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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76199 of 2019

(Arising out of Order-in-Appeal No. 10/CUS(A)/GHY/2019 dated 13.03.2019 passed by the Commissioner (Appeals), C.G.S.T., Central Excise & Customs, 5th Floor, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

Shri Manabendra Sarkar **: Appellant**
Kalikapur, Ramnagar, Agartala,
District: Tripura (W), PIN – 799 001

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
NER, Shillong

<u>APPEARANCE</u>:

Shri Tapan Kumar Mitra, Advocate, for the Appellant

Shri Sourabh Chakravorty, Authorized Representative, for the Respondent

<u>CORAM</u>:

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

FINAL ORDER NO. 76021 / 2025

DATE OF HEARING / DECISION: 24.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

This is the second round of litigation.

2. The facts of the case are that the appellant had filed Bill of Entry No. 1642/IMP/AGT-LC/07-08 dated 16.01.2008 for import of fabrics from Bangladesh through Agartala Land Customs Station in the State of Tripura. The above Bill of Entry was assessed by classifying the imported goods under CTH 55121110. Though samples were taken to determine the presence of 'p hazardous dye' in the fabrics, the assessment was made final and the goods were released for home consumption on payment of customs duty.

3. After three years, a Show Cause Notice dated 02.09.2010 was issued to the appellant, with a Corrigendum dated 31.05.2011, alleging that as per the Test Report the goods were "Polyester made with filament" and were having merit classification under CTH 54076900. Therefore, it was alleged that the appellant is liable to pay duty amounting to Rs.5,21,171/-, along with interest and penalty.

4. The ld. adjudicating authority confirmed the demand proposed, along with interest and penalty vide order dated 13.06.2012. On appeal, the Ld. Commissioner (Appeals), vide Order-in-Appeal dated 30.10.2014, rejected the appeal filed by the appellant, but admitted that the mistake in the assessment during clearance of the goods had occurred due to lack of knowledge.

4.1. Thereafter, the appellant challenged the said order before this Tribunal and this Tribunal vide Final Order No. FO/78753-78758/2017 dated 22.12.2017 remanded the matter to the adjudicating authority to decide the matter afresh after considering the submission of the appellants.

5. In the *de novo* proceedings, the ld. adjudicating authority passed the adjudication order dated 31.08.2018 and reconfirmed the demands against the appellant. Thereafter, on appeal, the Ld. Commissioner (Appeals), vide the impugned order, has upheld the order passed by the ld. adjudicating authority.

6. Against the said order, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellant submitted that as the goods were cleared for home consumption after completion of final assessment, on 16.01.2008, in such circumstances, the Show Cause Notice issued to the appellant on 02.09.2010 becomes barred by limitation. It is further submitted that in this case, the Ld. Commissioner (Appeals), in the Order-in-Appeal dated 30.10.2014, had also mentioned that the admitted mistake in assessment and clearance had occurred due to lack of knowledge part of the adjudicating authority in the case. In these circumstances, it is contended by the appellant that the extended period of limitation is not invokable against them.

8. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

9. Heard the parties and considered their submissions.

10. We find that in this case, it is an admitted fact that on 16.01.2008, when the Bill of Entry was filed by the appellant, the same was assessed finally and the goods were released for home consumption. In these circumstances, there is no suppression or mis-statement of facts attributable to the appellant and thus the Show Cause Notice issued on 02.09.2010, followed by the Corrigendum dated 31.05.2011, are highly time-barred.

10.1. Admittedly, in this case, it has not been alleged that the appellant has suppressed facts or misrepresented facts.

11. In view of the above, we hold that the extended period of limitation is not invokable in the facts and circumstances of the case. Consequently, whole of the demand against the appellant is barred by limitation and therefore, the same is set aside. Accordingly, we hold that no penalty is imposable against the appellant.

12. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd