CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 28.2.2017

Central Excise Appeal No.55410 – 55411 of 2013 with
Cross-Objection No.56769 – 56770 of 2013

Arising out of the Order-in- Appeal No.158-159(RDN)CE/JPR-I/2012 dated 23/10/2012 passed by the Commissioner (Appeals I) , Customs & Central Excise, Jaipur I.

C.C.E., Jaipur I .. Appellant

Vs.

Gupta Fabtex Pvt. Ltd … Respondents
Harish Gupta, MD

Appearance:

Present Shri H.C.Saini, A.R. for the Appellant -Revenue
Present Shri B.L. Narasimhan, Advocate for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52119-52120/2017

Per M.V. Ravindran:

These two appeals are filed by Revenue against the Order-in-Appeal No. 158-159(RDN)CE/JPR-I/2012 dated 23/10/2012 passed by the Commissioner (Appeals I) , Customs & Central Excise, Jaipur –I. Respondents have also filed Cross-Objections which are also taken up for disposal.

2. The relevant facts that arise for consideration are that the respondent was manufacturing quilts which according to Department were classifiable under Tariff Heading No.9404 under the brand name of others but was not discharging duty liability on the product by classifying the same under Tariff

Heading No.5811 and claiming ineligible exemption under Notification No.30/2004-CE dated 9.7.2004. The officers of DGCEI visited the premises of the respondent and carried out search and resumed documents. A show cause notice was issued to the appellant demanding duty for the period 2006 – 2007 to 2008-09 (upto December 2008) holding mis-classification of the quilts was intentional and central excise duty is liable to be discharged. The adjudicating authority after following due process of law confirmed the demand raised. Aggrieved by the said order, an appeal was preferred before the first appellate authority. The first appellate authority relying upon the Board's Circular dated 20.10.2009 set aside the Order-in-Original 15.6.2011.

3. Ld. A.R. appearing for Revenue submits that the first adjudicating authority was not correct in setting aside the confirmed demand. It is his submission that the first appellate authority has erred in holding that the appellant was under bona fide belief that the products are exempted under Notification No.30/2004 classifying the same under Chapter Heading No.5811. It is his further submission that first appellate authority has wrongly relied upon the CBEC's Circular No.903/23/2009-CX dated 20.10.2009. He draws our attention to the said Circular and submits that the Circular mentions that products in question are classifiable under Chapter 94. It is his submission that the respondent vide their letter dated 16.3.2009 submitted that they have sold the quilt and by classifying the same under Heading No.9404 during the period 2008-09 and accepted the duty liability. In view of this, it is his submission that the impugned order be set aside and the Order-in-Original be reinstated.

4. Ld. Counsel for the respondent-assessee submits that cross-objection filed by them is only in support of the impugned Order-in-Appeal. It is his further submission that the letter referred to by the ld. A.R. for , in the grounds of appeal is nothing but a letter which was given to the

investigating authority stating that they have classified the product under Heading 5811 and if the said classification of the product is under Heading 9404, they would do so, subject to outcome of the case and has also mentioned in the letter that if any duty is payable , they would discharge the same. He draws our attention to the CBEC's Circular dated 20.10.2009 to submit that Trade itself in doubt as to the classification of the product, no ulterior motive cannot be attributed to the assesse. It is his further submission that the show cause notice dated 30.6.2010 was issued in this case which is clearly time barred as the demand is only upto December 2008. He relies upon the decision of the Tribunal in the case of Neotric Informatique Ltd. vs. C.C.(Import), Nhava Sheva – 2015 (318) ELT 710 (Tri-Mum.); Greaves Ltd. vs. C.C.E. & Cus., Aurangabad - 2015 (322) ELT 772 (SC) and C.C.E. vs. Minimax Industries – 2011 (269) ELT 166 (Del.).

5. On considering the submissions made by both sides and on perusal of the record, we find that the issue that falls for consideration is whether during the material period respondent had intentionally evaded duty on the quilts manufactured and cleared while classifying the same under Heading 58.11 and claiming the benefit of Notification No.30/2004-CE.

6. We find that first appellate authority in paragraph No.11 has recorded a finding which is reproduced below:

> *"11. Further, the appellant has contended that during the period in dispute there was general practice prevalent in trade for classifying the quilts under Chapter 5811 and the Tariff Item 5811 is exempt under Notification No.30/04-CE dated 9.7.04 and therefore, appellant had bona fide belief that no duty was payable at the relevant time on such goods, hence extended period cannot be involved and no penalty can be imposed. In this regard, I observe that it is a fact on record that there existed divergent practice regarding classification of textile quilts articles as is evident from the Board Circular No.903/23/2009-CX dated 20.10.2009, wherein it has been stated in the opening paragraph that the general practice as per the trade has been to classify the products under Chapter 5811 and that practice at some places has been to treat these products as classifiable under Chapter 94. Thus, it is clear that the*

> *department itself admitted that there was divergent practice to classify the textile quilts. Therefore, I find force in the said arguments advanced by the appellant and that they were under bona fide belief that their product was exempted under Notification No.30/2004 being classifiable under chapter 5811. Further, I find that in a catena of judgment of higher judicial for a i.e Hon'ble Supreme Court, High Court and CESTAT wherein it has been held that where there is a bona fide doubt as to non-excisability of goods due to divergent view, extended period of five year is not invocable as no evidence of any fraud, collusion, willful mis-statement or suppression of facts available with the department."*

7. It can be seen from the reproduced paragraph that the first appellate authority has considered the issue from all angles and h also followed the Board Circular dated 20.10.2009. We have perused the Board Circular. We find that the said Circular categorically in respect of classification of textile quilted products like quilts, quilted bed spreads and also specifically notes that reference was from the Trade seeking clarification regarding classification of quilts and quilted bed spreads; it also states that there was a general practice in the trade to classify the product under Chapter 5811 while in some other places , it has been classified under Chapter 94. By the Circular dated 20.10.2009, the Board has clarified that the product merits classification under Chapter 9404 and the benefit of Notification No.30/2004-CE is not available. Since the CBEC Circular had issued clarification only on 20.10.2009 that the product manufactured and cleared by the appellant merits classification under 9404, the defence of the respondent herein before the appellate authority that they were under a bona fide belief that the products classifiable under Chapter 5811 cannot be faulted with. We find that the respondent herein could have entertained a bona fide belief that their product merits classification under 5811. In our considered view the respondent has made out a case for setting aside the demand of duty only on the ground of limitation as has been held by the

first appellate authority. We find that the impugned order is correct and legal and does not require any inference .

8. Since the Cross-Objections filed by the respondents are only in support of the impugned order, the same also stand disposed of.

9. In sum, the impugned order is upheld and the appeals are rejected.

(V. Padmanabhan) Member (Technical)

(M.V. Ravindran) Member (Judicial)

scd/