IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal Nos.76537,76579/14

(Arising out of Order-in-Appeal Nos.34/CUS(A)/GHY/14 & 35/CUS(A)/GHY/14 both dated 25.09.2014 both passed by the Commissioner (Appeals) of Central Excise, Cus. & S.Tax, Guwahati)

Shri Ruman Dey
Shri Sanjibur Rahman

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs (NER), Shillong

Respondent (s)

Appearance:

Shri K. P. Dey & Shri H.K.Pandey, both Advocates for the Appellant (s)
Shri S. N. Mitra, Asstt. Commr. (A.R.) for the Respondent (s)

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of Hearing /Date of Pronouncement : 26.03.2018

ORDER NO…FO/A/76114-76115/2018

Per Shri P. K. Choudhary :

These appeals have been filed by the Appellants against the Orders-in-Appeal Nos.34/CUS(A)/GHY/14 & 35/CUS(A)/GHY/14 both dated 25.09.2014 both passed by the Commissioner (Appeals) of Central Excise, Cus. & S.Tax, Guwahati.

2. As the issue involved in both the appeals, is the same, they are taken up together for hearing.

3. Briefly stated the facts of the cases are that M/s Ruman Dey and M/s Sanjibur Rahman are importers of fabrics. Each filed a bill of entry declaring the imported goods as "Other woven fabrics of polyester

staple fibre” of Bangladesh origin classifiable under HSN 5512 11 10. The clearance of the imported goods was permitted on payment of the assessed duties paid by the appellants, BCD @ 10%, CVD @8%, Special CVD @ 4% and appropriate Education Cess and SHE Cess. In terms of DGFT, New Delhi’s Public Notice No. 12 (RE-2081) 1977-2002 dated 03.05.2001, samples of the fabrics so imported were drawn and sent to the Textile Testing Laboratory, Central Silk Board, Ministry of Textile, Govt. of India, Varanasi to determine the hazardous dye containment (Azo dye test) in the imported fabrics. The test reports revealed that they had “Not detected any banned aryl amines” in the sample of the fabrics and its composition was “Polyester made with filament yarn”, without specifying any tariff classification. Relying upon the test results, the department issued show cause notices dated 02.09.2010 contending that the imported fabrics were “Polyester made with filament yarn” classifiable under CTH 5407 69 00 of the First Schedule to the Customs Tariff Act, 1985 and chargeable to BCD @10% or Rs. 60/- per sq. mtr., whichever is higher, vide Notification No. 21/2007-Cus dated 01.03.2007, CVD @ 8%, Special CVD @4% and appropriate cesses. The show cause notice proposed recovery of differential duty as per Section 28 of the Customs Act, 1962 along with interest and penalty.

4. The department had also sent samples to CRCL, Kolkata for a second test and to the Textile Committee, Kolkata for a third test of the samples. As per the results of these subsequent tests and market surveys, a corrigendum was issued against each of the above show

cause notices, classifying the goods under 5407 52 90 and accordingly, the leviable duty was recalculated. The adjudicating authority confirmed the demand of duty after appropriating the amount paid by the appellants during clearance of goods. On appeal, the Commissioner (Appeals) upheld the adjudication orders. Therefore, aggrieved by the orders of the Commissioner (Appeals), the appellant have filed these appeals before this Tribunal.

5. Heard both sides and perused the appeal records.

6. On perusal of records, I find that the decision of this Tribunal in the cases of Md. Muslem Miah and Sh. Manabendra Sarkar v. CCE & ST, Shillong vide order No.FO/78753-78758/2017 and M/s Asha Enterprise v. Commr. Of Customs (Prev.), NER, Shillong vide order No. FO/78767-78770/2017 are squarely applicable to the instant appeals. The relevant portion of the judgment in the case of M/s Asha Enterprise is reproduced below :

> *"Briefly stated the facts of the case are that the appellant filed Bills of Entry declaring the Fabrics imported as "Other Woven Fabrics of Polyester Staple Fibre" of Bangladeshi origin and claimed classification under Sub Heading No. 55121110 of Customs Tariff Act, 1985. The goods were released upon assessment of duty of the said Bill of Entry. After receipt of the Test Report, Show Cause Notices were issued alleging that the appellant imported the goods with other woven fabrics of Polyester Filament and classifiable under 5407.5290 of CETA. The Adjudicating authority confirmed the demand of duty along with interest and imposed penalty.*
>
> *2. ……………………………………………………………………….*

3. ……………………………………………………………………………….

4. I find that the main contention of the appellant is that the demand is barred by limitation. It is contended that the Bills of Entry are finalized and therefore extended period of limitation cannot be invoked.I also find that the Commissioner (Appeals) observed that there is no suppression of fact with intent to evade payment of duty. On the other hand, it is also observed that though the department has accepted the mistake in the assessment and cleared the subject goods but the mistake of the department is because of lack of knowledge. Apparently, there is a contradiction in the findings of the Commissioner (Appeals). Hence, the impugned Orders cannot be sustained further. The Adjudicating authority had also not considered the submission of the appellant in proper manner.

5. In view of the above discussion, the impugned Orders are set aside and the matter is remanded to the Adjudicating authority to decide afresh after considering the submission of the appellant and to pass Order in accordance with law".

7. In view of the above discussion, the appeals filed by the appellants are allowed by way of remand to the Adjudicating Authority.

(Operative part of the order was pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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