CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 42800 of 2014

(Arising out of Order-in-Appeal C.Cus.No.1839 & 1840/2014, dated 26.09.2014 passed by the Commissioner of Customs (Appeals), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Olympic Enterprises **.....Appellant**
166/1, 3rd Floor
S.P.Road, Bangalore 560 002

Versus

Commissioner of Customs (Exports) **.....Respondent**
Custom House
No.60, Rajaji Salai, Chennai 600 001

AND

Customs Appeal No. 40284 of 2016

(Arising out of Order-in-Appeal C.Cus.No.1839 & 1840/2014, dated 26.09.2014 passed by the Commissioner of Customs (Appeals), 60 Rajaji Salai, Custom House, Chennai 600 001)

Shri Vivek Kumar Jain **.....Appellant**
Olympic Enterprises
166/1, 3rd Floor, S P Road
Bengaluru Rural
Karnataka 560 002

Versus

Commissioner of Customs (Exports) **.....Respondent**
Custom House
No.60, Rajaji Salai, Chennai 600 001

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER Nos.41017-41018/2025

DATE OF HEARING: 13.06.2025
DATE OF DECISION: 17.09.2025

Per Mr. Ajayan T.V.

These two appeals being inter-related, were heard together and are being disposed of by this common order. M/s. Olympic Enterprises a proprietary concern (first appellant) and Mr. Vivek Kumar Jain, son of the Proprietrix (second appellant) are the appellants herein.

2. The relevant facts are that pursuant to intelligence that the first appellant had imported "fibre glass measuring tapes," which are chargeable to anti-dumping duty if imported from China, in terms of Notification No.49/2009–Cus. dated 15.05.2009, by declaring them as "tailor tapes", DRI commenced investigation in the course of which, the business premises of the first appellant were searched, measuring tapes seized and statements were recorded from the second appellant.

3. Pursuant to such investigation, a Show Cause Notice was issued alleging that the importer has deliberately suppressed complete and actual description of the goods in respect of four bills of entry mis-declaring the description as "tailor tapes" in spite of the fact that they were "fibre glass measuring tapes." The importer had also not declared the brand name despite the tapes being of "cow brand' and the above appeared to have been done to evade payment of anti dumping duty. The show cause notice alleged deliberate suppression of facts and wilful mis-statements, invoked the *proviso* under section 28 (1) of the Customs Act 1962 read with Section 9 A of Customs Tariff Act 1975 to demand anti-dumping duty of Rs.47,36,512/- along with applicable interest and also proposed imposition of penalty equivalent to the duty evaded along with applicable interest, under Section 114 A of the Customs Act. It was also alleged that the measuring tapes are governed by the provisions of Standards of Weights and Measures Act (SWMA) 1976 and that the importer appeared to be not registered under Section 47 (1) of the SWMA, 1976. Therefore, it was alleged that the goods were imported in violation of the provisions of the SWMA, 1976 rendering the goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act and the importer liable to penalty under section 112(a)

of the Act. The second appellant was alleged to have committed various acts of omission and commission rendering him liable for a penalty under Section 112(a) of Customs Act.

4. After due process of law, the adjudicating authority ordered confiscation of all the goods already cleared which included the goods related to bill of entry no.600974/18.08.2010 that was seized, which were valued at Rs.8,84,878/-, with option to redeem the goods on payment of fine of Rs.10,00,000/-. The Adjudicating Authority also ordered for payment of anti-dumping duty of Rs.47,36,512/- and imposed penalty of Rs. one lakh on the importer and Rs.50,000/- on Shri Vivek Kumar Jain.

5. Aggrieved by the Order in Original, the appellant preferred appeals before the Commissioner of Appeals, *interalia* pleading that the goods were imported during the period September 2009 to August 2010 and were examined by the customs officers who had also not proposed any levy of ADD. It was contended that the goods were therefore cleared on payment of duty duly assessed and thus the demand was barred by limitation. The Commissioner, Appeals passed the impugned orders in appeal C.Cus.No.1839 & 1840/2014 dated 26.09.2014, rejecting the appeals filed and holding that the demand for payment of anti dumping duty was not hit by limitation as there was suppression and wilful misstatement. The Appellate Authority thus upheld the order in original *in toto*. Aggrieved and dissatisfied by the impugned Orders in appeal, the appellant preferred the present appeals and are before this Tribunal.

6. Shri Hari Radhakrishnan, Advocate appeared and argued for the appellant. The Ld. Counsel submitted as under:

   A. The Appellate Authority has not controverted the appellants contentions on the in-applicability of the anti-dumping duty and had given the findings only on the issue of invoking extended period of limitation.

   B. That the extended period of limitation was not invokable as the goods were imported by the appellant during the pre self-assessment period, and the bills of entries were examined and were assessed to duty only thereafter.

C. That there was no malafide on the part of the appellant declaring the product as tailor tapes. The supplier described the product as tailor tapes in the invoices and on packages. That these measuring tapes commonly used by tailors is known in trade parlance as tailor tapes. As evidenced by the supplier invoice and the practice of manufacturers of such tapes in India, including M/s. Freemans Measures (P) Ltd. referred in the Order in Original. The officers had also enhanced the value at the time of assessment and thus were aware, pursuant to their examination, of the nature of the imported goods.

D. The appellant had also classified the goods under CTH 90178010 which pertain to "measuring rods and tapes and divided scales" and therefore the charge of mis-declaration or suppression does not hold good. The appellant places reliance on the decisions in *CC and CE, Ex., Kanpur vs. Jas International, 2011 (272) E.L.T. 282 (Tribunal, Delhi), Northern Plastics Ltd. Vs. Collector of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C), Zenith Rubber and Plastic Works Vs. Commissioner of Customs (Export), Mumbai 2010 (262) E.L.T. 272 (Tribunal, Mumbai), Lakshmi Floor Glass Ltd. Vs. Commissioner of Customs, New Delhi, 2009 (240) E.L.T. 249 (Tribunal, Delhi), Landyard Folks Ltd. V. Commissioner of Central Excise, Bangalore, 2009 (244) E.L.T. 445 (Tribunal, Bangalore), Bajaj Tempo Ltd. Vs. Collector 1984 (17) E.L.T. 205 (Tribunal) upheld in 1998 (100) E.L.T. A 68 (SC)*.

E. That no order for confiscation and imposition of redemption fine on the goods can be made as they are neither available for confiscation nor were they cleared under bond. That goods pertaining to the three bills of entry cleared, as well as part of the goods pertaining to bill of entry dated 18.08.2010 cleared and unavailable, are total valued at Rs.6,34,878/- and thus the confiscation of such goods which are not available is unsustainable in law. The market value of the seized goods is only Rs.2,50,000/-. Thus the confiscation of goods which are not available for seizure and imposition of redemption fine of Rs.10 lakhs, much in excess of what the goods were valued at by the adjudicating authority itself, is contrary to settled law. Reliance is placed on the decisions in *Shiv Kripa Ispat Pvt. Ltd. Vs. CCE, Nashik, 2009 (234) E.L.T 623 (Tribunal - LB), Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C), Commissioner of Customs & C. Ex., Kanpur Vs. Jas International, 2011 (272) E.L.T. 282 (Tri. – Delhi)*.

7. Shri Sanjay Kakkar, Ld. Authorised Representative appearing for the respondent, reiterated the findings of the Appellate Authority. Ld. Authorised representative placed reliance on the decisions in *Madanlal Steel Industries Ltd. Vs. Union of India, 1991 (56) ELT 705 (MAD) and final order no.40590 /2025 dated 06.06.2025 passed in Customs appeal no.42629 of 2014 in the case of Shanti Rayons India Pvt. Ltd. Vs. Commissioner of Customs, Tuticorin.*

8. Heard both sides. Perused the appeal records and the case laws submitted as relied upon.

9. We find that the imports have taken place from September 2009 to August 2010 and the show cause notice was issued in July 2011. It is not in dispute that the subject period was prior to the introduction of self-assessment and at the time of import, the goods were cleared on examination and assessment by the proper officer. The appellant's contention that the proper officer had granted such clearance only after the goods were examined and that they were assessed at a value enhanced as found appropriate by the said officer, also remain uncontroverted. Thus, save for the imports made vide bill of entry No.600974 dated 18.08.2010, the imports made vide the earlier three bills of entry, are in any event beyond the normal period of limitation and thus barred by limitation.

10. We also find merit in the contention of the appellant that when the description, and quantity at the time of importation based on the commercial invoices received by them from their overseas suppliers were declared and the consignments were cleared after duly scrutinizing the supporting documents and the assessing officers had also enhanced the value at the time of assessment and clearance of these goods, after having regard to contemporaneous imports prevailing during the relevant period, the allegation of suppression or

misdeclaration against the appellant cannot sustain. It cannot be the case of the Department that the proper officers who had examined the goods are unaware that fiberglass measuring tapes attract anti-dumping duty. There is neither any evidence on record that the proper officer has claimed that he was misled nor is it the case of the Department that the proper officer had acquiesced and connived with the importer.

11. When the dispute is one of classification, once the assessee had declared the description of the goods imported correctly as per the supporting documents, it was the duty of the assessing officer to correctly assess the goods. It cannot be gainsaid that classification of the goods, along with valuation and import policy, are crucial aspects of assessment which the proper officer is entrusted with. When the proper officer has chosen to clear the goods on examination and has given out of charge it can only mean that the officer has satisfied himself that the goods so cleared have been assessed to the correct duties leviable. The appellants' contentions on the nature of the goods as known in trade and materials relied on to substantiate their contentions that their competitor also sold the impugned goods as tailor tapes also remain uncontroverted by the appellate authority. In such circumstances, post such clearance of imported goods, any statement taken from the second appellant to the contrary, and which is admittedly retracted and the voluntariness of which remains contested, cannot be relied upon to substantiate misdeclaration.

12. While the appellant had placed reliance on many decisions which are apposite, it is profitable to reproduce the case law cited and shown to us at bar, in the case of ***Commissioner of Customs & Central Excise v Jas International, 2011 (272) ELT 282 (Tri-Del),*** wherein under somewhat similar circumstances, it has been held as under:

" **6.** We find no merits in the above contention of the Revenue. Admittedly, the goods were declared as 'tapes' and the same were found to be 'tapes'. Further, classifying the said goods under a different Customs tariff heading than the one adopted by the Revenue for the purpose of Anti Dumping Duty, cannot said to be with a *mala fide* intention, in the absence of any evidence to that effect. In any case, adoption of correct classification is in the hands of Customs authorities who can always change the same from the declared classification to the correct classification. To classify the product under a particular heading, according to the understanding of the importer, by itself cannot be held a ground so as to confiscate the imported goods. As such, we find no infirmity in the view adopted by the Commissioner. Accordingly, the appeal filed by the Revenue is rejected."

13. On perusal of the case laws cited by the Ld. A.R, we find that in shanti Rayons case, it was found that there was an admitted suppression by the appellant therein whereas the second appellant in the instant case has in the statement stated that the declaration in the bills of entry were as per the declaration in the invoices of the supplier. In Madanlal Steel Industries case the importer had moved the court prematurely. Thus, we find that the case laws relied upon by the Ld. A.R. are distinguishable as they were delivered in different factual matrices not comparable with these matters.

14. In view of our analysis and discussions above, we are of the considered view that the impugned orders in appeal cannot sustain and are liable to be set aside. Ordered accordingly.

The appeals are allowed, with consequential reliefs in law, if any.

(Order pronounced in open court on 17.09.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M AJIT KUMAR)
MEMBER (TECHNICAL)

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