CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal Nos.41500, 41504, 41506 - 41507 of 2014-DB

(Arising out of Order-in-Appeal C. Cus. Nos. 599 to 614/2014, dated 04.04.2014, passed by the Commissioner of Customs (Appeals), Chennai)

M/s.Alto Polymers Pvt. Ltd., **: Appellant/s**
No.25A/1, T.V. R. Complex,
Chinnandan Koil Street,
Karur 639 001.

M/s. Tarajyot Polymers Ltd.,
Archana Complex,
No.37/12-1, 4th Cross,
Lal Bagh Road,
Bangalore 500 027.

M/s. Bishen Saroop Ram Kishan
Agro. Pvt. Ltd.
B-35, SIDCO Industrial Estate,
Maraimalai Nagar,
Distt: Kancheepuram,
Pin 603 209.
Tamil Nadu.

M/s. Kamadhenu Polymers Pvt. Ltd.
No.37/12-1, 4th Cross,
Lal Bagh Road,
Bangalore 500 027.

VERSUS

Commissioner of Customs, **: Respondent**
[Seaport – Imports],
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri B.N. Gururaj, Advocate for the Appellant

Ms. T. Ushadevi, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
HON'BLE SHRI ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40487-40490/2020

DATE OF HEARING: 30.01.2020

DATE OF DECISION: 30.01.2020

Per Anil G. Shakkarwar:

Above stated four appeals are taken together for decision since all of them are having common issue.

2. Brief facts of the case are that the appellants were regular importers of plastic granules during the period after 19.02.2009. The appellants imported plastic granules and for payment of Basic Customs duty appellants used transfer of duty-free imported authorisation. For the period prior to 19.02.2009, there was exemption from payment of Additional duty of Customs under Customs Tariff Act in case the Basic duty is paid through transfer of duty-free import authorisation. On 19.02.2009 such facility was withdrawn through Notification No.17/2009-Cus., dated 19.02.2009. However, the appellant declared to the authorities that they were availing Notification No.40/2006-Cus., through which payment of Additional duty of Customs under Customs Tariff Act, 1975 [CTA] was exempted. However, the departmental officers assessee the goods and such duty of Customs, which was imposable under CTA Act was not imposed and the goods were allowed be cleared. Subsequently, through show-cause notices, dated 28.10.2010, 11.2020, 28.11, 2010 and 31.01.2011, the unimposed Additional Customs duty to the tune of amounting to Rs.11,000/- 3,00,000/- and 16,00,000/ and Rs.74,000/-from different appellants were demanded by invoking of extended period of limitation provided under section 28 of Customs Act, 1062. Aggrieved by the said confirmation of duties, appellants are before this Tribunal.

3. Heard the learned counsel Shri B.N. Gururaj on behalf of the appellant. He has submitted that at the time of clearance of the goods, the appellant declared to the Customs officers that they were

availing exemption under Notification No.40/2006-Cus., as amended by Notification No.17/2009-Cus., dated 19.02.2009. So, there is no misdeclaration on the part of the appellant. So, under those circumstances, the demand should have been raised under normal period of limitation i.e., within six months from the date of payment of duty. He submitted that within six months i.e., normal period of limitation demands were not raised and there is no misdeclaration or suppression on the part of the appellant and, therefore, the show-cause notices were not admissible to be raised by invoking larger period. The counsel has submitted that in case of Appeal No.C/41504/2014, one bill of entry was relating to the period prior to amendment of notification, dated 19.02.2009. He has submitted that the same is covered by ruling by Hon'ble High Court of Madras in the appellant's own case as reported as *2018 (359) E.L.T.678 (Mad.)*, wherein, it was ruled that condition no.(iia) imposed in Notification No.17/2009-Cus., to be read as operative prospectively with effect from 19.02.2009.

4. Heard the learned Authorised Representative Ms. T. Ushadevi, who has submitted that the appellant had declared that they were eligible for the said exemption under Notification No.40/2006-Cus., though they were not eligible and, therefore, there was misdeclaration.

5. 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 sutainable. 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.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

ksr
13-02-2020