**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**CHENNAI**

REGIONAL BENCH – COURT NO. III

**Customs Appeal No. 40890 of 2018**

(Arising out of Order-in-Original No. 61300/2018 dated 25.01.2018 passed by the Commissioner of Customs, Chennai-II, Custom House, No.60, Rajaji Salai, Chennai – 600 001)

**M/s. Hi-Tec Corporation** **: Appellant**
Flat No.29B, 3rd Floor, Shamnath Apartment,
Shamnath Marg, Civil Lines,
Delhi – 110 054

**VERSUS**

**The Commissioner of Customs** **: Respondent**
Chennai-II Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai – 600 001

**APPEARANCE:**

Shri B. Lakshmi Narasimhan, Advocate for the Appellant

Shri S. Balakumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 42144 / 2021**

DATE OF HEARING: 24.08.2021

DATE OF DECISION: 24.08.2021

**Order : Per Hon'ble Ms. Sulekha Beevi C.S.**

Brief facts of the case are that the Tribunal vide Final Order No. 41936 of 2017 dated 31.08.2017 had remanded the matter to the Adjudicating Authority. After *de novo* proceedings, the Commissioner of Customs, Chennai-II Commissionerate vide order impugned herein held that the goods imported are correctly classifiable under CTH 4811 9099 and rejected the classification adopted by the appellant which is under CTH 4911 9990. The benefit of Notification No. 26/2000-Cus. dated 01.03.2000, Sl. No. 5, was rejected and differential duty was confirmed with interest, besides imposing penalty. Aggrieved by such order, the appellant is now before the Tribunal.

2.1 Learned Counsel Shri B. Lakshmi Narasimhan appeared and argued the matter on behalf of the appellant. He submitted that the appellant is engaged in the business of trading paper products such as printed thermal paper rolls, paper articles, paper sheets, lottery tickets, etc., in India. They supplied printed thermal paper rolls to the clients in India. These thermal paper rolls are used by banks, shopping malls, eateries, State Road Transport Corporation, etc. That during the relevant period, the appellant imported printed thermal paper rolls vide 18 Bills-of-Entry with the description "printed paper <name of bank/company> rolls". These goods were classified by the appellant under CTH 4911 9990. On the basis of such classification, the appellant claimed full exemption from Basic Customs Duty (BCD) as per Sl. No. 5 of Notification No. 26/2000-Cus. dated 01.03.2000 as the goods were of Sri Lankan origin and entitled to full BCD exemption under the Indo - Sri Lanka Free Trade Agreement (ISFTA). That out of the 18 Bills-of-Entry, three Bills-of-Entry viz. 548691 dated 24.06.2010, 549083 dated 24.06.2010 and 549017 dated 24.06.2010 were provisionally assessed by the Department and the same are pending finalization.

2.2.1 He explained that though the goods were imported by the appellant from M/s. Gopsons Sri Lanka (Private) Limited, Sri Lanka, the said supplier in Sri Lanka had procured jumbo rolls of thermal paper from M/s. Koehler Paper Group, Germany. On receipt of the goods, the supplier undertook the following operations:

(a) The logo/brand of the bank/company is printed along with some instances of printing instructions as well; the print type and other details are received from the appellant, who in turn receives it from their customers;

(b) The thermal paper rolls also undergo sensor mark printing for the purposes of the end customers machines to recognize when the transaction paper is to be cut;

(c) The jumbo rolls are then slit into varying widths and lengths, depending on the end customer use and rolled to an appropriate length; and

(d) Insert is placed in the roll enabling the product to be placed on a spool or dispenser in various machines.

2.2.2 After undertaking the above process, the goods were exported to India. On export, the supplier also obtained a Country of Origin Certificate on the basis of which the appellant has claimed the exemption.

2.3.1 He adverted to page 93 of the appeal paper book and referred to the Show Cause Notice dated 12.04.2010 issued by the Commissioner of Customs, Mumbai Zone-II, Jawaharlal Nehru Custom House, Nhava Sheva for the imports made by the appellant in 2009; investigations were conducted alleging mis-classification of the goods and incorrect availment of benefit of Notification No. 26/2000-Cus. The Show Cause Notice issued, as above, raising allegation of mis-classification of goods and wrong availment of the above Notification culminated in the Order-in-Original No. 11678/2015-16, NS-I/AM-I JNCH dated 31.03.2016. The Original Authority in the said proceedings dropped the demand and upheld the classification adopted by the appellant. The Department has not filed any appeal against the said order and has accepted the same. This is evident from the response dated 31.05.2021 to the RTI application filed by the appellant seeking information from the Commissionerate as to whether or not the said order has been accepted. In the reply dated 31.05.2021 to the RTI application, it is stated that the Order-in-Original dated 31.03.2016 passed by the Commissioner of Customs NS-I, JNCH, Nhava Sheva has not been appealed against by the Department and that the order has been accepted by the Committee of Principal Chief Commissioner of Customs, Mumbai Zone-II and Chief Commissioner of Customs, Mumbai Zone-I on 01.07.2016. It is also stated that a letter dated 18.07.2016 intimating this fact was also forwarded to the Commissioner of Customs, NS-I, JNCH, Nhava Sheva.

2.3.2 He contended that the said decision having been accepted by the Department, the issue has attained finality and the Department cannot reject the classification of the appellant and demand differential duty denying the benefit of exemption as per Notification No. 26/2000-Cus. That it is the settled position of law that when the issue has been decided in favour of the assessee for a previous period and the same has been accepted by the Department, it is not open for the Department to contend otherwise for subsequent periods.

2.3.3 Learned Counsel for the appellant placed reliance on the following decisions:

(i) *M/s. Rosemerta Technologies Ltd. v. C.C. [2019 (11) TMI 1573 – CESTAT, Chandigarh];*

(ii) *M/s. Popular Carbonic Pvt. Ltd. v. C.C.E. [2021 (8) TMI 240 – CESTAT, Chennai];*

(iii) *M/s. Mohak Hi Tech Specialty Hospital v. C.C.E. [2020 (11) TMI 152 – CESTAT, New Delhi].*

2.4.1 It is further argued by the Learned Counsel for the appellant that the Show Cause Notice in this case has been issued by the Additional Director General (ADG) of the Directorate of Revenue Intelligence (DRI) under Section 28 of the Customs Act, 1962 for import of the subject goods made during the period from 19.04.2010 to 24.06.2010. That the Show Cause Notice is issued without jurisdiction as 'ADG, DRI' is not the 'Proper Officer' for the purposes of issuance of Show Cause Notice under section 28 of the Customs Act, 1962. That the Hon'ble Supreme Court in the case of *M/s. Canon India Pvt. Ltd. v. Commissioner of Customs* reported in *2021 (3) TMI 384 – Supreme Court* has held that the Show Cause Notice issued by the ADG, DRI is invalid. The said decision was followed by the Hon'ble High Court of Madras in *M/s. Quantum Coal Energy (P) Ltd. v. The Commissioner, Custom House, Tuticorin* reported in *2021 (3) TMI 1034 – Madras High Court.* The said view has been reiterated by the Hon'ble High Court of Karnataka in *Shri Mohan C. Suvarna, Director, M/s. Givaudan India Pvt. Ltd. v. The Principal Commissioner of Customs, Bangalore* reported in *2021 (8) TMI 178 – Karnataka High Court.* The Learned Counsel also relied upon the decision of the Tribunal in the case of *M/s. Evershine Customs (C & F) Pvt. Ltd. and The Two Step Trading Co. v. Commissioner of Customs, New Delhi* reported in *2021 (8) TMI 906 – CESTAT, New Delhi.*

2.4.2 He prayed that applying the above decisions, the impugned order requires to be set aside as the Show Cause Notice is issued without jurisdiction.

3. Shri S. Balakumar, Learned Authorized Representative, appeared and argued on behalf of the Department.

4. Heard both sides.

5.1 From the submissions made by the Learned Counsel for the appellant as well as after perusal of the records, we find that the issue on merits has been decided in the appellant's own case in Order-in-Original

No. 11678/2015-16, NS-I/AM-I JNCH dated 31.03.2016 passed by the Commissioner of Customs, Nhava Sheva. The classification adopted by the appellant under CTH 4911 9990 has been accepted by the Department and the proceedings initiated vide the Show Cause Notice have been dropped. The appellant filed an RTI application seeking information as to whether any appeal has been filed by the Department against such Order-in-Original or whether the same has been accepted by the Department. The relevant portion of the reply dated 31.05.2021 to the RTI application reads as under:

> *"3. The request of the applicant has been examined carefully. In this regard, CCO, JNCH has has submitted point-wise the reply as follows:-*
>
> *1. It is informed that the aforesaid Order-in-Original No.11678/2015-16, NS-I/AM(I)JNCH dated 31.03.2016 has not been appealed against by the Department.*
>
> *2. It is informed that the aforesaid Order-in-Original No.11678/2015-16, NS-I/AM(I)JNCH dated 31.03.2016 has been accepted by Committee of Pr. Chief Commissioner of Customs, Mumbai Zone-II and Chief Commissioner of Customs, Mumbai Zone-I on 01.07.2016. A letter dated 18.07.2016 intimating the same was forwarded by this office to the Commissioner of Customs, Import, NS-I, JNCH (Copy enclosed for ready reference)."*

5.2 It is seen that the Department has accepted the decision passed by the Commissioner of Customs, Nhava Sheva holding that the subject goods are to be classified under CTH 4911 9990. When this classification has been accepted, the Department cannot allege mis-classification for imports of the same goods made during the subsequent period.

5.3 In *M/s. Popular Carbonic Pvt. Ltd (supra)*, the Tribunal held that when the issue has been decided and has attained finality, the Department cannot be permitted to take a different stand for subsequent periods. A similar view was taken in *M/s. Rosemerta Technologies Ltd. (supra).*

6. From the above discussions, we hold that the correct classification of the impugned goods would be under CTH 4911 9990, as contended by the appellant. The issue on merits is found in favour of the appellant.

7.1 Learned Counsel for the appellant has also raised a technical issue that the entire proceedings are vitiated as the Show Cause Notice issued by the ADG, DRI is without jurisdiction. In *M/s. Canon India Pvt. Ltd. (supra)*, the Hon'ble Apex Court held that the DRI is not the Proper Officer for issuing Show Cause Notice under Section 28(4) of the Customs Act, 1962. The said decision was followed by the Hon'ble jurisdictional High Court in *M/s. Quantum Coal Energy (P) Ltd.* cited *supra.* The Tribunal in the case of *M/s. Evershine Customs (C & F) Pvt. Ltd. and The Two Step Trading Co.(supra)* has also followed the same to hold that the impugned order cannot sustain when the proceedings have been initiated by the Show Cause Notice issued by the DRI.

7.2 From the foregoing, we hold that the impugned order cannot sustain and requires to be set aside, which we hereby do.

8. The appeal is allowed with consequential reliefs, if any, as per law.

(Operative part of order pronounced in the open court)

Sd/-
**(SULEKHA BEEVI C.S.)**
MEMBER (JUDICIAL)

Sd/-
**(P. VENKATA SUBBA RAO)**
MEMBER (TECHNICAL)

Sdd