

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76191 of 2019

(Arising out of Order-in-Appeal No. 07/Cus(A)/GHY/2019 dated 11.03.2019 passed by the Commissioner (Appeals) CGST, Central Excise & Customs 5th Floor, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati-781005)

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

: Appellant

VERSUS

Commissioner of Customs(Preventive)

N.E.R., Shillong,
Customs House, 110, M.G. Road
Shillong-793001, Meghalaya

: Respondent

APPEARANCE:

Shri H. K. Pandey, Advocate for the Appellant

Shri S. Chakravorty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75595/2025

DATE OF HEARING: 05.02.2025

DATE OF PRONOUNCEMENT: 05.03.2025

Order: [PER SHRI R. MURALIDHAR]

The appellants have imported other woven fabrics of polyester staple fibre, unbleached of Bangladesh origin and filed Bill of Entry dated 26-05-2007, classifying the same under HS Code 5512 1110. After getting certain tests done, the Revenue issued a Show Cause Notice on 12.09.2011, seeking to know as to why the product should not be classified under CTH 5407 52 90 and the differential duty of Rs.11,71,044/- should not be demanded from the appellant.

2. The appellant submitted that the Show Cause Notice was issued beyond the period of limitation without challenging the assessment of the Bill of Entry, which was already assessed by the customs official in 2007. However, the Adjudicating Authority confirmed the demand. Being aggrieved, they filed their Appeal before the Commissioner (Appeals). The Commissioner (Appeals) noted that extended time period is required to be applied since the Bill of Entry was submitted by the appellant holding that the HS Code is 55121100 as per the test report of CRCL. The Department's classification was correct. He also held that the Department has accepted the mistake in the assessment made while clearing the subject goods, but the lack of knowledge on the part of the Department, on its own, does not absolve the importer from illegal acts. Finally, he went on to affirm the Adjudicating Authority's Order-in-Original. Being aggrieved, the Appellant filed their Appeal before the Tribunal. The Tribunal, vide the Final Order dated 06.02.2018 noted the contradiction in the findings of the Commissioner (Appeals), wherein on the one hand, he has held that the appellant has wrongly classified the goods deliberately and on the other hand he has also given a finding that it was lack of knowledge on the part of the Department in classifying the goods earlier in a different category. On these grounds, the matter was remanded to the Adjudicating Authority.

3. In the Denovo proceedings, the Adjudicating Authority has confirmed the demand and on appeal the Commissioner (Appeals) has affirmed the

Denovo OIO. Being aggrieved, the Appellant is before the Tribunal.

4. The learned Consultant appearing on behalf of the appellant submits that first of all the show-cause notice was issued after about four years from the date of assessment of the Bill of Entry. The Bill of Entry was finally assessed but the same was not challenged by the Revenue before higher appellate authority. Therefore, the classification adopted by them in the Bill of Entry has already reached finality. He submits that in view of this, the Department is in error in holding that the revised classification would still be applicable without first challenging the earlier classification.

5. He submits that even on merits, the appellants have sufficient case. But he prays that the present appeal may be decided on the issue of non-challenging of assessment order by the revenue. In case the Tribunal is not inclined to decide the issue of basis non-filing of the appeal by Revenue, then he will make further submissions on account of merits.

6. The Learned AR for the Revenue reiterates the findings of the lower authorities and submits that the appellant has deliberately adopted a wrong classification thereby becoming eligible to pay lesser custom duty at the time of imports. He justifies the confirmed demands.

7. Heard both sides and perused the Appeal papers and the documentary evidence placed before us.

8. We find that the appellant has got the Bills of Entry assessed by the customs officials. Since the assessment has been done in 2007, this is not a case of self-assessment. In the case of normal assessment (not being provisional assessment), it is deemed that the same attains finality unless the same is challenged before the appellate authority.

9. In the present case, the Department is in error in not challenging this order before the appellate authority and by directly issuing another Show Cause Notice to re-classify the goods.

10. On this issue, in the case of *Priya Blue Industries v. Commissioner of Customs (Preventive)* – 2004 (172) E.L.T. 145 S.C., the Hon'ble Supreme Court has held as under: -

"5. Under Section 27 of the Customs Act, 1962 a claim for refund can be made by any person who had (a) paid duty in pursuance of an Order of Assessment or (b) a person who had borne the duty. It has been strenuously submitted that the words "in pursuance of an Order of Assessment" necessarily imply that a claim for refund can be made without challenging the Assessment in an Appeal. It is submitted that if the assessment is not correct, a party could file a claim for refund and the correctness of the Assessment Order can be examined whilst considering the claim for refund. It was submitted that the wording of Section 27, particularly, the provisions regarding filing of a claim for refund within the period of 1 year or 6 months also showed that a claim for refund could be made even though no Appeal had been filed against the Assessment Order. It was submitted that if a claim for refund could only be made after an Appeal was filed by the party, then the provisions regarding filing of a claim within 1 year or 6 months would become redundant as the Appeal proceedings would never be over within that period. It was submitted that in the claim for refund the party could take up the contention that the Order of Assessment was not correct and could claim refund on that basis even without filing an Appeal.

6. We are unable to accept this submission. Just such a contention has been negated by this Court in Flock (India)'s case (supra). Once an Order of Assessment is

passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

11. We find that in the present case, the Revenue was definitely required to challenge the assessment order of the Bill of Entry which was passed in 2007, which has not been done. While Priya Blue dealt with the issue of non-challenging of assessment order by the assessee, the present case is that of non-challenging of the assessment by the revenue before embarking on revision of classification of goods. We find that the ratio laid down in the cited case laws is squarely applicable to the facts of the present case. Therefore, we find that the entire proceedings initiated by the Revenue without preferring any appeal is erroneous.

12. Therefore, we set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Order Pronounced in Open court on 05.03.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)