CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

CUSTOMS APPEAL NO: 86293 of 2013

[Arising out of Order-in-Original No: CC/RK/25/2011-12 ADJ.ACC dated 31st December 2012 passed by the Commissioner of Customs (Export), ACC, Mumbai.]

Ravi Kotian … ***Appellant***
152/102 Padma Ganga, Sher-E-Punjab Society,
Andheri (E), Mumbai 0- 400 093

versus

Commissioner of Customs (Export) ***…Respondent***
Air Cargo Complex, Sahar, Andheri (E),
Mumbai – 400 099

WITH

CUSTOMS APPEAL NO: 86294 of 2013

[Arising out of Order-in-Original No: CC/RK/25/2011-12 ADJ.ACC dated 31st December 2012 passed by the Commissioner of Customs (Export), ACC, Mumbai.]

Shamir Poddar … ***Appellant***
13 Parijat Gaushala Road, Mulund (West)
Mumbai – 400 080

versus

Commissioner of Customs (Export) ***…Respondent***
Air Cargo Complex, Sahar, Andheri (E),
Mumbai – 400 099

WITH

CUSTOMS APPEAL NO: 86613 of 2013

[Arising out of Order-in-Original No: CC/RK/25/2011-12 ADJ.ACC dated 31st December 2012 passed by the Commissioner of Customs (Export), ACC, Mumbai.]

Gopi Jhawar … ***Appellant***
Flat No. 105, B Wing, Nirmal Park, Building No. 1, SV Road, Navghar Road, Bhayander (East), Dist: Thane

versus

Commissioner of Customs (Export) ***…Respondent***
Air Cargo Complex, Sahar, Andheri (E),
Mumbai – 400 099

APPEARANCE:

Shri S S Srivastava, Advocate for the appellants

Shri A P Kothari, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86481-86483/2019

DATE OF HEARING: 15/05/2019
DATE OF DECISION: 15/05/2019

PER: C J MATHEW

The short point in these appeals against order-in-original no. CC/RK/25/2011-12 ADJ.ACC dated 31st December 2012 of Commissioner of Customs (Export), Air Cargo Complex, Mumbai, pertaining to the import of four consignments of 'interlining material fabric' that were declared under heading no. 6217 9090 of First Schedule to Customs Tariff Act, 1975 applicable to garment accessories and proceeded against for classification under alternative heading no. 5407 of the First Schedule to the Customs Tariff Act, 1975 intended for 'dyed fabric of synthetic filament yarn', leading to confiscation of goods valued at ₹ 43,59,085/-, reclassification under the proposed heading and revision of the value leading to differential duty liability of ₹ 68,23,887/-, is the legality of the adjudication without providing opportunity to defend themselves.

2. Learned Counsel for the appellants draws attention to the findings in the order of the adjudicating authority to back the contention that the test reports, which were the basis of the detriment to the appellants herein, had not been furnished despite many requests having been made. He argued that effective defence was handicapped by non-availability of the documents.

3. We have heard Learned Authorised Representative.

4. Considering that it can be deduced from the show cause notice, and from the clear admission in the impugned order, that the appellants had not been furnished with relied upon documents, including the test memo, the detriments cannot sustain, we set aside the impugned order and remand the matter back to the original authority to decide the matter afresh after furnishing the test memo and other documents that are intended to be relied upon.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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