CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 654 OF 2010

[Arising out of Order-in-Original No: 25/Commissioner/Goa/CX/2009-10 dated 22nd January 2010 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

Pentair Water India Pvt Ltd
L/52-55 Verna Industrial Estate,
Verna Saicette, Goa – 403 722 … ***Appellant***

versus

Commissioner of Customs & Central Excise
ICE House, EDC Complex, Patto-Plaza
Panaji, Goa – 403 001 ***…Respondent***

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the appellant

Shri Anil Choudhary, Deputy 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/ 85878 / 2020

DATE OF HEARING: 12/03/2020
DATE OF DECISION: 12/03/2020

PER: C J MATHEW

Appellant, M/s Pentair Water India Pvt Ltd, is a unit approved under '100% export oriented scheme (EOU)' of the Foreign Trade

Policy and the issue in dispute pertains to leviability of ‘special additional duty (SAD)’ on clearances effected to ‘domestic tariff area (DTA)’ customers outside Goa. In terms of the scheme, such units, primarily intended to cater to the export market, are permitted to clear goods domestically on discharge of appropriate duties of central excise as prescribed in first *proviso* to section 3(1) of Central Excise Act, 1944. Hence, for domestic clearances, the duty liability is computed as the aggregate of duties of customs that would have been levied on these goods had these been imported. Necessarily, imported goods are liable to ‘special additional duty’ at the rate specified in Customs Tariff Act, 1975 at the time of import but refunded subsequently on furnishing of evidence of having been sold domestically on payment of the appropriate Value Added Tax charged under the laws of the state in which transaction has occurred.

2. The proceedings against the appellant were initiated for recovery of ₹1,3,036,486 that had not been discharged on ‘water purification/ treatment systems’ cleared outside the state of Goa on which central sales tax was exempted and, thereby, not conforming to the condition for exemption from ‘special additional duty’ under notification no. 23/2003-CE dated 31st March 2003. In order in-original no. 25/Commissioner/Goa/CX/2009-10 dated 22nd January 2010, the proposed amount was confirmed for recovery under section 11A of Central Excise Act, 1944, along with interest as appropriate under

section 11AB of Central Excise Act, 1944, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944. Hence, the present appeal before us.

3. Advancing his arguments for setting aside the impugned order, Learned Counsel for appellant submits that goods are liable to tax and which, having been duly discharged, would render them eligible for exemption from ‘special additional duty’ and that the clearances effected outside the state are not exempted but charged to ‘nil’ rate owing to which the exemption is not deniable. It is further contended, by placing reliance on the decision of the Hon’ble Supreme Court in *State of Punjab and Others v. Perfect Synthetics and Others [(2008) 3 SCC 702]*, that subjecting to tax did not imply that the goods had to actually suffer the tax; as long as the goods were taxable, non-payment of tax is not to be construed as not being subject to tax.

4. It was also contended that their claim of limitation in recovery proceedings had been wrongly discarded as the ambiguity in the legal provisions was noted by the Tribunal in *Hanil Era Textiles Ltd v. Commissioner of Central Excise, Belapur [2007 (210) ELT 414 (Tri-Mumbai)]*, that the issue had to be referred to a Larger Bench of the Tribunal in *Moser Baer India Ltd v. Commissioner of Central Excise, Noida [2009 (240) ELT 25 (Tri-LB)]* for finality and that their invoices were being submitted to the jurisdictional authorities for assessment at

periodic intervals.

5. Learned Authorised Representative submitted that the 'special additional duty' is intended to countervail the taxes levied on goods sold domestically which, in the present instance, was exempted for the clearances that were proceeded against in the show cause notice leading to the impugned order. He further submits that the notification cited therein mandates the inclusion of this duty in the computation of aggregate customs duties for clearances effected in the 'domestic tariff area' that are exempted from the tax on sale of goods. Furthermore, relying on the decision of the Larger Bench of the Tribunal in *re Moser Baer India Ltd*, he contends that the impugned order is in accordance with law.

6. That the goods covered in the show cause notice leading to the impugned order had not been subjected tax on sale is not in dispute. The impugned notification, which grants concession in basic duties of customs and exemption from additional duties of customs on clearances effected in the 'domestic tariff area' conditional upon fulfilment of prescribed export obligation, directs the inclusion of 'special additional duty' to the extent of exemption from tax on sale within aggregate duties of customs. The impugned goods are liable to the duty. Nevertheless, the controversy over such liability persisted for long and was finally determined by the Tribunal through reference to Larger

Bench only in July 2009. That the appellant had been discharging liability on sale of goods within the state is also not in dispute. Furthermore, the show cause notice takes note of the correspondence between the appellant and the jurisdictional central excise authorities. It would, therefore, appear that the doubts about taxability did cloud the discharge thereof and the element of suppression/misrepresentation is not unequivocally clear on record. The extended period of limitation was, therefore, not liable to be invoked.

7. The show cause notice in the dispute before us had been issued on 13th March 2009 for the period from 1st March 2006 to 30th November 2007. In view of our findings *supra*, the demand fails for being beyond the normal period of limitation. Appeal is, accordingly, allowed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*