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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 87040 of 2013

(Arising out of Order-in-Appeal No. 188(Gr.I)/2013/JNCH/IMP145, dated 05.03.2013 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s Empire Industreis Ltd. .....**Appellant**
Empire House,
414, Senapati Bapat Marg,
Mumbai-400013

VERSUS

Commissioner of Customs Nhava Sheva .....**Respondent**
Jawaharlal Nehru Customs House,
Post Uran, Dist: Raigad,
Maharashtra-400707

Appearance:

Shri Sanjay Dwivedi, Advocate for the Appellant
Shri Bhudhan Kamble, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87493/2019

Date of Hearing: 10.10.2019
Date of Decision: 10.10.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 05.03.2013 passed by the learned Commissioner (Appeals), Customs, Mumbai-II.

2. Briefly stated, the facts of the case are that the appellant herein, had imported a consignment of Frozen Black Tiger Prawns, of Bangladesh origin classifiable under CTH 03061320.

For clearance of the said imported consignment, the appellant had filed the Bill of Entry dated 19.10.2010, claiming the benefit of duty exemption provided under Notification No. 67/2006 dated 30.06.2006. The said notification permits clearance of goods at concessional rate of 14% BCD, as against the Tariff rate of duty of 36% BCD. The Bill of Entry filed by the appellant was assessed and the goods were cleared for home consumption on payment of the concessional rate of duty. Subsequently, the department initiated show cause proceedings against the appellant, contending that the benefit of the notification dated 30.06.2006 had been wrongly claimed as per the appendix annexed to the said notification, wherein the country of origin as Bangladesh should not be eligible for the preferential rate of duty for import of the specified goods. The show cause notice in this case was issued on 29.11.2011, proposing for recovery of the differential duty along with interest and for imposition of penalty. The matter was adjudicated vide order dated 29.02.2012, wherein the original authority had confirmed differential duty of Rs.9,01,867/- and also imposed equal amount of penalty on the appellant. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 05.03.2013 has upheld the adjudged demands confirmed on the appellant.

3. The learned Advocate appearing for the appellant, at the outset, submits that the show cause notice issued by the department invoking the extended period of limitation is not proper and justify inasmuch as in absence of fulfillment of the ingredients namely suppression, willful misstatement, fraud etc., with intent to evade payment of customs duty, the demand should only be confined to the normal period of one year. The learned Advocate further submits that the appellant had correctly filed the Bill of Entry, by providing the requisite information. Thus, he submits that it is not the case that the appellant had suppressed the facts of claiming concessional rate of duty from the department and as such, the extended period of

limitation cannot be invoked for confirmation of the adjudged demands.

4. On the other hand, the learned AR appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that notification dated 30.06.2006 does not provide the concessional rate of duty for the imports made from Bangladesh and thus, the appellant had wrongly claimed the benefit by suppressing the material facts and that since the wrong classification claimed by the appellant was detected by the department subsequently on its own efforts, issuance of show cause notice by invoking the extended period of limitation is appropriate and justified.

5. Heard both sides and perused the records.

6. We find that in the Bill of Entry dated 19.10.2010, the appellant had claimed the benefit of the Notification No. 67/2006 dated 30.06.2006 and also provided the details of the exporter, including the country of origin. It is not the case of Revenue that the appellant had suppressed certain material facts, while filling the Bill of Entry, which was subsequently detected by the department through its own source. Since, the present show cause notice was issued based on the information available in the Bill of Entry, the said notice should have been issued within one year from the relevant date. Further, we also find that the show cause notice dated 29.11.2011 had not specifically alleged or proved with any tangible evidence to substantiate that the appellant had in fact indulged into the activities, concerning fraud, collusion, willful misstatement etc. Therefore, we are of the considered view that the department is not justified in invoking the provisions of sub-section (4) of Section 28 of the Act for issuance of the show cause notice beyond the normal period of limitation.

7. In view of above, we do not find any merits in the impugned order, insofar as it has upheld the adjudication order

in respect of the demands confirmed beyond the normal period of limitation. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant on the ground of limitation.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

HK