IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.41317 of 2014

(Arising out of Order-in-Appeal C. Cus. No. 423/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. L.G. Balakrishnan & Bros. Ltd. **Appellant**
Fine Products Division
SF No. 1/175, Sathy Road, Pongalur Plant
Puliyampatti, Coimbatore – 638 459.

Vs.

Commissioner of Customs (Import) **Respondent**
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Ms. Shobhana Krishnan, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40154/2024

Date of Hearing : 06.02.2024
Date of Decision: 13.02.2024

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal C.Cus. No. 423/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai. (Impugned Order).

2. Brief facts of the case are that the officers of DRI, Regional Unit, Coimbatore visited the appellant's unit on 2.12.2009 in connection with the import of SCM 435 and C45E varieties of steel. With respect to SCM 435 variety of steel, they felt that the same was not eligible for exemption provided under Sl. No. 190C of Notification No. 21/2002 as they were an alloy and do not qualify for the exemption. This was

accepted by the appellants and the appellant paid the differential duty of Rs.9,25,055/- along with interest. As regards C45E variety of steel, the same was tested in National Metallurgical Laboratory, Chennai and found to be eligible for classification under Chapter 7211. Hence Show Cause Notice dated 21.4.2011 was issued to the appellant proposing to demand the differential duty of Rs.9,25,055/- along with interest for SCM 435 variety of steel along with fine and penalty. After due process, the adjudicating authority reclassified the goods under CTH 7226 with respect to SCM 435 and appropriated the differential duty along with interest already paid by the appellant during the course of investigation and imposed penalty. However, he refrained from imposing redemption fine as the goods were not available for confiscation. In appeal, the Commissioner (Appeals) upheld the order passed by the adjudicating authority. Hence the appellant is now before the Tribunal.

3. We have heard learned counsel Ms. Shobhana Krishnan for the appellant and learned AR Shri R. Rajaraman for the respondent.

3.1 The learned counsel for the appellant submitted that the classification of SCM 435 variety of steel is not disputed and the issue pertains to invocation of extended period for demanding duty and imposition of penalty under Section 114A of the Customs Act, 1962. Appellant paid differential basic customs duty of Rs. 9,25,055/- along with interest of Rs.1,80,322/- vide Challan dated 15.12.2009 with respect to subject goods imported vide 8 Bills of Entry prior to the issue of SCN. Consequent to the issue of the OIO the Appellant had deposited 25% of penalty (Rs. 2,31,264/-) under protest imposed vide TR-6 Challan dated 16.09.2011. Firstly, the Appellant submits that for one

Bill of Entry No. 868587 dated 16.10.2008 pertaining to the period in dispute, the department issued Demand Notice in File No. Bill of Entry No. 868587/PCA-2008 dated 01.05.2009 for which differential duty along with interest was paid vide TR-6 Challan No. 0502285 dated 16.05.2009. Subsequently, DRI issued Show Cause Notice in DRI File No. VIII/26/13/2009-DRI-CBE dated 21.04.2011 proposing to demand differential duty by invoking extended period and impose penalty under Section 114A of the Customs Act for the period in dispute. In supersession of the said DRI SCN, the Ld. Joint Commissioner issued Show Cause Notice No. S59/55/2011-Gr. 4 dated 08.06.2011 for the very same period in dispute. The Appellant submits that it is settled law that extended period of limitation is not applicable in case of subsequent show cause notices wherein the facts of the Appellant's case were well within the knowledge of the Department since the issue of the first show cause notice. Further, the Appellant for each import have furnished along with the Bills of Entry and invoices, copies of inspection certificate as well. The Appellant submits that they had produced test certificate containing the composition of various alloys and the relevant invoice at the time of filing the Bills of Entry. That the present appeal pertains to the tax regime prior to the introduction of self-assessment. Thus, during such period, the onus of classification was on the Department. When the subject goods, along with the Bills of Entry and all relevant documents were available with the Department to verify at the time of assessment itself, no suppression can be claimed on part of the Appellant. The present case only pertains to a claim of incorrect classification which cannot be equated with misdeclaration. Further, in ***Chaithanya Projects Pvt. Ltd. v. Commissioner of Customs, Chennai-II, 2023 (383) E.L.T. 124 (Tri.- Madras)***, the Hon'ble Tribunal observed that merely declaring a wrong classification per se would not amount to collusion or any willful mis-statement or suppression of facts and thus, penalty is not imposable. Hence the impugned order may be set aside.

3.2 The learned AR stated that the Appellant had all the details available for the correct classification of the goods. There was no complicated question of law involved. Once the Appellants own documents were shown to them by DRI the Appellants have not disputed the classification and have paid the duty. Show Cause Notice No. S59/55/2011-Gr.4 dated 08.06.2011 was issued in supersession of the Show Cause Notice issued by DRI from File No. VIII/26/13/2009-DRI-CBE dated 21.04.2011 as per instructions contained in Board's Circular, hence it cannot be said that a second SCN was issued in the same case. Had the matter not been investigated, duty would have been evaded by the Appellant due to misdeclaration and suppression of fact and hence the invocation of the extended period and penalty was justified. He further reiterated the points given in the impugned order. He prayed that the impugned order may be upheld, and the appeal be rejected.

4. We have carefully gone through the appeal and have heard the rival parties. We find that there is no dispute regarding the classification of the goods. It's only the invocation of the extended period of time for demand of duty along with the imposition of penalty

that is under challenge. The question involved is whether misdeclaration and suppression of facts is involved in this case.

4.1 Any breach of a civil obligation under the Act is a blameworthy conduct by the assessee. What needs to be examined is whether there was indeed a breach and if so whether it was committed with a view to evade tax by misdeclaration and suppression of facts or whether it was a bonafide dispute, without any fraudulent / reckless intention.

4.2 As stated by the Appellant, the import took place in the pre-self-assessment period. The obligation was on the part of the department to assess the imported goods. The Appellant had along with the Bills of Entry and invoices, furnished copies of inspection certificate as well. They had produced test certificate containing the composition of various alloys and the relevant invoice at the time of filing the Bills of Entry. In fact, the correct classification of the goods was arrived at by DRI on a perusal of the said documents submitted at the time of import. The goods were not mis-declared and the declaration in the Bills of Entry were as per invoice. Even in his statement recordered by DRI, Mr. M Jayaramachandar had stated that they used to procure the same goods indigenously and the Indian manufacturers also classified the same only under CTH 7211 as had been declared by them in the Bills of Entry. This has not been controverted by the Department. This being so the charge of misdeclaration and suppression of fact, fails. Since the onus of assessment was on the department and the Appellant had submitted the necessary documents to facilitate the same, they cannot be held responsible for suggesting a certain classification heading in the Bill of Entry. As held by the Hon'ble Supreme Court in

Northern Plastic Ltd. v. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)] that mere claiming the benefit of exemption or a particular classification under the bill of entry does not amount to mis-declaration or suppression of facts.

5. In the light of the discussions above the charge of the Appellant having mis-declared the goods and supressed facts fails. The demand has hence to be restricted to the normal period and the penalty needs to be set aside. The impugned order is modified on the said terms. The appeal is disposed of accordingly with consequential relief to the appellant, if any as per law.

(Pronounced in open court on 13.02.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex