

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

1. CUSTOMS APPEAL No.41597 OF 2014

(Arising out of Order-in-Appeal C.Cus No.599 to 614/2014 dated 04.04.2014 by Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs Hose, Chennai 600 001).

M/s. Samarth Corporation

...Appellant

Archana Complex
37/12-1, 4th Cross,
Lalbagh Road
Bangalore 560 027

Versus

The Commissioner of Customs

...Respondent

Seaport – Imports
Custom House
No.60, Rajaji Salai
Chennai 600 001

2. CUSTOMS APPEAL No.41601 OF 2014

(Arising out of Order-in-Appeal C.Cus No.599 to 614/2014 dated 04.04.2014 by Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs Hose, Chennai 600 001).

M/s. P. P. Products Pvt. Ltd.

...Appellant

Archana Complex
37/12-1, 4th Cross,
Lalbagh Road
Bangalore 560 027

Versus

The Commissioner of Customs

...Respondent

Seaport – Imports
Custom House
No.60, Rajaji Salai
Chennai 600 001

3. CUSTOMS APPEAL No.41602 OF 2014

(Arising out of Order-in-Appeal C.Cus No.599 to 614/2014 dated 04.04.2014 by Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs House, Chennai 600 001).

M/s. P. P. Products Pvt. Ltd.

...Appellant

Archana Complex
37/12-1, 4th Cross,
Lalbagh Road
Bangalore 560 027

Versus

The Commissioner of Customs

...Respondent

Seaport – Imports
Custom House
No.60, Rajaji Salai
Chennai 600 001

APPEARANCE:

Shri. B.N. Gururaj, Advocate
For the Appellant

Shri. Harendra Singh Pal, Assistant Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing & Decision:08.01.2024

FINAL ORDER Nos.40038-40040/2024

ORDER : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that the appellant had imported plastic granules and cleared them under DFIA scheme. The period of dispute in these appeals range prior to 19/2/2009 and after such

date. As per notification No.40/2006, the appellants were eligible to avail exemption from basic customs duty and additional customs duty. Later amendment was brought forth in the said notification by Notification no.17/2009 dated 19.02.2009, whereby a condition was introduced. As per the condition (iii) (a) the transferee importer has to execute a bond to the effect that the inputs would be consumed within six months in the manufacture of dutiable goods. The department was of the view that the appellants have mis-declared as they failed to fulfill the condition and are therefore liable to pay duty and penalty. Show Cause Notice was issued to the appellant proposing to demand the duty along with interest on the imported goods and for imposing penalties. After due process of law, the original authority confirmed the duty demand, interest and penalties. Against such order, the appellant filed appeal before Commissioner (Appeals) who upheld the same. Hence this appeal.

2. On behalf of the appellant, the Ld. counsel Shri B.N. Gururaj appeared and argued the matter. It is submitted that many importers challenged the condition (iii) (a) imposed by notification 17/2009 dated 19.02.2009 by which the condition to execute the bond was made applicable retrospectively and the Honourable High Court of Madras in the case of *M/s. Tarajyot Polymers Ltd. versus Union of India 2018 (359) E.L.T. 678 (Madras)* held that the amendment Notification no.17/2009 –Cus. dated 19.02.2009 cannot be applied retrospectively. SLP filed by the department

against the judgement of Hon'ble High Court was dismissed by the Honourable Supreme Court *vide* judgement dated 11.4.2013. It is submitted that the period involved in appeal No.C/41597/2014 is prior to 19/2/2009 and squarely covered by the judgement rendered by the Jurisdictional High Court in the case of M/s. Tarajyot Polymers.

3. The period involved in appeal nos. C/41601/2014 and C/41602/2014 is partly prior to 19/2/2009 and after 19/2/2009. It is submitted that in similar matter the Tribunal *vide* Final Order no.40487/40490/2020 dated 30.1.2020 had considered the facts as well as the amendments brought to the notification. It was held by the Tribunal that as the Show Cause Notice is issued beyond the period of six months as envisaged under Section 28 of Customs Act 1962, the Show Cause Notice is time barred. It is submitted by the Ld. counsel that the disputed period being the transition period when the notification 40/2006 was amended by adding a condition into it, there is no intention to evade payment of duty and is only a procedural violation. There was no conscious act on the part of the importer to mis-declare or violate any provisions of law. The Ld. counsel prayed that the appeals may be allowed.

4. The Ld. AR Shri Harendra Singh Pal appeared and argued for the department. The findings in the impugned order was reiterated.

5. Heard both sides.

6. The plastic granules of various grades were imported by the appellant under duty free import authorization scheme read with Customs Notification no.40/2006-Cus dated 1/5/2006. In appeal no.C/41597/2014, the goods were cleared prior to 19.02.2009. The Notification no.17/2009-Cus dated 19.02.2009 had brought in condition no.(iii) (a) by which the transferee importer has to execute a bond that the goods will be used within six months in manufacture of dutiable products. It is noted that the amendment was challenged by many importers before the Hon'ble High Court of Madras and the Hon.'ble High Court vide judgement reported in the case of M/s. Tarajyot Polymers Ltd. (supra) held that the amendment cannot be applied retrospectively. The SLP filed by the department against such judgement has been dismissed. The period in appeal No. C/41597/2014 being prior to 19.2.2009 the decision would squarely apply and the demand and penalties cannot sustain and requires to be set aside. Ordered accordingly.

7. The Tribunal in similar matters *vide* Final Order No.4481/4486/2019 dated 11.3.2019 had set aside the demand interest and penalties for the clearances which were partly prior to 19/2/2009 and after 19/2/2009. The Tribunal had considered the issue of the amendment to the notification no.40/2006 and held that the allegation of misdeclaration and intention to evade customs duty cannot be saddled on the importer as the period is

the transition period of the introduction of the amendment. The Tribunal vide Final Order No.40487-40490/2020 dated 30/1/2020 held as under:

"We have carefully gone through the record of the case and submissions made. We follow the ruling by Hon'ble Madras High Court in the appellant's own case in respect of Appeal No.C/41504/2014 and hold that the demand in respect of bill of entry for re-determination raised by applying retrospective amendment, is not sustainable. We note that these are the cases where departmental officers made the assessment and the appellant had declared that they were availing the said Notification No.40/2006, which exempted payment of Additional Customs duty. In case appellants were not eligible for the same, it was the responsibility of the assessing officers to examine whether the appellants were eligible for the same or not. The provision for demand under normal period of limitation is provided only for such circumstances where by bonafide mistake on the part of the officers or the importer, Customs duty is not levied then the same can be recovered. The departmental officers did not object the same and the appellants were allowed to avail Notification No.40/2006-Cus., therefore there are no grounds for raising the demand under extended period of limitation. We, therefore, set aside the impugned orders and allow all the four appeals with consequential reliefs, if any, to the appellants".

8. The Tribunal had set aside the demand interest and penalties in above similar cases on the ground of limitation. In these appeals C/41601-41602/2014, we do not find any grounds of fraud, misdeclaration or suppression of facts established against the appellant. The only allegation is that appellant did not fulfill the condition as introduced in the amended notification and that this amounts to misdeclaration. Except that the bond was not furnished as per amendment notification 17/2009 there is no allegation indicating misdeclaration. Following the decision of the Tribunal in identical set of facts, we are of the considered opinion that as there is no evidence to establish fraud, misrepresentation or suppression of facts with intend to evade payment of duty. The Show Cause Notice issued on 3.12.2010 and 21.5.2010 invoking the extended period cannot sustain. The demand, interest and penalties imposed in appeals C/41601 – C/41602/2015 therefore requires to be set aside. Ordered accordingly.

9. In the result the impugned orders are set aside. The appeals are allowed with consequential reliefs if any.

(dictated and pronounced in court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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