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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76152 of 2019

[Arising out of Order-in-Appeal No.08/Cus(A)/GHY/2019 dated 12.03.2019 passed by Commissioner (Appeals) of CGST, Central Excise & Customs, Guwahati)

Shri Muslem Miah
(South Ramnagar, Agartala,PS-West Agartala, Tripura-799001)

Appellant

VERSUS

Commissioner of Customs (Preventive), Shillong
(Customs House, 110, Mahatma Gandhi Road, Shillong, Meghalaya)

Respondent

APPERANCE :
Shri H.K.Pandey, Advocate for the Appellant
Shri Ashwini Kr.Choudhary, Authorized Representative for the Respondent

WITH

Customs Appeal No.76719 of 2019

[Arising out of Order-in-Appeal No.12/Cus(A)/GHY/2019 dated 14.03.2019 passed by Commissioner (Appeals) of CGST, Central Excise & Customs, Guwahati)

Commissioner of Customs (Preventive), Shillong
(Customs House, 110, Mahatma Gandhi Road, Shillong, Meghalaya)

Appellant

VERSUS

Shri Muslem Miah
(South Ramnagar, Agartala,PS-West Agartala, Tripura-799001)

Respondent

APPERANCE :
Shri Ashwini Kr.Choudhary, Authorized Representative for the Appellant
Shri H.K.Pandey, Advocate for the Respondent

AND

Customs Appeal No.76197 of 2019

[Arising out of Order-in-Appeal No.06/Cus(A)/GHY/2019 dated 07.03.2019 passed by Commissioner (Appeals) of CGST, Central Excise & Customs, Guwahati)

M/s Asha Enterprise
(A.K.Road, Near Check Post, Agartala,PS-West Agartala,Tripura-799001)

Appellant

VERSUS

Commissioner of Customs (Preventive), Shillong
(Customs House, 110, Mahatma Gandhi Road, Shillong, Meghalaya)

Respondent

APPERANCE :

Shri H.K.Pandey, Advocate for the Appellant
Shri Ashwini Kr.Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75565-75567/2025

DATE OF HEARING : 27 FEBRUARY 2025
DATE OF DECISION : 27 FEBRUARY 2025

Per Ashok Jindal :

All the appeals are having a common issue, therefore, all are disposed off by a common order.

2. The facts of the case are that the importers filed Bills of Entry for clearance of imported fabrics as "Other woven fabrics of polyester staple fibre" of Bangladesh origin classifying under H.S.Code No.5512.11.10 and the assessments were made final by the proper officer. The appellants paid Customs duty and the goods were cleared for home consumption.

2.1 In terms of DGFT, New Delhi's Public Notice No.12 (RE-2001) 1997-2002 dated 03.05.2001, the samples were drawn and sent to the Textile Testing Laboratory, Central Silk Board, Ministry of Textile, Government of India, to determine the hazardous dye containment in the imported fabrics. The test report reveals that the imported goods were not woven fabrics of polyester staple filament yarn without specifying any tariff classification. On the basis of the said report, the show-cause notices were issued.

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2.2 A show-cause notice was issued on 02.09.2010 for the imports made during the period from 08.01.2008 to 03.09.2008. The demand of duty was confirmed along with interest and penalty was also imposed on the appellant.

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2.2 A show-cause notice was issued on 09.09.2010 for the imports made during the period from 06.08.2007 to 06.12.2008. The demand of duty was confirmed along with interest and penalty was also imposed on the appellant

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2.3 Another show-cause notice was issued on 29.08.2011 for the same imports by invoking extended period of limitation and in the said case, the ld.Commissioner (Appeals) dropped the proceedings holding that the show-cause notice is barred by limitation.

2.4 Against these orders, both sides are in appeals.

3. Heard both the parties and considered the submissions.

4. We find that in these cases, the samples were drawn at the time of assessments and the assessments were done final. In fact, it was required to be done provisionally when the goods were allowed clearance for home consumption. In that circumstances, the show-cause notices were required to be issued within a period of limitation to re-classify the goods in question on the basis of test report, which has not been done in this case.

5. Therefore, we hold that all the show-cause notices issued by invoking extended period of limitation are barred by limitation. Consequently, whole of the demand is barred by limitation.

6. In that circumstances, no demand of duty is sustainable against the assessee/importers and no interest is payable.

7. In view of the above, no penalties are imposable on the importers.

8. Therefore, we dispose off the appeals filed by the importers-assessee and we do not find any merits in the appeal filed by the Revenue, accordingly, the same is dismissed.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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