IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal Nos. C/79563-79565 & 79569-79570/2018

(Arising out of Orders-in-Appeal No. KOL/CUS(A/P)/AA/1821-24/2018 dt. 24/09/2018, KOL/CUS(A/P)/AA/1826/2018 dt. 24/09/2018 all passed by the Commissioner of Customs (appeals), Kolkata.)

C. C., Kolkata (Admn. Airport) Appellant (s)
Vs.

1. M/s. Satyanarayan Impex Pvt. Ltd.
2. C. L. Roongta
3. Narayani Industries
4. Pravin Enterprises
5. Electro Mica Components Respondent (s)

Appearance
Shri K. K. Maity, Sp. Counsel for the Revenue
Ms. Rakhi Purnima Paul, Advocate for the Respondent

CORAM:
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-12.03.2019

ORDER NO. FO/75257-75261/2019
PER CORAM

These five appeals have been filed by Revenue against the various Orders-in-Appeal passed by the Commissioner (Appeals), Kolkata. The Respondents, exported Mica Products through Air Cargo Complex, Kolkata through different Shipping Bills. As per the Second Schedule of the Export Tariff read with Appendix-I, Cess is leviable on certain articles on export. For Mica Products, such export Cess was payable @ 3.5%.

2. During the course of scrutiny of records, it was observed that these exporters did not pay the export Cess leviable on Mica Products. The Shipping Bills filed by them at the time of export of consignments were self-assessed in terms of the provisions of Section 17 of Customs Act, 1962. After noticing the non-payment of cess by these exporters, the

Department issued Show Cause Notices to the exporters for demand of the cess on Mica in terms of Section 28 (1) of the Customs Act, 1962. These Show Cause Notices were issued within the period of five years from the date of export of the consignments alleging non-payment of the cess on account of collusion or willful mis-statement or suppression of facts.

3. The Original Adjudicating Authority in these cases, upheld the proposal in the Show Cause Notices and confirmed the demand for payment of export cess. However, when these orders of the Adjudicating Authority were challenged before the Commissioner of Customs (Appeals), he set aside the demands by issue of separate Orders-in-Appeal. He took the view that the demand is not sustainable. Revenue has challenged these orders by way of the present set of appeals.

4. Revenue is represented by Shri K. K. Maity, Ld. Special Counsel and the Respondent is represented by Ms. Rakhi Purnima Paul, Ld. Advocate.

5. The Ld. Special Counsel submitted that the orders passed by the Commissioner (Appeals) were erroneous. He has held that the Show Cause Notice was hit by time bar. He pointed out that the Respondents were liable to pay the cess on the export of Mica Products and were found to have been paying the cess in respect of similar exports made from the sea port. Since they were aware of the liability of export cess, the Department was justified in taking the view that the exporters willfully suppressed the fact of non-payment of export cess. Since the SCNs have been issued within the period of five years, he submitted that the demands may be upheld.

6. The Ld. Advocate on behalf of the Respondents supported the orders of the Commissioner (Appeals). It is her submission that the Show Cause Notice has been rightly held to be time barred. She drew my attention to the findings of the Commissioner (Appeals) in which he has referred to various case laws and submitted that there is no justification for invoking the extended time limit. In the present case, the Shipping Bills were filed and self assessed and the Show Cause Notice has not alleged any grounds for invoking the extended period of limitation.

7. I heard both sides and perused the appeal record.

8. The Respondents in these cases have exported Mica Products from the Air Cargo Complex, Kolkata. In terms of the Second Schedule of the Exported Tariff, Mica Products are liable to payment of export cess @ 3.5%. Admittedly, in the Shipping Bills filed by the Respondents and self assessed under Section 17 of the Customs Act, the export cess has not been levied or paid. There is no dispute on this fact. The Revenue has issued the Show Cause Notices in these cases for demand of cess within a period of five years from the dates of export by invoking the proviso to Section 28 by alleging suppression etc. on the part of the exporters. A perusal of the Show Cause Notices reveal that the only reason cited for alleging suppression and willful mis-statement is the exporters, on self assessed shipping bills, did not pay the export cess. The act of not paying the cess which was otherwise payable, has been cited by Revenue to allege suppression of the part of the exporters.

9. I am of the view that this alone cannot constitute proper justification for invoking extended period under Section 28. Perusal of the

Order passed by the Commissioner (Appeals) reveals that he has taken a similar view. He has cited several case laws in which the Higher Judiciary has taken the view that to allege suppression, something more is required to be established in addition to simple non-payment of Tax which was due to be paid. In the facts of the present case, no such evidence has been cited by Revenue. Consequently, I find no reason to interfere with the Orders passed by the Lower Authority which are sustained and all the appeals filed by Revenue are rejected.

(Dictated and pronounced in the open court.)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja