CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 3000 of 2012

(Arising out of Order-in-Appeal No.38/2012 (H-II) Customs dt.16.07.2012 passed by Commissioner of Customs, Central Tax & Service Tax (Appeals-II), Hyderabad)

Bhagyalaxmi Industries .. **APPELLANT**
51, Electronic Complex Extension,
Kushaiguda, Hyderabad – 500 062

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
Kendirya Shulk Bhavan Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

APPEARANCE:-

Shri P. Rama Krishna, Advocate for the Appellant.
Shri V. Srikanth Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO. A/30046/2025

Date of Hearing:23.12.2024
Date of Decision:11.02.2025

M/s Bhagyalaxmi Industries (hereinafter referred to as the appellant) is a manufacturer of plastic moulded items, moulds, etc., and duly registered with the Central Excise department. During the period 2004-05, the appellant got an export order for the products manufacturer by them. Apart from the supplies of plastic moulded components, they had also exported 3 moulds under form ARE-1 dt.15.12.2004 vide Invoice No. 479 & 480 dt.15.12.2004. On the request of their foreign buyer for repair/reconditioning of the moulds, the appellant has accepted for re-import of the moulds and filed Bill of Entry No.500969 dt.27.02.2006. Accepting the identification of these moulds, the authorities allowed without payment of duty under Notification No.158/95-CUS dt.14.11.1995 for the purpose of repair/reconditioning and re-export. Thereafter, the appellant submitted a letter dt.12.06.2009, about the clearance of re-imported goods to a 100% EOU, as per the directions of their foreign buyer and payment of duties of Rs.1,34,416/- on invoice dt.13.10.2008. On 27.07.2011, department issued a SCN demanding an amount of Rs.3,83,566/- towards Customs Duty under section 28 of the Customs Act, 1962 along with interest and penalty. The appellant contested the SCN before the Original Adjudicating Authority, who, vide Order-in-Original dt.31.01.2012, has rejected the appeal filed by appellant on the ground that appellant had failed to fulfil the re-export obligation as laid down in Notification No.158/95-CUS dt.14.11.1995 and thereby confirmed the demand as proposed in the SCN along with interest and penalty. Aggrieved by the OIO, the appellant went on appeal before the Commissioner (Appeals), who, vide Order-in-Appeal dt.16.07.2012 (impugned order), upheld the OIO except for reducing the penalty under section 112(a) of the Customs Act, 1962 to Rs.30,000/-. Aggrieved by the OIA, the appellant filed the subject appeal before the Tribunal.

2. Learned Counsel for the appellant submits that the SCN was issued after prescribed period of six months, which is barred by limitation under the provisions of section 28(1) of the Customs Act, 1962. He has relied on the decision of Hon'ble Supreme Court in the case of CC (import) Vs Anurag Trading Company [2024 (15) CENTAX 179 (SC)], CC, Mundra Vs Hindustan Unilever Ltd [2023 (12) CENTAX 172 (SC)], and NRB Bearings Ltd Vs CC, Mumbai [2015 (322) ELT 599 (SC)] in support of his contention. Therefore, he prays for allowing the appeal on the ground of SCN being time barred.

3. Learned AR for the department reiterated the findings of the Commissioner (Appeals) in the impugned order and has relied on the judgment of Hon'ble Madras High Court in the case of M/s Lahari Impex Pvt Ltd Vs CC (Seaport-Import) [2020 (374) ELT 716 (Mad.)], wherein, it was held that "the goods re-imported for repair/reconditioning having been exported after one year (which is also inclusive of six months extended period) of such re-import, the benefit of exemption under Notification No.158/95-Cus, would not be available in respect of such re-imported goods. Merely because the assessee could claim the duty drawback later on and it may give rise to a revenue neutral situation, it cannot be said that the period of one year prescribed in the said notification is without any meaning." Accordingly, he prays for dismissing the appeal filed by appellant.

4. Heard learned Counsel for the appellant, Mr. P. Rama Krishna and learned AR for the department, Mr. V. Srikanth Rao and perused the records.

5. The appellant had opted to re-import the exported goods without payment of duty under Notification 158/95-Cus dt.14.11.1995, which stipulates condition that the appellant has to execute a bond with bank guarantee. But the conditions for re-export were not fulfilled. The payment of Excise Duty on the re-imported goods does not exempt the imported from payment of Customs Duties. The appellant has initially exported the goods under EPCG scheme. Therefore, it was mandatory for the appellant to fulfil the export obligation. Thereafter, the re-importation without payment of Custom Duties was a condition under Notification 158/95-Cus dt.14.11.1995.

6. Learned Counsel for the appellant has also contended that appellant is entitled for the benefit under the Notification No.94/96-Cus dt.16.12.1996. Whereas, learned AR for department argued that goods are initially exported under EPCG scheme and not under bond, without payment of Excise Duty. Hence, benefit of this Notification is also not available to the appellant.

7. Chennai Bench of this Tribunal in Appeal in the case of M/s Lahari Impex Pvt Ltd & others Vs CC, Chennai [Final Order No.41874-47877/2017 dt.31.08.2017] decided that Notification No.94/96-Cus is only an exemption notification to facilitate re-import, however, without any attendant requirement of the imported goods. Meaning thereby, once the duty at the rates given is discharged at the time of re-importation, there is no further requirement to re-export the goods. Therefore, Notification No.94/1996-Cus is not applicable in this matter.

8. Learned Counsel for the appellant also contended on the ground of limitation. It is mentioned in the SCN dt.27.07.2011 that submission was made by the importer vide their letter dt.03.07.2009. Therefore, SCN has been issued after two years. In this regard the Adjudicating Authority observed in his order that the present case relates to failure to fulfil the conditions attached to exemption notification and it is not a case of non-levy, short levy or erroneous refund covered by the provisions of Section 28. The appellants are also required to fulfil the commitment in the bond executed by them namely, to pay on demand an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained in the notification.

9. Appellant has taken this plea in the appeal filed before the Commissioner (Appeals) but the learned Commissioner has decided the appeal without any findings on this ground.

10. The SCN was issued under Section 28 of the Customs Act, 1962. The relevant portion of Section 28 is as under:-

> ***"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.***
>
> *(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, --*
>
> *(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;"*

11. No any finding of collusion or any wilful mis-statement or suppression of fact. In these circumstances, it is observed that SCN is barred by limitation. It is also important to mention that at the time of during the period under dispute, the period prescribed under Section 28 of the Customs Act, 1962, was only six months.

12. Learned AR for department has relied on the judgment of Hon'ble High Court of Madras in the case of M/s Lahari Impex Pvt Ltd Vs CC (Seaport-Import), Chennai (supra). But in that case, the issue relating to limitation was not involved.

13. On the other hand, learned Counsel for the appellant relied on the judgment of Hon'ble Supreme Court in the case of CC (Import) Vs Anurag Trading Company (supra) in which, the Hon'ble Supreme Court held that SCN under Section 28B of the Customs Act, 1962, issued after 9 years of cause of action, could not be said to be had been issued within reasonable period and hence was not sustainable on the ground of limitation.

14. He has also relied on the judgment of Hon'ble Supreme Court in the case of CC, Mundra Vs Hindustan Unilever Ltd (supra), in which, Hon'ble Supreme Court held that extended period of limitation for raising demand of Customs duty could not be invoked if assessee had no malafide intent and submitted all information required for assessment of imported goods.

15. He further relied on the judgment of Hon'ble Supreme Court in the case of NRB Bearing Ltd Vs CC, Mumbai (supra), wherein, Hon'ble Supreme Court observed and held that goods after import under project import were shifted under proper records; findings of the fact by Commissioner in adjudication that there is no suppression or mis-declaration by assessee and holding that demand was barred by limitation was correct; Tribunal reversing the said findings by simply referring to a judgment of Apex Court in the case of Jacsons Thevara Vs Collector of C & CE [1992 (61) ELT 343 (SC)] without discussing as to how findings of fact by Commissioner were erroneous is not tenable; and there being proper declarations, shifting of machinery from Waluj to Thane, a bonafide action of assessee, no misstatement was attributable to the assessee and accordingly, it was held that extended period of limitation is not invocable.

16. In these facts and circumstances, I find that SCN was issued after prescribed period, as provided under Section 28(1)(a) of the Customs Act, 1962. I further find no mis-statement or suppression of facts on the part of the appellant. Therefore, appeal is liable to be allowed.

17. Accordingly, appeal allowed with consequential relief.

(Pronounced in Open Court on 11.02.2025)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda