CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 41325 of 2015

Customs Appeal No. 41326 of 2015

(Arising out of Order-in-Appeal No.130 & 131/2014-TTN(CUS) dated 17.11.2014 passed by Commissioner of Central Excise (Appeals-II) at Trichy, No.1, Williams Road, Cantonment, Tiruchirappalli 620 001.)

M/s. Zeon International **.... Appellant**
No.167, Union Mill Road,
Opp. To Sangeetha Theatre,
Tiruppur 641 601.

VERSUS

The Commissioner of Customs, **... Respondent**
Custom House,
New Harbour Estate,
Tuticorin 628 004.

APPEARANCE :

Shri S. Murugappan, Advocate, for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41236-41237/2024

DATE OF HEARING : 18.09.2024
DATE OF DECISION : 25.09.2024

Per: P. Dinesha

These appeals filed by the appellants question the levy of Anti-dumping duty (ADD) and denial of exemption from Basic Customs Duty (BCD) in the common impugned order passed by the Commissioner of Central Excise (Appeals-II), Trichy.

2. Heard Shri S. Murugappan, Ld. Advocate for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative for the Revenue, we have gone through various Orders-in-Original as well as the documents placed on record. We find that the issues to be decided by us is "whether the Commissioner (Appeals) was justified in confirming (i) the levy of ADD; and (ii) the demand of differential BCD ?".

3. Brief relevant facts as could be gathered upon hearing both sides and from the perusal of impugned common Orders-in-Appeal as well as Order-in-Original are that the appellant is a regular importer of "Air Covered Spandex Yarn" from China and they have availed BCD exemption at 5% vide Sl.No.289 of Notification No.12/2012. They had also made similar imports wherein they have claimed the same benefit vide Sl. No.534 of Notification No.21/2002. In respect of a subsequent import vide Bill of Entry No.9289000 dated 12.12.2013 from China, it appears that the goods were tested for the composition by the Revenue wherein they appear to have found that the "Air Covered Spandex Yarn" predominates nylon filament yarn and hence the same was to be classified under ITC HS 540231 which attracts 7.5% BCD vide Sl.No.290 of Notification

No.12/2012; the same was also held to attract ADD at USD 1.27 per kg. vide Sl.No.1 of ADD Notification No.03/2012 dt. 13.01.2012. The above was demanded vide Order-in-Original No.800/2013 dt. 5.4.2013 against which it appears that the importer filed an appeal before the first appellate authority and the same was also confirmed in appeal. It also appears from the record that the appellant did not pursue further for the reasons best known to them, but however, it is an undisputed fact the same has become final.

4. Based on the above test reports, it appears that a demand notice dt. 07.05.2013 (for a Bill of Entry dt. 13.07.2012) came to be issued demanding differential duty and a show cause notice was also issued dt. 01.08.2013 (for the Bills of Entry dt. 18.11.2010 and 17.08.2011) proposing inter alia to recover differential duties. It is obvious from the record that the said demands apparently were made by invoking the extended period of limitation. It appears that the importer filed its replies thereto but, however, not satisfied with the reply, the original authority appears to have confirmed the demand vide common OIO dt. 16.06.2014. Seriously aggrieved by the said demands, it appears that the importer preferred the appeals before the first appellate authority; even the first appellate authority having rejected the appeals thereby confirming the demands, the present appeals have been filed before this forum.

5. Sri Murugappan, Ld. Advocate took us through the grounds of appeal both on merits as well as limitation; we find at the threshold that it is a case where the extended period of limitation has been invoked while issuing the SCN. We also find from the Orders-in-

Original that the test report obtained for an earlier import made vide the Bill of Entry dt. 12.12.2013 has been used later proposing to recover differential duties, which came to be confirmed and sustained in the common impugned OIA. The said demands are now questioned in these appeals. Further, we do not find any whisper either in the common Orders-in-Original or the impugned Orders-in-Appeal as to the grounds on which the extended period of limitation was invoked, to justify the demand of differential duty, apart from ADD. In the Orders-in-Original however, the original authority has only recorded that the importer had misdeclared the description which rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. But we find that the alleged misdeclaration pertained to a different Bill of Entry and the goods imported vide these Bills of Entry were not subjected to any tests.

6. In view of the above discussions, we are of the clear view that the demands as confirmed in the impugned Orders-in-Appeal do not stand the test of law inasmuch as the SCNs have been issued without justifying the invocation of extended period of limitation and hence, the demands become unsustainable.

7. Accordingly, we set aside the common impugned order and allow the appeals on the limitation with consequential relief, if any.

(Order pronounced in the open court on 25.09.2024)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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