

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Miscellaneous Application No. 50339 of 2024
Customs Miscellaneous Application No. 50340 of 2024

(on behalf of respondent)

in

Customs Appeal No. 52193 of 2014 [DB]

[Arising out of Order-in-Original No. 68/RKB/CC/NCH/2013 dated 24.12.2013
passed by the Commissioner of Customs (Adjudication), New Delhi]

**Commissioner of Customs-
New Delhi (ICD TKD)**

Inland Container Depot,
Tuglakabad, ICD, Delhi

...Appellant

VERSUS

Navshakti Industries Pvt. Ltd.

980-81/4, 1st Floor,
Makki Market, Chawri Bazar,
Delhi-6

...Respondent

APPEARANCE:

Shri Rakesh Kumar, Authorized Representative for the Appellant
Shri T.P.S. Kang, Advocate for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIAY, MEMBER (TECHNICAL)

DATE OF HEARING: 04.06.2024

DATE OF DECISION: **03.10.2024**

FINAL ORDER No. 58773/2024

DR. RACHNA GUPTA

The present appeal has been filed by the department pursuant to Review Order No. 01/2014 dated 26.03.2014 to assail the Order-in-Original No. 68/2013 dated 24.12.2013 vide which the proceedings against all the noticees initiated vide Show Cause Notice No. 10/2/97 dated 23.07.2002 issued by Commissioner of Customs, ICD TKD have been dropped. The facts relevant for the impugned adjudication in brief are as follows:

1.1 The department had the intelligence that M/s. Navshakti Industries Pvt. Ltd., New Delhi has been mis-declaring the goods of

import with a view to avail ineligible exemption benefit of Notification No. 11/97-Cus dated 01.03.1997, entry on S.No. 78. The officers from SIIB Branch of ICD TKD, Commissionerate acted upon the said intelligence and found that M/s. Navshakti Industries Pvt. Ltd. had imported 26 consignments vide following 26 numbers of Bills of Entry Declaring the goods as printing paper, uncoated in reels having not less than 70% mechanical wood pulp by weight of total fiber content. :

S.No.	Bill of Entry No.	Date
1	108100	02.08.1997
2	109316	29.08.1997
3	109517	19.09.1997
4	10958	04.09.1997
5	110452	19.09.1997
6	110474	20.09.1997
7	111345	08.10.1997
8	111361	09.10.1997
9	112300	31.10.1997
10	112781	11.11.1997
11	113110	17.11.1997
12	113348	20.11.1997
13	113349	20.11.1997
14	113699	27.11.1997
15	114160	03.12.1997
16	114182	28.08.1997
17	114260	08.12.1997
18	114270	08.12.1997
19	114380	10.12.1997
20	113341	20.11.1997

21	107739	25.07.1997
22	107940	30.07.1997
23	108391	11.08.1997
24	108602	14.08.1997
25	108603	14.08.1997
26	111740	18.10.1997

1.2 The goods were classified under Customs Tariff Heading No. 4802.60 and exemption from customs duty under the said notification was claimed. On examination of goods, department formed the opinion that the imported/declared printing papers appeared to be newsprints classifiable under Customs Tariff Heading 4801. The representative sealed samples from each of the consignments were therefore drawn and were sent to the Chief Chemist, Central Pulp and Paper Research Institute, Saharanpur vide office letters dated 09.02.1998 and 20.02.1998 for testing and to ascertain as follows:

- a) Whether the paper is newsprint or not as per chapter note 3 of chapter 48 of Customs Tariff Act, 97-98;
- b) Ash content in the paper;
- c) The GSM of the paper;
- d) The percentage by weight of total fibre content obtained by mechanical process; and
- e) whether coated or not. If yes, then is it coated with Kaolin or China clay or other inorganic substances?

1.3 Pending the test results, the goods were provisionally assessed on execution of test bonds by the importer covering the difference between the duty self assessed and the duty provisionally assessed and paid. The test report with respect to one Bill of Entry No. 13341 dated 20.11.1997 was received vide letter dated 19.03.1998. The investigation team conducted search at the official as well as the residential premises of the Managing Director of M/s. Navshakti Industries Pvt. Ltd. namely Shri Rajneesh Goel on 20.12.1997 and 21.12.1997.

1.4 From the seized documents, specifically the document dated 05.12.1997 and 09.12.1997 i.e. the letters sent to supplier and to the indenter requesting for the certificates to enable the importer to clear the consignment. Department formed an opinion that the importer, M/s. Navshakti Industries Pvt. Ltd. aided and abetted by the indentors, had been corresponding regularly with the suppliers in order to get misleading certificates to hoodwink the Customs authority so as to evade the prohibition under Section 11 of the Customs Act, 1962 and the provisions of EXIM Policy, which was changed w.e.f. 29.01.1997 to restrict the import of standard newsprint for the traders, due to which the importers, being traders, no more remained eligible to import the newsprint. Thus importer-respondent allegedly resorted to the mis-declaration of the description of newsprint in connivance with their indenter to circumvent licensing restriction. The statement of Shri Rajneesh Goel and the supplier as well as the indentors were also recorded. Meanwhile the test report for remaining 25 Bills of Entry was received from CISL, Saharanpur vide letter dated 11.09.1998 reporting that the samples in respect of all the above 26 Bills of

Entry confirmed to the parameters of newsprint as provided in note 3 of Chapter 48 of the Customs Tariff Act, 1975.

1.5 Based thereupon, department formed an opinion that the goods imported vide 26 Bills of Entry were 'Newsprint' (restricted goods which were allowed to be imported only under a specific importer license). Hence, vide Show Cause Notice No. 02/97 dated 23.07.2002 respondent, M/s. Navshakti Industries Pvt. Ltd. has been alleged to have imported the newsprint by mis-declaring the same as printing paper by paying nil rate of duty as contrary to customs duty at the rate of 10% Basic Customs Duty (BCD), thereby evading the customs differential duty amounting to Rs.31,77,162/-. The said amount of duty was accordingly proposed to be recovered along with the interest. The goods imported vide Bills of Entry were proposed to be seized and penalties were proposed to be imposed on the respondent, M/s. Navshakti Industries Pvt. Ltd, their financial partner, M/s. Ridhima General Trading Company, Shri Anil Vig, Managing Director of M/s. Anika International Pvt. Ltd. (the indenting agents), and Shri K.L. Arora, Director of M/s. Anika International Pvt. Ltd. The test bonds executed by the importer in respect of 26 Bills of Entry were proposed to be invoked. All these proposals have been dropped by the original adjudicating authority by the order under challenge. In terms of Section 129D(1) of Customs Act, 1962 the committee examined the order under challenge. The committee vide Review Order dated 26.03.2014 has concluded that the impugned Order-in-Original is not legal and proper, for the reasons as mentioned in the said order, the present appeal has been filed pursuant to the said Review order.

2. We have heard Shri Rakesh Kumar, learned Authorized Representative for the department and Shri T.P.S. Kang, learned counsel for the respondent.

3. Learned Departmental Representative appearing on behalf of the appellant has mentioned that the goods imported by the appellant, as trader, vide 26 Bills of Entry between August 1997 to December 1997 were declared as printing papers by classifying the same under CTH 4802. The goods were found by the department to be the newsprint which could be imported only by the end users and not by the traders subsequent to the notification as was amended on 01.01.1997. The appellant has wrongly declared the 'Newsprint' paper as 'Printing Paper' to avoid the said amendment as appellant was not allowed to import the new print paper being the trader post said amendment dated 01.01.1997.

3.1 Learned Departmental Representative impressed upon that the respondent has also wrongly claimed the benefit of exemption under S.No. 78 of Notification No. 11/1997-Cus. It is impressed upon that the respondent cannot dispute the fact that prior amendment dated 01.01.1997, they were importing 'Newsprint' only. It is after the said amendment that the respondent, though continued importing the same goods, but resorted to mis-declaration and misclassification thereof to 'Printing Paper' of CTH 4802 to wrongly avail the exemption benefit of Notification No. 11/1997. The said mis-declaration/mis-classification was purely with an intent to douse the department of its revenue, is nothing but an act of suppression on part of the appellant committed with a *mala fide* intent to evade the requisite customs duty. Hence

extended period in terms of Section 28(4) of the Customs Act, 1962 (herein after referred as the Act) has rightly been invoked in the facts of the present case, while issuing the impugned show cause notice.

3.2 It is further impressed upon that the impugned 26 Bills of Entry, the assessment thereof was never finalized. There is no evidence to the said effect except that the Commissioner of Customs has relied upon rejected test bonds which cannot be called as the proof of final assessment. Not only this, the adjudicating authority below has relied upon the test reports of CRCL, Pusa, Delhi which were submitted by the respondent-importer and have not even been mentioned in the impugned show cause notice. The findings in the order under challenge are therefore beyond the scope of show cause notice, hence are liable to be set aside. The test reports of CRCL, Saharanpur based whereupon the show cause notice has been issued have not been discussed in the order under challenge which amount to deciding the matter ex-parte i.e. without relying upon the submissions made by the department. The order therefore gets hit by the violation of principle of natural justice as well and is liable to be set aside on this ground also.

3.3 Learned Departmental Representative further impressed upon that the appellant vide their letter dated 19.12.1997 have admitted that the wrong consignment were sent by their supplier M/s. Ridhima General Trading Company (Manager, Shri Rakesh Kumar). However, it was revealed that the supplier was the related party, said Shri Rakesh Kumar being the brother of Shri Rajneesh Goel, the proprietor of the respondent-importer. Thus, it stands clear

that the respondent had prior knowledge that the paper imported by them is the restricted one i.e. the 'Newsprint' which is restricted to be imported by the end users only but the respondent were the traders. The said act of the respondent-importer reflects that the restrictions imposed vide DGFT Public Notice No. 22 (RE-96) 92-97 dated 29.01.1997 vide which the EXIM Policy was changed to restrict the import of standard newsprint for traders have also been violated by the respondent.

3.4 Shri Rajneesh Goel, the proprietor of the respondent vide his statement recorded on different dates had also admitted that he was also fully aware of the fact that 'Newsprint' import was restricted to actual users only and M/s. Navshakti Industries Pvt. Ltd. being the traders were not competent to import the same. He has also admitted that the consignment covered under Bills of Entry No. 114293 dated 08.12.1997 to be of standard newsprint and not of printing paper as declared. Also the department got the samples collected from all the consignments, and got those through CRCL, Saharanpur. The test report reveal that samples in respect of the 26 Bills of Entry confirmed to the parameters of 'Newsprint' as provided note 3 Chapter 48 of the Customs Tariff Act, 1957. Based on this test report that the impugned show cause notice was issued. The order under challenge has not considered the said test reports, on the contrary has relied upon the reports produced by the respondent-importer. The order is liable to be set aside on this ground also.

3.5 Learned Departmental Representative also submitted that since the document of department was not considered by the

adjudicating authority below, the matter is prayed to be remanded back for the *de novo* adjudication. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, respondent-importer has mentioned that the impugned show cause notice was issued after the delay of more than 4 years since the date when consignments of the importer-respondent were intercepted in the month of August to October 1997. However, the show cause notice has been issued in the Year 2002. The department has not produced anything to justify said delay nor has produced any document on record to prove the allegations of mis-declaration. There is nothing on record to prove as to which samples were sent to M/s. CRCL, Saharanpur. No notice of drawing those samples was served upon the importer-respondent, nor the date of those being sent and tested by Saharanpur Lab was informed to the appellants. On the contrary, the goods of 26 Bills of Entry were initially detained for test check. The sample from each of the consignment were drawn sealed in presence of the respondent's representatives and were sent to testing to CRCL, Pusa, Delhi. 80% of the detained goods were provisionally released at that time of submitting those test bonds. Based on the reports received from CRCL, Pusa that the Sample do not confirm to the standards of 'Newsprint' that the test bonds, as were furnished by the respondents at the time of detention of the goods were got cancelled and remaining 20% goods were also ordered to be released. The goods got finally released in the month of December 1997 and January 1998.

4.1 Learned counsel for the respondent further mentioned that report of CRCL, Pusa dated 19.03.1998 with respect to one Bill of Entry No. 13341 dated 20.11.1997 and for remaining 25 Bills of Entry the report is dated 11.09.1998 is on record. But the show cause notice mentions about sending the samples to CRC, Saharanpur in the month of February 1998. The said fact of the show cause notice is apparently wrong on the face of record as the goods of all 26 Bills of Entry got finally released by January 1998. The possibility of drawing samples thereafter and sending them for testing is not feasible. It is also not the department case that samples were drawn twice. It is rather apparent that the samples were drawn at the time of detention of goods itself i.e. in the Year 1997 and were immediately sent for testing. The first report of CRCL, Delhi was obtained in March 1998 pursuant where all the goods were released in January 1998. But the show cause notice recites sending samples to Saharanpur Lab in February, 1998. It is impressed upon that the samples which were drawn in presence of respondents at the time of detention itself were actually sent to CRCL, Pusa, Delhi. The detained goods were fully released by January, 1998. The department is therefore alleged to have manipulated the test reports of CRCL Saharanpur against the respondent which got prepared at respondent's back and without their knowledge and without following the due process of law. The respondent importer was not even called to countersign the samples which were sent to CRCL, Saharanpur. Above all the show cause notice issued four and a half years later, based on the manipulative reports of CRCL, Saharanpur itself. Since all the allegations regarding the test reports are an afterthought and since

the fact of release of all goods till January 1998 was also in the knowledge of department, the extended period of limitation has been wrongly invoked while issued the impugned show cause notice.

4.2 Learned counsel has also impressed upon that after getting the release order of the goods since the goods were detained for a prolonged period, the department issued the detention certificate in the matter. Respondent-importer though paid the demurrage charges however claimed the same by filing the suit for recovery before Hon'ble High Court of Delhi. The said suit was decreed in favour of the respondent-importer in March, 2002 holding department liable for paying those demurrage charges. The present show cause notice of July 2002 is an afterthought to wrongly avoid the compliance, the decree passed by the Hon'ble High Court. Otherwise also department has not filed any document of any nature to support the findings in review order dated 26.03.2014, except the CRCL Saharanpur report which is not acceptable for want of due process of law as was required for obtaining those test reports. Adjudicating authority below has rightly observed that prior the report of CRCL Saharanpur, test reports of CRCL Pusa supporting the importers declaration was already there holding that the subject goods are 'Printing Paper'. Based whereupon the goods were finally assessed and got finally released. The complete silence of those facts in the impugned show cause notice is noticed as a strong ground to reject the show cause notice and to drop the demand arising there from. Top on that department itself remained silent for about 4.5 years subsequent to CRCL, Saharanpur reports as well.

4.3 Learned counsel further submitted that once final assessment was made by the department, the only remedy was of filing the appeal under Section 128 of the Customs Act to challenge the said assessment. Hence the impugned show cause notice as issued in July 2002 should not have been issued. Learned counsel has placed reliance upon the decision of Hon'ble Supreme Court in the case of **ITC Vs. Commissioner of Central Excise, Kolkata-IV reported as 2019 (368) ELT 216 (SC)**

4.4 While coming to the merits vis-à-vis alleged mis-declaration based on Saharanpur Test Report, learned counsel has submitted that goods imported are admittedly classifiable classified under Customs Tariff Heading No.4802. The findings in said report about the ash content of the imported paper is not the factor to be considered and thus is irrelevant for the purpose of assessment under Heading 48.02. Under the said entry, the aspect to be considered is mechanical wood pulp amounting to not less than 70% by weight of total fiber content. The entry at S.No. 78 of Notification No. 11/97-CUS covers the goods of 4802 i.e. the paper containing mechanical wood pulp amounting to less than 70% of weight of total fiber content. Hence, the benefit of duty exemption has rightly been availed by the appellant, the product importing being the printing paper. CRCL, Pusa report have clearly indicated that inspected goods are 'Printing Paper' and not the 'Newsprint'.

4.5 Impressing upon that the adjudicating authority in the order under challenge has rightly considered test report of CRCL, Saharanpur as invalid, the report being manufactured by the department, there is no infirmity in the findings. There is no

circumstance in the present case which warrants the reconsideration of the issue by the departmental adjudication authority as there is no document with the department adjudicating authority except for CRCL, Saharanpur reports. There is rather the decree of Hon'ble Delhi High Court passed against the department. Hence the prayer of remand raised by department department is alleged to be as strategy to continue harassing the appellant and is an attempt to get changed the final assessment after several years. With these submissions, it is prayed that matter may not be remanded. The order of adjudicating authority below is prayed to be upheld and the appeal filed by the department is prayed to be dismissed.

5. Having heard both the sides at length, perusing the voluminous record and the voluminous written submission submitted by both the parties, we observe following to be the apparent facts, the bone of contention:

(a) The impugned Order-in-Original dated 24.12.2013 as has been challenged by the department subsequent to the Review Order dated 26.03.2014 is an order passed in favour of the importer falsifying the allegations of mis-declaration and holding that the goods imported by the importer-respondent were the 'Printing Papers'. Based on the reports by CRCL, Pusa, Delhi reports, it has been held that the respondent importer has rightly availed the exemption benefit of Entry No. 78 of Notification No. 11/97-Cus.

(b) We also observe that the impugned show cause notice dated 23.07.2002 has been served upon the importer alleging mis-declaration on the basis that the imported goods are the 'Newsprint'

paper as got confirmed by the report given by CRCL, Saharanpur. As per department the samples of all 26 Bills of Entry were drawn and were sent to Saharanpurer Lab along with the letter 09.02.1998 and 20.02.1998.

5.1 The bare perusal makes it clear that two different reports about samples drawn from same 26 Bills of Entry have come of record. To appreciate the correctness, we need to go through the chronology of events occurred in the present case:

S.No.	Date	Events
1.	August 1997 to December	The respondent imported 26 consignments vide BOEs which were filed by the respondent declaring the goods as "Printing paper" under CTH 4802.60
2.	August 1997 to December 1997	On examination, the goods sought to be declared as above under said 26 BOEs appeared to be Newsprint classifiable under CTH 4801 and the samples were drawn and sent to Central Research Institute, Pusa, Delhi
3.	August 1997 to December 1997	Pending the test Results of the samples from CRCL, Delhi the goods covered under the said BOEs were provisionally assessed on execution of test Bonds by the Importer mentioning goods to be printing paper covering the difference between the duty finally assessed and the duty provisionally assessed and paid and 80% of the goods were got released.
3(a)	January 1998	The report from CRCL, Pusa, Delhi was received. This report is relied upon by the adjudicating authority below and by importer.
3(b)	19.03.1998	The report of Central Pulp and Paper Reseach Institute (CPPRI), Saharanpur based whereupon the impugned show cause notice was issued.
4.	22.03.2002	Hon'ble Delhi High Court passed decreed against the Appellants (Dept) in Civil Suit No. 2667/98 the recovery of demurrage. In appeal, against the order though the issue was decided otherwise but the declarations were not effected at any stage in litigation.
5.	23.07.2002	A Show Cause Notice bearing C. No. VIII/10/ICD/TKD/Prev./2/97 was issued by Shri A. K Raha., Commissioner of

		Customs, ICD to the Petitioner.
6.	31.08.2006	The SCN was initially adjudicated by adjudicating authority in favor of the Department
8.	01.07.2010	This Tribunal set aside the said order dated 31.08.2006 and remanded the matter for fresh adjudication i.e. for finalization of Provisional assessment
9.	24.12.2013	The impugned OIO was passed pursuant to remand, dropping the demand and penalty proposed in the SCN on the basis of test reports from CRCL, Pusa.
10.	26.03.2014	Review Order was passed by the Committee of Chief Commissioners under Section 129(D) of the Customs Act.with a prayer to remand the matter for final assessment.
11.	17.04.2014	Department filed an appeal pursuant to the said review Order dated 24.12.2013.
12.	23.02.2017	Final Order was passed by the Hon'ble Tribunal Delhi wherein the matter was again remanded to the Adjudicating authority, observing that goods have not been finally assessed.
12(a)	30/31.05.2017	An application was moved by the Appellant/Petitioner herein under Section 129(B)(2) for Rectification of mistake against the above said final order dated 23.02.2017 but was dismissed as barred by time.
13.	19.09.2017	Customs appeal was filed by the Respondent before the Hon'ble High Court Delhi challenging said order of remand.
14.	05.12.2017	The Hon'ble High Court Delhi dismissed the appeal of the Respondent on the ground of jurisdiction as the appeal was not maintainable.
15.	08.10.2018	The Respondent-importer moved the Hon'ble Supreme Court of India against the Order of the Hon'ble Tribunal Delhi dated 23.02.2017.
16.	22.08.2023	Hon'ble Apex Court remanded the matter back to the Honble Tribunal with permission to both the parties to submit additional documents. Pursuant to said order, the matter is again before this Tribunal.

5.2 After going through the said chronology as apparent on record, and has been observed by Hon'ble High Court of Delhi while

passing decree, sanctioning demurrage charges, in favour of the appellant, we have perused the impugned order. The adjudicating authority has observed the conduct of departmental authorities in Para 30, 31 and 33 of the order dated 24.12.2013 as follows:

30. Above vital facts have been deliberately suppressed as there is no mentions about the same in the show cause notice. This is because in the light of such crystal clear facts, there could have been no valid legal grounds to issue any such show cause notice and in the light of already assessed bills of entry, the authority would not have issued such an illegal show cause notice.

*31. To camouflage the whole case with malafide intention, in the show cause notice, reference has been made to some alleged samples drawn and tested by the Central Pulp & Paper Research Institute, Saharanpur It has been submitted by noticee that to their knowledge no such samples were drawn from their consignment and were ever sent to Central Pulp & Paper Research Institute, Saharanpur. Any such action if at all taken by the Departmental officers at their back, does not stand the test of scrutiny of sample drawn established procedures etc. and any reference to such tes reports is invalid in the eyes of law particularly in view of the fact that samples were already sent to CRCL, Delhi, for testing and on the basis of these test reports, the goods were finally released and cleared. Therefore, reference to any alleged test reports pertaining to Central Pulp & Paper Research Institute, Saharanpur is totally irrelevant, against the settled procedures and the provisions of law. Further, it has been pointed out that the show cause notice mentions that the samples were drawn and sent for testing in the month of Feb., 1998 and test reports were received in Sept., 1998. The show cause notice is dated 23.07.2002. That means more than 4 years elapsed between the receipt of test reports from Central Pulp & Paper Research Institute, Saharanpur and issuance of show cause notice. **The show cause notice does not mention any reason as to why such a long period was taken for issuing the show cause notice after the test reports were received and what action was taken during the intervening period. Based on above, it has been contended that the goods finally assessed and cleared cannot be re-opened for assessment***

on the basis of such alleged tests and test reports. Hence, the demand is time barred. Entire series of actions by officers by denying them the relevant records including test reports of CRCL, Delhi, on one pretext or the other holding that the same are not relevant or are not traceable and finally pass the order, without properly hearing the noticee shows malafide. Re-opening the finalized assessment on the basis of some alleged test reports is against the well settled position of law.

33. A perusal of the case records show that 26 consignments of papers were imported during August Dec., 1997. The representative samples were drawn from 26 consignments and sent for testing. As per show cause notice, the samples were sent to Central Pulp & Paper Research Institute, Saharanpur vide office letters Ref. C. No. VIII(ICD)6/16/270/97/Imp/1654 dated 9.2.198 and even No. 2049 dated 20.2.1998. However, as per noticee, the representative samples were sent to CRCL, Delhi. Hence, there is variation in facts and show cause notice does not mention that the samples were sent to CRCL, New Delhi, for testing and test reports were received by them. This important fact has been completely blacked out from the show cause notice."

5.3 We further observe that the CRCL, Pusa reports are prior in time. The goods were released based on said report by January 1998 but those reports were not obtained by the importer after moving an application under RTI Act 2005 as is apparent from departments own communication dated 25.04.2007 vide which the Deputy Commissioner of Customs had requested the Joint Directors of Central Revenue Control laboratories, Pusa, IARI, New Delhi to provide the requisite test reports, if any, in respect of Bills of Entries as were required by the importer vide their letter dated 20.12.2006. The importer has placed on record those test reports of CRCL, Pusa and has also placed on record the copies of test bonds has got cancelled in the month of December 1997 and

January 1998. The appellant has also placed on record the typed copies of detention certificates with respect to each of the Bill of Entry the Assistant Commissioner (Customs) ICD TKD has mentioned in those services as follows:

*"This is certified that the above contained has to be detained for carrying out checks necessitated by circumstances of the case.
However, the importer was not found to be at fault."*

5.4 The another miscellaneous order/stay application no. 1162/06 in C/607/06 dated 12.01.2007 is also placed on record. Perusal whereof reveals, the order records that 26 consignments of paper were imported by M/s. Navshakti Industries Pvt Ltd (respondent) claiming the goods to be the 'printed paper'. 19 consignments were cleared on Test Bonds which were subsequently cancelled. Since some of the consignments were detained pending Test Reports from CRCL, Pusa for long period that the department issued detention certificate in 1998 so as to enable the appellant to obtain waiver off demurrage charges from 'Container Corporation of India and Shipping Companies'.

5.5 We observe that the show cause notice dated 23.07.2002 (the one in question) was issued after the goods were already released and the Test Bonds were already cancelled. The order also recorded another submission of present respondent that since the provision assessment bonds had been cancelled upon finding that the goods were as declared, it was not open to the revenue to invoke proviso to Section 28A of the Customs Act alleging that there was any misdeclaration by the appellant. It is being pointed out that the cancellation of the bonds shows that test reports from the Customs Chemical Laboratory confirmed that the paper

consignments were of printing paper. The allegation is that those reports were being suppressed. It is being pointed out that the appellant has specifically sought copies of those test reports from the customs authorities during adjudication but the request was rejected under letter dated 18.01.2006 stating that "CRCL reports are not available in the case record and also do not appear to the relied documents in the SCN". The allegation of the learned counsel is that revenue is trying to keep evidence favourable to the appellant out of the proceedings, so that demand could be confirmed.

5.6 In view of said submissions this Tribunal vide order dated 12.01.2007 held that it is a fit case for granting waiver of pre-deposits. Firstly, because the same dispute had arisen between the parties before the Hon'ble High court and the decree made is binding on both parties. Secondly, the record shows that their provisional assessments were finalized, apparently, based on tests by Customs Laboratory. If that was the case, there is no justification for invoking the extended period, merely because another report by Central Pulp and Paper Institute has been received.

5.7 It has been alleging that the goods imported were actually 'Newsprint' and on account of mis-declaration as printing paper, there was a short levy of customs duty of about Rs.32 lakhs. The appellant resist the allegation, but under an ex-parte order dated 31.08.2006, that demand was confirmed and penalties imposed. We also observe that Hon'ble Delhi High Court in Civil Suit No. 2667 of 1998 filed by the present importer ordered the customs authority

to pay sum of Rs.46,31,929/- with interest at the rate of 18% as demurrage charges. The said decree of Hon'ble High Court was held to be binding of both the parties even by this Tribunal in order dated 12.01.2007. Invocation of extended period of limitation while issuing the said show cause notice/the impugned show cause notice was also held to be unjustified for the reason that the provisional assessments with respect of 26 Bills of Entry, 3 were finalized based on the test reports by, CRCL, Pusa, Delhi holding that the paper imported by M/s. Navshakti Industries Pvt. Ltd. was the printing praper and the declaration was correct, as already quoted above. The ex parte order of confirmation of demand dated 31.08.2006 was set aside and the adjudicating authority was directed to decide the matter afresh after giving opportunity to the respondent-importer to be heard. After hearing the importer and perusing the documents produced by them, the demand proposed in show cause notice dated 23.07.2002 was set aside by this Tribunal vide order dated 01.07.2010, remanding matter back to original adjudicating authority for finalization of assessment. In compliance of those directions, the order dated 24.12.2013 (O-I-O) was passed with observations, as already quoted above and holding the declaration of respondent-assessee to be correct about imported goods, as thereby accepting finally, the classification to be printing paper and the value as declared by appellant.

5.8 Pursuant to review order dated 26.03.2014 after order, department filed an appeal which was allowed by this Tribunal vide order dated 23.02.2017. The said order has been set aside by Hon'ble Supreme Court vide order dated 08.10.2018 holding that the Tribunal has passed the order without giving opportunity of

representation to the importer. The matter has been remanded back to this Tribunal giving opportunity to both parties to produce additional documents, if any. (The chronology of these orders is already tabulated above)

5.9 The subject of the said review order is, "Review of Order-in-Original No.68/RKB/CCE/NCH/2013 dated 26.12.2013". It is stated that Section 129(D) does not provide any power to review the order and in fact, the Committee of Chief Commissioners of Customs have gravely erred in passing the order dated 26.03.2014 bearing No. 01/2014 in the nature of review. The said order could only be in the nature of recommendation after satisfying to the legality or propriety of such decision. Neither the department has filed in the Appeal any record, which has been considered by the Committee of Chief Commissioner's of Customs, Delhi Zone. Para 4 of the order dated 23.02.2017 of the Tribunal does not even indicate anything regarding the same or shed any light that what was looked into by the Committee of Chief Commissioners of Customs while using their powers under Section 129(D). The sequence of events clearly indicates that even the applicant did not get an opportunity to explain the case. This is one of those cases which required dismissal and not remand as has been done.

5.10 The department has filed the documents which are Annexure A and B to the show cause notice, the communication between importer and exporter and the copy of statements recorded during investigation. We observe from the extract of the statements recorded during the investigation, as placed on record that Shri Rajneesh Goel, Director of M/s. Navshakti Industries Pvt. Ltd. had

admitted for importing newsprint paper but only till the time prior to the amendment in the notification and exemption policy where after the trade like respondent could no more import the 'Newsprint'. The notification permitted only end user to import the 'Newsprint'. While answering question No. 4 it has been stated that no consignment of 'Newsprint' were supplied by M/s. Anika International Pvt Ltd in the Financial Year 1997-98. They have supplied the 'Printing Paper' only. With respect to the certificate seeing discretion of the goods, it has been mentioned that the order was originally booked by the importer for supply of printing papers to firm M/s. Sachsen Papier Eilenburg, Germany as original consignee. The invoice for the same was instructed to be generated through M/s. Regium General Trading, Dubai so as to get negotiate the documents through their bankers at Dubai. The order was initially booked through M/s. Anika International Pvt Ltd, hence when the requisite declaration was sought at the time of checking the Annexure B which was sent by Shri Rajneesh Goel.

5.11 The said statement has no admission that even after the notification imposing restriction, the importer was still importing 'Newsprint' nor the statement anywhere records that prior the said notification the respondent was importing 'Newsprint' only and continued importing the same paper even after the restriction. There is no evidence produced by the department to prove that the paper imported by the respondent pre and post restriction was same. Otherwise also these statements and annexures to the show cause notice were already before the adjudicating authorities. The only additional documents are two letters sent by respondent to M/s. Anika, the indenter. The perusal reveals that the respondent

has simply asked for a certificate to the effect that the imported consignment is not 'Newsprint'. In our opinion, these two letters are insufficient to prove the allegations in the show cause notice. In the light of such statements and such documents, and in the absence of any other document to falsify the test reports from CRCL, Pusa, Delhi, and further, in absence of any documents proving that the department had followed the due procedure for drawing samples, subsequently, to be sent to CPPRI, Saharanpur, we do not find any infirmity in the order under challenge.

5.12 Coming to the another contention of learned Departmental Representative where emphasis has been laid upon the ash content as the criteria for describing the nature of imported goods as has been appreciated by CPPRI, Saharanpur, we observe that the appellant has availed the exemption benefit of Entry on Serial No. 78 of Notification No. 11/1997. It reads as follows:

S.No.76. Heading Newsprint, having an ash content by weight not exceeding 8%

S.No. 77. Heading 4801 Newsprint, having an ash content by weight exceeding 8%

S.No. 78. 4802. Paper (excluding chrome paper, marble paper, flint paper, poster Paper, stereo paper and art paper) containing mechanical wood pulp amounting to not less than 70 per cent. By weight of the total fiber content.

5.13 The perusal of above quoted entry reveals that the content of mechanical wood pulp was the only criteria about paper to be assessed for the benefit under Serial No. 78. The reports of CRCL, Pusa have specifically reported with respect to mechanical wood pulp as follows:

Mechanical wood pulp	-	Actual being 74.6%
		(not less than 70%)
GSM	-	50.6%
Ash content	-	Actual being 4.43%
		(less than 8%)

The Test Report from CPPLR, Saharanpur has reported on several parameters, viz sizing, brightness, gloves, grammage etc. which are absolutely irrelevant for Entry No.78 of the notification. It also reported:

Ash content	-	9.9
		(more than 8%)
Mechanical wood pulp	-	90
		(more than 70%)

5.14 The test reports of CPPRI, Saharanpur has contradictory findings vis-à-vis CRCL, Pusa reports. Also it is not clear as to why, after release of 100% goods, report from another lab were required. Apparently no intimation of second testing, as required, was sent to the respondent-assessee. There is nothing on record to show that which samples were sent to Saharanpur lab and when those were drawn. Still the test report of CPPRI, Saharanpur have been relied upon by the department while issuing the Show Cause Notice with allegations to say that the ash content is less than 8%. Since the ash content is absolutely irrelevant for the above entry, it is held that the ash content was unnecessarily discussed in those reports, despite that mechanical wood pulp is the criteria for classification of paper under Chapter 48.02. The test report of Saharanpur, despite it is reporting mechanical wood pulp be more than 70% was wrongly made the basis of denying the imported

goods to be printing paper. We also observe that even the detention certificates of the period August, 1997 to December 1997 specifically mentions that the importer was not found at fault. Above all the test bonds as were furnished by the assessee-respondent were all cancelled by the department while releasing the goods/printing paper of CTH 4802.60.

5.15 It is also on record that Test Report of CRCL, Pusa was not provided to importer who obtained it under RTI Act. The documents reviewed under RTI have also been produced on record which include the Test Memo issued from the Office of Deputy Commissioner of Customs, ICD, Tughlakabad, Delhi to CRCL, Pusa. All the documents pertain to the period August, 2007 to December, 2007. These documents as produced by respondent shows that the consignments as were imported during August 1997 to October 1997 were all released by January, 1998 based on the test reports from CRCL, Pusa holding the imported goods to be the printing paper. Apparently the samples to CPPRL, Saharanpur were sent in February, 98 vide letters of the Assistant Commissioner (Prev.) bearing no. 1654 dated 09.02.98 and another bearing no. 2049 dated 20.02.98. Though department acted on those Test Reports and released all consignments of respondent-importer in January 1998 itself. To our opinion there is no proof/bagger with the department to get the samples tested from the Lab at Saharanpur. There is also no proof as to which samples were sent to Saharanpur, and the reason to doubt the report of CRCL, Pusa, which is the department's own laboratory. No additional document is produced by the department to justify the subsequent drawing of

samples, if any, that too at the back of importer. There is no additional document produced by the department which may falsify their own documents which had come in existence prior to sending the samples to CPPRI, Saharanpur. This is sufficient for us to hold that CPPRI, Saharanpur Report is an afterthought, which has no basis. The report cannot be relied also for the reason that it has been obtained at the back of the respondent and is contradictory to the report which was already accepted and acted upon by the department itself. No opportunity of representation, against a contrary report, was given to the importer-respondent. It stands clear that the proper procedure was not followed while obtaining the report from CRCL, Saharanpur. The reports cannot be accepted to the prejudice of the importer-respondent.

6. In view of these observations, lack of evidence in support of CPPRI, Saharanpur report, and no other document than what have been already produced and discussed, we do not find any justification in remanding the matter back to the adjudication authority. The department itself had acted upon the test reports of CRCL, Pusa, Delhi and had finally released the goods by January 1998 itself. The show cause notice of July 2002 based on the subsequent report which is not legally sustainable and have no fate other than it being rejected. There can be no proper findings on such show cause notice in the absence of any document with department to reopen department's earlier assessment. When once goods are already assessed after all the testing, verification etc. correctly done by the Competent Adjudicating Authority, it is not open to any other Revenue functionary to re-adjudicate the same matter by invoking extended period of limitation. Hence, we do not

find any justified reason for accepting the request of remanding back the matter made by the department.

7. In the light of entire above discussion, we find no infirmity in the order under challenge. We hereby upheld the same. Consequent thereto, the appeal filed by the department against the said order is hereby dismissed. Miscellaneous applications are also disposed of.

[Order pronounced in the open court on **03.10.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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