CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.2

Customs Cross no. 87 of 2012
Customs Appeal No. 297 of 2012

(Arising out of Order-in-Original No. CC/MAK/19/2011-12 dated 31.12.2011 passed by the Commissioner of Customs (Imports), ACC Mumbai)

Commissioner of Customs (ACC & Import), Mumbai .....**Appellant**
Sahar Road, Andheri (E)
Mumbai

Vs.

1) Siemens Ltd. .....**Respondent**
V.V. Paranjape Mauli, 2nd Floor,
Highway CHS, Gawant Path
Naupada, Thane
2) Rahul Limaye
H-101, Eternity CHS,
Teen Hath Naka, Thane
3) Sanjay Apte
Taxcon Consultancy
A-1 Shreepal Complex,
Gr. Floor, Panchpakhadi
Thane

APPEARANCE:

Shri M. Shamshad Alam, Addl. Commissioner (AR) for the appellant
Shri Anil Balani, Advocate for the respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/87003 / 2019

DATE OF HEARING : 05-11-2019
DATE OF DECISION : 05-11-2019

PER: S.K. MOHANTY

This appeal is directed against impugned order dated 31.12.2011 passed by the learned Commissioner of Customs (Imports), Mumbai. Revenue has assailed the impugned order contending that dropping of proposals made in the show cause notice on the ground of limitation is not proper and justified inasmuch as the respondent herein M/s Siemens Limited had mis-declared the goods in the Bills of Entry filed before the jurisdictional customs authorities at the port of import.

2. Heard both sides and perused the records.

3. The present dispute relates to import of switchgears and assessment under Section 4A of Central Excise Act, 1944 read with Section 3 of Customs Tariff Act, 1975 for levy of Additional Duty of Customs (CVD). The period in dispute was from 17.12.2003 to 31.03.2008. It is an admitted fact on record that the show cause notice was issued to the present respondent on 15.12.2008, alleging for recovery of differential customs duty by invoking the extended period of limitation. While adjudicating the show cause notice, the learned original authority has recorded specific findings as to why the extended period of limitation cannot be invoked under the facts and circumstances of the case. The relevant paragraph in the impugned order is extracted herein below:

> *"20(iii) I find that the Noticee has been importing the goods at Air Cargo Complex by making declaration of the value as required under Customs Tariff Act. There is no allegation in the SCN that the declaration in the Bill of Entry or the value as given for customs purposes suppressed any fact or was wrong. It is seen that the period of demand is from 17.12.2003 to 31.03.2008. A period of more than four years. In this context it is necessary to understand that assessment in the context of the Customs Department refers to assessment to duty i.e. determination of the amount of duty to be charged on the goods. In the pre self-assessment regime, the onus of assessment was on the department. It is also quite obvious that the assessment of duty wold be dependent on several factors such as the exact description of the goods which could be ascertained by examination/ testing etc., determination thereafter of the classification,*

i.e. the tariff heading, the peak rate of duty chargeable on the goods, under different Acts, as well as the notification benefit claiming a lower rate of duty that is finally allowed etc., thus the process of assessment cannot be complete without a determination of all the above parameters by the department. In short assessment means determination of tax liability as set out by the legislature in the act provided for the same. The officers should have verified the value as per section 4A for determining the duty to be paid for determining CVD as it is common knowledge that the imported value is not the value at which goods are sold in the retail market. It thus appears that it was the practice during that time not to resort to the Section 4A value under the Central Excise Act to determine the CVD. From the SCN it also appears that a similar pattern was noticed on the Central Excise side with the duty being paid on the transaction value instead of in terms of Section 4A of the Central Excise Act, 1944. It was the duty of the Department to have asked the importer to declare the value as required under section 4A of the Central Excise Act, 1944 if they felt that CVD had to be discharged as per the said Section. It is not the department's case that they had asked for the information and were given wrong information by the Noticee. It is seen from the SCN that the department had referred the matter to the Director of Legal Metrology, New Delhi as 27/02/2007. Hence it appears that the issue did require an external opinion and was not crystal clear to bring it under the label of suppression. This being so I agree that this is not a fit case to invoke the proviso to Section 28 of the Customs Act. As the notice is dated 15/12/2009 and the period of demand is from 17.12.2003 to 31.03.2008, the entire period of demand falls outside the normal time limit as given by Section 28(1), is hence time barred.

Since the demand itself fails, I feel that there is no necessity to go to the other issues that has arisen by the issue of Show Cause Notice and listed above as it would be only on academic exercise, hence I do not discuss the same."

4. Further, we also find that on an identical issue, this Tribunal vide order no. A/87138/2018 dated 24.08.2018 in the case of respondent herein has extended the benefit of limitation, holding that demand cannot be confirmed beyond the normal period of limitation provided under Section 28 of Customs Act, 1962.

5. In view of above, we do not find any merits in the appeal filed by the Revenue. Accordingly, the same is dismissed. Cross Appeal is disposed of.

(Dictated and pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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