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

Appeal No. E/276/2011

(Arising out Order-in-Original No. Belapur/39/Bel-I/R-III/COMMR/SLM/10-11 dated 24.01.2011 passed by the Commissioner of Central Excise, Belapur)

M/s. Interscape — Appellant

Vs.

CCE, Belapur — Respondent

Appearance:

Shri Rajeev Waghlay, Advocate for the appellant
Shri Sanjay Hasija, Supdt.(AR) for the respondent

CORAM:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing : 09-10-2018
Date of decision : 09-10-2018

O R D E R No: **A/87618/2018**

Per: Archana Wadhwa

The present impugned order has been passed by the Commissioner in denovo proceedings when the matter was earlier remanded by the Tribunal vide order dated 08.03.2010 with liberty to appellant to contest the demand on all points including the point of limitation. The dispute relates as to whether the furniture manufactured by the appellant would attract duty or not. The appellant was not paying duty by treating the same as handicraft.

2. However the demand was raised against them for the period April 1993 to October 1994 by issuance of show-cause notice in May 1995 on the ground that furniture cannot be considered as handicraft so as to avail exemption Notification 76/06. The above view was formed on the basis of Hon'ble Supreme Court decision in *Louis Shoppe vs. CCE* 1996 (83) ELT 13. In remand proceedings the Commissioner has again upheld the demand by invoking the extended period of limitation.

3. Ld. Advocate for the appellant is not contesting the merits of the case but submits that demand having been raised beyond the normal period of limitation is barred. By relying upon the same decision of the Hon'ble Supreme Court in the case of *Louis Shoppe*, he submits that even the Hon'ble Supreme Court has observed that since the Tribunal have been adopting a view that all furniture is handicraft from 1989 onwards, the cases concerned herein shall not be reopened. He submits that the decision of the Hon'ble Supreme Court was given on 12.03.1995 and the period involved in the present appeal is prior to the said date. As such the demand by making allegation of suppression and malafide cannot be held to be sustainable.

4. After hearing the ld. AR for the revenue, we note that the issue on limitation was considered by the Tribunal in the assessee’s own case for different period. By taking note of

the fact that the Commissioner of Central excise Kolkata vide his different order for different period has dropped the demand falling outside the normal period of limitation and such order of the Commissioner stands accepted by the Revenue, the Tribunal also granted relief on the limitation aspect in their case reported as *Interscape* 2015-TIOL-2785-CESTAT-MUM.

5. Inasmuch as the appellants have already been held to be entertaining a bonafide belief in their other matters involving different period, we are not inclined to take a different view in the present case Accordingly, by holding the demand as barred by limitation, we set aside the impugned order and allow the appeal with consequential relief.

(Dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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