IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. C/384/08

(Arising out of Order-in-Appeal No.KOL/CUS/CKP/241/2008 dated 29.08.2008 passed by the Commissioner of Customs(Appeals), Kolkata.)

Commissioner of Customs(P), W.B.,
Applicant (s)/Appellant (s)

Vs.

Manpuria Synthetics
Respondent (s)

Appearance:
Shri S.N.Mitra, AC(AR) for the Revenue

Shri N.K.Chowdhury, Advocate for the Respondent (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

Date of Hearing/Decision :- 12.03.2018

ORDER NO. FO/A/76103/2018

PER CORAM:

Revenue has filed this appeal against the order of the Commissioner (Appeals), who allowed the assessee's appeals holding the demand as time barred.

2. Briefly stated the facts of the case are that the respondent imported "Pran Litchi Juice" and "Litchi Cup Jelly" from Bangladesh during the period February, 2003 and October, 2003 and cleared the goods at lower rates of duty by availing benefit of various exemption

Notification. It is the case of the Revenue that the respondent had erroneously availed benefit of duty exemption by mis-declaring the goods. It has been alleged that the imported goods were tested for fruit juice contain, but on test, no fruit juice was found. Accordingly show cause notice was issued for denial of benefit of exemption Notification and consequent re-assessment of the Bills of Entry. The adjudicating authority re-assessed the Bills of Entries and demanded differential duty of Rs.3,89,850/- along with interest. On appeal, the Commissioner (Appeals) allowed the appeal filed by the assessee on limitation. Hence Revenue is in appeal before the Tribunal.

3. The only ground taken by the Revenue in their grounds of appeal is that the learned Commissioner of Customs(Appeals), Kolkata has erred in the Order-in-Appeal No.Kol/Cus/CKP/241/2008 dated 29.08.08 by not taking the case as misdeclaration and suppression of fact by importer with intention to evade payment of duty. As such invocation of extended period is rightly applicable.

4. The ld.AC(AR) appearing on behalf of the Revenue reiterated the grounds of appeal.

5. The ld. Advocate appearing on behalf of the Respondent submits that the Bills of Entry were presented for assessment along with the goods and everything was before the department. The Customs authorities assessed the goods and allowed clearance on payment of appropriate Customs duty. There is no suppression of fact with intent to evade payment of duty. Accordingly the extended period cannot be invoked.

6. Ld.Advocate further submits that the Commissioner(Appeals) has rightly held that the demand is barred by limitation. He relied on the following decisions:-

(a) Aeon's Construction Products Ltd. v. Commissioner of C.Ex., Chennai
[2005 (180) E.L.T. 209 (Tri.-Chennai)]
(b) PSL Ltd. v. Commissioner of Customs, Kandla
[2015 (328) E.L.T. 177 (Tri.-Ahmd.)]
(c) Vijeta International v. Commissioner of Customs, Mumbai
[2006 (199) E.LT. 89 (Tri.-Mumbai)]
(d) Commissioner of Customs (Prev.), New Delhi v. Marks Marketing
[2017 (346) E.L.T. 144 (Tri.-Del.)]

7. Heard both sides and perused the appeal records.

8. We find that the department drew sample only in respect of 3(three) Bills of Entry and on that basis, demand was raised against all the Bills of Entry amounting to Rs.3,89,850/-. The relevant paragraphs of the impugned order are reproduced for better appreciation of the facts:-

> "6. On going through the facts of the case, it is observed that the test results in respect of three bills of entry have been made applicable to all the bills of entry. The Tribunal in Vijeta International vs. CC [2006 (199) ELT 89 (Tri.-Mum)] has held that samples of three test reports cannot be made applicable to all consignments. I find that in the present case, the lower authority has extended the test reports of three cases to all other independent consignments. That simply cannot be done in terms of ratio of the Tribunal decision. Hence, the re-assessment and the consequent demand in respect of all consignments other than those covered by the three bills of entry are unsustainable in law and are set aside. So also the demand in such cases.
>
> 7. The next question for determination is whether the demand is within the period of limitation in respect of the three bills of entry. It is seen that the notice for demand has been issued after a period of almost two years. The demand notice in such cases cannot be issued under section 28 except under the situations warranting invocation of extended period. The situation in the present case could

either be the suppression of fact or wilfull mis-statement of facts. The lower authority has not adduced any evidence of suppression of the facts. Thus, this is not a demand for suppression of facts. As regards the invocation of willful-declaration, it is seen that the appellant has in the bills of entry declared what was indicated in the invoices. That it was willfully done has not been brought out by the lower authority. In view of this, requirements for invocation of extended period for demand of duty in respect of three bills of entry have not been met. As a result, the demand become time barred."

9. In our considered view, the law on the issue is well settled. The test reports of the samples drawn from a particular consignment cannot be applied to the other consignments. The allegations of mis-declaration and suppression raised against the assessee in show cause notice dated 04.07.2005 are unfounded inasmuch as the entire details were known to the department. In the facts and circumstances, it was not open to the department to invoke larger period of limitation against the assessee to demand the differential duty. Therefore the demand of duty confirmed against the assessee cannot be sustained.

9. In view of the above discussion, we find no reasons to interfere in the impugned order of the Commissioner(Appeals). The appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in the open court.)

(C.J.Mathew)
Member(Technical)

(P.K.Choudhary)
Member(Judicial)

T.K.