# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH
## COURT No. I

### Customs Appeal No. 86926 of 2013

(Arising out of Order-in-Appeal No. 87(Gr.VII-I)/2013(JNCH)/EXP-06 dated 31.01.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva)

**M/s. Eve Fabrics Pvt. Ltd.** **Appellant**
NTC House, 1st floor,
N.M. Marg, Ballard Estate,
Mumbai 400 038.

Vs.

**Commissioner of Customs (Exp), Nhava Sheva Respondent**
Jawaharlal Nehru Custom Hose,
Post Uran, Dist. Raigad,
Sheva 400 707.

Appearance:

Shri T. Viswanathan, Advocate, for the Appellant
Ms. Trupti Chavan, Assistant Commissioner, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO. **A/87431/2019**

Date of Hearing: 22.10.2019
Date of Decision: 22.10.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against order-in-appeal No. 87(Gr.VII-I)/2013(JNCH)/EXP-06 dated 31.01.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva. By the said impugned order, the Commissioner (Appeals) has upheld order-in-original No. 147/2012/ADJ(X) dated 12.11.2012 of the Additional Commissioner of Customs (Export), Nhava Sheva. By the said order, the Additional Commissioner has held as follows:-

*"ORDER*

*In view of the facts and circumstances of the case and the discussion and finding mentioned above, I deny benefit of notification no.98/09-Cus. dated 11.09.2009 to the importer and order for assessment of Bill of Entry on merit."*

2.1 Proceedings were initiated against the appellants vide show cause notice dated 25.10.2012. The show cause notice was issued asking the appellants to show cause as to why:-

i. The duty exemption benefit claimed under the notification 98/2009-Cus. dated 11.09.2009 should not be denied.

ii. The duty amounting to Rs.9,82,894.34 should not be imposed and recovered under Section 28 of the Customs Act, 1962.

iii. The goods covered by the Bill of Entry No.7306753 dated 05.07.2012, assessable value Rs.23,38,505.79, duty incentive amount Rs.9,82,894.34, sought to be cleared under DFIA licence No.0310657462 dated 03.10.2011 should not be confiscated under the provisions of Section 111(o) of the Customs Act, 1962 read with the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 and rules made thereunder.

iv. Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on the importer.

2.2 The show cause notice was adjudicated by the Additional Commissioner. Aggrieved by the order of the Additional Commissioner, the appellants filed appeal before the Commissioner (Appeals).

2.3 The appeal filed was rejected by the Commissioner (Appeals) as per the impugned order and hence this appeal.

3.1 We have heard Shri T. Viswanathan, Advocate, for the appellants and Ms. Trupti Chavan, Assistant Commissioner (Authorised Representative) for the Revenue.

3.2 Arguing for the appellants, learned counsel referred to various pages of the appellate order and the appeal memorandum to claim that the relied upon documents along with show cause notice were not given to them and hence the impugned order was passed in violation of the principles of natural justice. Hence this order cannot be sustained.

3.3 Learned AR for the Revenue reiterated the findings recorded in the order and submitted that the appeal should be dismissed.

4.1 We have considered the impugned order along with the submissions made in the appeal and during the course of argument.

4.2 In the matter, we find that the appellants have in para E.6 of their submissions made before the adjudicating authority have stated as follows:-

*"E.6 In any case, the SCN has not given copies of these shipping bills or test reports. It merely gives the computer screen shot. The information provided along with the SCN is inadequate and the Hon'ble Adjudicating Authority may direct the department to provide copies of the shipping bills and the test report."*

4.3 By the above, they have clearly made a request for providing the documents relied upon in the show cause notice for making their submissions. However, without considering the same, the adjudicating authority proceeded to confirm the demand against the appellants. The Commissioner (Appeals) has in para 3.1 recorded about non-providing of the relied upon documents by stating as follows:-

*"3.1 That the impugned order has been passed in gross violation of principles of natural justice in as much as the clarification relied upon by the adjudicating authority has not a relied upon documents in the SCN and copy of it has not been made available to the appellant; that even otherwise also the clarification has no binding effect as it lack authority."*

However, without recording any finding in respect of this, he has also proceeded to decide the appeal against the appellants.

4.4 In their appeal before us, the appellants have challenged the order grossly on this account in para A.1 to A.4. The same has been stated by the learned counsel for the appellants during the course of argument, which is as follows:-

*"A.1 Para 33 of the order dated 12.11.12 relies upon clarification dated 23.10.2012 issued by the licensing authority to the effect that the imported fabrics are not relevant fabrics, covered by the DFIA.*

*A.2 This clarification has not been relied upon in the SCN dated 25.10.2012. Hence, the order has relied upon a document not mentioned or referred to in the SCN. Hence, on this ground alone, the impugned order is liable to be set aside.*

*A.3 For the first time in the order-in-original, the clarification dated 23.10.2012 has been referred to, without supplying a copy of the same to the appellant. In fact, even during the personal hearing, existence of such clarification was not disclosed to the appellant.*

*A.4 As the copy of the clarification issued by the DGFT has not been furnished to the appellant, either along with the SCN or during the personal hearing or after passing of the order, the impugned order is liable to be set aside, as having been passed in violation of principles of natural justice."*

4.5 We are in agreement with the submissions made by the learned counsel that the order has been passed in violation of principles of natural justice as the relied upon documents in the show cause notice were not given to the appellants. Hence the orders of the lower authorities cannot be sustained and the matter needs to be remanded back.

5.1 In view of the discussions as above, the appeal is allowed and the matter remanded back to the adjudicating authority for *de novo* consideration after providing the relied upon documents to the appellants. Since the matter is quite old, the adjudicating authority should endeavour to dispose of this matter in *de novo* proceedings within four months from the date of receipt of this order.

(Order pronounced in the open court)

**(Dr. D.M. Misra)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Technical)**

*tvu*