No. 73/2012 (M-IV) dated 21.12.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Chennai]

The Commissioner of G.S.T. & Central Excise, **: Appellant**
Chennai South Commissionerate

Versus

M/s. R.S. Graphics, **: Respondent**
No. 59/4D, MRC Garden Road,
Maduravedu, Velapanchavadi,
Thiruverkadu, Chennai – 600 077

Appearance:-
Shri. B. Balamurugan, AC (AR)
for the Appellant

Shri. N. Viswanathan, Advocate
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision:**21.03.2019**

Final Order No. 40592 / 2019

Per Bench :

The above appeal is filed by the Department against the Order passed by the Commissioner (Appeals), who set aside the demand, interest and penalties on merits as well as on the ground of limitation.

2.1 Ld. AR Shri. B. Balamurugan appeared on behalf of the Department and argued the matter. He reiterated the grounds stated in the Appeal. It is submitted by him that the adjudicating authority had held that the printed sheets manufactured by the assessee and used in the packing of printed notebooks and magazines would fall under Chapter Heading 4811 9099 and confirmed the demand of duty, interest and also imposed penalties. However, the Commissioner (Appeals) held that the goods are classifiable under Chapter Heading 4901 attracting "nil" rate of duty.

2.2 With regard to the issue of invoking the provisions of larger period, the Commissioner (Appeals) held that the Department was fully aware of the manufacturing activities of the assessee since a Show Cause Notice dated 17.03.2009 was issued for the earlier period 2006-07 which also overlapped with the subsequent Show Cause Notice dated 27.04.2011.

3.1 Ld. Advocate Shri. N. Viswanathan appearing on behalf of the respondent submitted that a Show Cause Notice was issued dated 17.03.2009 for the period 2006-07 wherein the very same allegations were raised. Duty was confirmed by the adjudicating authority holding that the goods are classifiable under Chapter Heading 4811 of the Central Excise Tariff Act, 1985. However, the Commissioner (Appeals) vide Order-in-Appeal No. 24/2012 dated 24.07.2012 has set aside the demand, holding that the goods viz. printed wrappers manufactured by the assessee is rightly classifiable under Chapter Heading 4901 and is subject to "nil" rate of duty.

3.2 The Order-in-Original in regard to the present proceedings were passed on 31.05.2012 during the pendency of the said appeal before the Commissioner (Appeals). The Commissioner (Appeals) has rightly noted that the period involved in the Show Cause Notice overlaps and that the second Show Cause Notice invoking the extended period on the very same issue cannot sustain. The Hon'ble Apex Court in the case of ***M/s. Nizam Sugar Factory Vs. Collector of Central Excise, A.P. - 2006 (197) E.L.T. 465 (S.C.)*** has held that the larger period cannot be invoked in the second/subsequent Show Cause Notice invoking the same issue and similar set of facts.

4. Heard both sides.

5. The Commissioner (Appeals) has held that the printed wrapper is classifiable under Chapter Heading 4901. However, on perusal of the Show Cause Notice, there is no issue raised with

regard to the classification of the goods. The Original Authority has however dealt with the classification issue also.

6. In the impugned Order, the Commissioner (Appeals), after considering the facts as well as the position of law, has held that the goods are rightly classifiable under Chapter Heading 4901. It is to be mentioned that in the assessee's own case in the previous proceedings, the Commissioner (Appeals) vide Order-in-Appeal No. 24/2012 dated 24.07.2012 held that the impugned goods are classifiable under Chapter Heading 4901. This being so, the subsequent Show Cause Notice alleging suppression of facts with intent to evade payment of duty cannot sustain. The second Show Cause Notice is on the very same issue and on similar set of facts. Therefore, the decision of the Hon'ble Apex Court in the case of *M/s. Nizam Sugar Factory (supra)* squarely applies.

7. We find no infirmity in the Order passed by the Commissioner (Appeals).

8. The appeal filed by the Department is dismissed.

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

(Madhu Mohan Damodhar) — Member (Technical)

(Sulekha Beevi C.S.) — Member (Judicial)

Sdd