IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Custom Appeal No.C/52193/2014-Cu[DB]
[Arising out of Order-In-Original No. 68/RKB/CCE/NCH/2013 dated 26.12.2013 passed by Commissioner of Customs (Adjudication), New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok K. Arya, Member (Technical)

C.C. New Delhi ...Appellant

Vs.

M/s. Nav Shakti Industries Pvt. Ltd. …Respondent

Appearance:
Mr.K.Poddar, AR for the Appellant
None for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok. K. Arya, Member (Technical)

Date of Hearing.14.02.2017
Date of Decision 23.02.2017

<u>Final Order No. 51919 /2017</u>

<u>Per Ashok K. Arya</u>:

Revenue is in appeal against order in original No. 68/2013 dated 24.12.2013 passed by Commissioner of Custom (adjudication) Delhi, where under *inter-alia the* proceedings against the respondent, Ms. Nav Shakti Industries Pvt. Ltd have been dropped.

2. The Revenue has been represented by the Ld.AR Shri. K. Poddar and there is none present for the

respondent namely, Ms. Nav Shakti Industries Pvt. Ltd. It is on record that on earlier hearings fixed on 4/10.2016, 27.10.2016 no one appeared on behalf of respondent.

3. The brief facts are that the respondent, Ms. Nav Shakti Industries Pvt. Ltd. imported various consignments declaring the goods as 'printing paper uncoated in reels having not less than 70% mechanical wood pulp by weight of the total fiber content' and claimed classification under the Customs Tariff Heading 4802.**6**0 and exemption from Customs duty under Notification NO. 11/97-Cus dated 01.03.1997 (S.No. 78).

3.1 The Customs after examination, was of the view that goods appeared to be 'Newsprints' classifiable under the Custom Tariff Heading 48.01. Therefore, the representative sealed samples from each of the consignments were sent to the Chief Chemist, Central Pulp and Paper Research Institute, Sharanpur, for testing.

3.2 Pending the test result of the samples, goods were provisionally assessed on execution of test bonds by the importer covering the difference between the duty to be finally assessed and the duty provisionally assessed and paid.

3.3 The test result of all the samples for all the goods conformed to parameters of 'Newsprints' as provided in Note 3 of chapter 48 of the Customs Tariff Act, 1975.

3.4 The Revenue thereafter issued the SCN *inter-alia* demanding differential duty of Rs. 31, 77,162/- along with interest and for imposition of penalty on the respondent importer and others.

3.5 The SCN was adjudicated by Commissioner dropping the proceedings against the respondent appellant and others vide his order dated 24.12.2013. Therefore, the Revenue is in appeal before the Tribunal.

4. The Ld. AR on behalf of Revenue based on the appeal memorandum mainly pleads that the impugned order wrongly mentions that assessment of the goods under question was finalized. Ld. AR says that there has been no finalization of assessments. It has also been pleaded that the importer did not produce any documents to show the fact of final assessment, therefore, impugned order wrongly concluded that goods were finally assessed.

5. After careful consideration of the facts of on record and the submissions of the Revenue, it appears that there have been factual mistakes in the impugned order. The impugned order wrongly notes that provisional

assessments were finalized and the goods were finally assessed.

5.1 When the goods have not been finally assessed, the findings given in the impugned order cannot be sustained. Consequently, the impugned order is set aside and the matter is remanded to the Commissioner for denovo adjudication within four months of the receipt of this order after giving fresh opportunity of personal hearing and submissions of documents to both the sides.

6. In the result the appeal is allowed by way of remand.

(Pronounced in the open court on ___23.02.2017__)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi