IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

C/40372/2013

[arising out of Order-in-Appeal No.101/2012, dated 19.12.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

M/s.JENEFA INDIA APPELLANT

Versus

COMMISSIONER OF CUSTOMS, TUTICORIN RESPONDENT

Appearance:

For the Appellant	Shri S. Ramachandran, Cons.
For the Respondent	Ms. T. Usha Devi, DC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **21-02-2019**

FINAL ORDER NO. **40388 / 2019**

Per Bench:

The facts of the matter was that appellants had imported crushed bones under 7 bills of entry from Pakistan claiming exemption under Sl.No.6 of the table of Notification No.67/2006-Cus., dated 30.06.2006. It appeared that as Pakistan is Appendix-2 of the notification and hence goods imported from that country were not eligible for the exemption. Accordingly, the show-cause noticed dated 05.08.2001 was issued in respect of the 7 bills of entry amou8nting to short-levy of Rs.14,42,643/- with interest thereon and imposition of penalty under section 112 of the Customs Act, 1962. In adjudication, the original authority vide order darted 08.08.2012, *inter alia,* held exemption notification under the said notification was not available to the appellants, demanded differential duty of Rs.14,42,643/- with interest and also imposed equal penalty under section 112 (a)(ii) of Customs Act, 1962. In appeal, before Commissioner (Appeals), *inter alia*, contending that out of the 7 bills of entry, 4 nos. were assessed by the assessing officers and not processed by Risk Management System [RMS]. Hence the appellants continued to claim exemption on the belief that exemption notification was applicable, as departmental officers had allowed the exemption. In the order of Commissioner (Appeals) no. 101/2012, dated 19.12.2012, penalty imposed under section 112 (a)(ii) was set aside. However, no interference was made with the remaining portion of the order of the original authority. Hence this appeal.

2. Today, when the mater came up for hearing on behalf of the appellants learned Senior Consultant Shri S. Ramachandran, *inter alia,* made a number of submissions, which are reproduced as under:-

(i) There are no misdeclaration in the bill of entry

(ii) Out of 7 bills of entry, 4 nos. were manually assessed and were duly assessed by appropriate officers of Customs where exemptions was allowed under Notification No.67/2006. The duty involved in these 4 bill of entries amounts to Rs.9,60,238/-

(iii) Had the officers pointed out the ineligibility in these manual bill of entries, the appellants would have paid appropriate Customs duty on these imports and would not also have not claimed exemption for the remaining import consignment cleared through RMS.

(iv) Once the assessment has been done in respect of the 4 bills of entry, for any changes to be brought out in the same, the appeal would be required to be filed against the assessment to the

Commissioner (Appeals) as per the ratio laid down by Hon'ble Apex Court in the case of *M/s. Priya Blue Industries Ltd., Vs Commissioner of Customs (Preventive)* reported in *2004 (172) E.L.T.145 (S.C.)*. This was not done, the assessment has become final and for that reason, the department cannot demand in respect of 4 bills of entries, which have been manually assessed. The issue is also covered by decision of Tribunal in the case of *Commissioner of Customs (Imports), Miumbai Vs M/s. Hindustan Gas and Industries Ltd.,* reported in *2006 (202) E.L.T.692 (Tri.-Mumbai)*. It cannot be sustained.

3. On the other hand, the Ld. Representative for the Revenue Ms. T. Usha Devi, DC (AR) supports the impugned order. She submits that even as per M/s. Priya Blue Industries Ltd., (supra) judgment para 6, unless, the order of assessment has been reviewed under section 28 and or notification in an appeal, the order will stand.

4. However, in the present case, the assessment has been sought to be reviewed by issue of a show-cause notice dated 05.08.2011 under section 28 of the Customs Act, 1962. For this reason, learned Ld. AR also submits that section 28 very clearly provides for issue of a show-cause notice to demand duty in respect of duties not levied or short levied.

5. Heard both sides.

6. Notwithstanding the assertions of the learned consultant, we do not find any infirmity in the impugned order. Discernably, section 28 of the Customs Act, 1962, provides for issue of a show-cause notice, *inter alia*, where duty has not been levied or short levied. Evidently, any non levy or short levy would only be by the assessing officer and not by the importer. *Per contra*, the other provisions

related to duty not paid and short paid would apply to the importer. We also find merit in the assertions of the learned Authorised Representative that even in the Apex Court judgment in the case of *M/s. Priya Blue Industries Ltd.* (supra) has validated the disturbance of an order of assessment by review under section 28 of the Customs Act, 1962. In our opinion, therefore, the ratio laid down by *M/s. Priya Blue Industries Ltd.,* (supra) will not help the case of the appellant herein. There cannot also be any dispute that the exemption provided in the Notification No.67/2006-Cus., would never have been eligible or applicable to goods imported from Pakistan. By seeking to setting aside the appropriate demand of duty in respect of four bills of entry, the appellant is only seeking to wrongly benefit indirectly what they are not entitled to directly. In the circumstances, no merit is found in the appeal, for which reasons, it is dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
25-02-2019

	DRAFT			Remarks
	I	II	III	
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Fair Order Typing	**25.02.2019**			
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