IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/1134/2009

[Arising out of Order-in-Original No: 126/2009-CC(I)/JNCH dated 10th August 2009 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Commissioner of Customs (Import)
Nhava Sheva … ***Appellant***

versus

Siemens Ltd …***Respondent***

Appearance:

Ms. Trupti Chauhan, Assistant Commissioner (AR) for appellant

Shri Anil Balani, Advocate for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 09/07/2018
Date of decision: 24/08/2018

ORDER NO: A/87138 / 2018

Per: C J Mathew

This appeal of Revenue is against order-in-original no. 126/2009-CC(I)/JNCH dated 10th August 2009 of Commissioner of Customs (Import), JNCH which has dropped proceedings on the ground that the extended period under section 28 of the Customs Act, 1962, sought to be invoked in the show cause notice, does not lie in view of the circumstances leading thereo.

2. The issue pertains to import of various electrical switch gear products between December 2006 and December 2007 on which additional duty was assessed on the declared value and not on the retail selling price applicable under section 4A of Central Excise Act, 1944. Narrating the background, Learned Authorised Representative points out that the switch gear products manufactured by M/s Larsen and Toubro Limited had been the subject of dispute on coverage under the Standards of Weights and Measurement Act, 1976 and had been finally decided by the Hon'ble High Court of Bombay *vide* its order dated 29th February 2008 following which the writ petition of the present respondent on the same issue was also disposed off by the Hon'ble High Court *vide* its order dated 13th March 2008 wherein it has declared that the issue stood decided in the earlier order.

3. Learned Authorised Representative points out that the show cause notice for differential duty of ₹ 22,60,620/- was issued thereafter on 19th December 2008 which, having been dropped, led to the present appeal.

4. Learned Counsel for respondent sought dismissal of appeal of Revenue by stating that it is well settled that a change of interpretation

places the dispute beyond the scope of conditions precedent to invoking the extended period under section 28 of the Customs Act, 1962.

5. According to the grounds of appeal, the notification for coverage under section 4A of Central Excise Act, 1944 had been issued on 1st March 2002 and 1st March 2006 despite which the respondent had avoided such assessment by marking on the packages that that the goods are not for trade but for use as raw material and that, despite these facts being brought to his notice, the adjudicating authority did not invoke extended period. The various decisions cited by the adjudicating authority were also questioned in the grounds of appeal as two of them had attained finality and the other two are not in conformity on facts.

6. It is seen that the differential duty had been sought to be levied for a period beyond the normal prescribed under section 28 of the Customs Act, 1962 as the purported knowledge of the respondent regarding assessment of the goods manufactured by them under section 4A of Central Excise Act, 1944 precluded pleading of ignorance. Further, it is the contention of Revenue that there has been no change in practice, as held in the impugned order, in view of the notifications of 2002 and 2006 bringing the impugned goods under section 4A of the Central Excise Act, 1944.

7. The proceedings initiated against the respondent under Central Excise Act, 1944 was settled by the decision of the Hon'ble High Court of Bombay against them in 2008 and can be said to have attained finality only then. That the decision of the Hon'ble High Court of Bombay upheld the contention of the investigating authority does not in any way dilute the existence of a dispute which had to be resolved by judicial process. In these circumstances, scope for alleging suppression, misrepresentation or any of the other qualifications to justify the invoking of the extended period does not exist.

8. For the above reason, we find no merit in the appeal of Revenue, which is dismissed.

(Pronounced in Court on 24/08/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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