CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 87675 of 2013

[Arising out of Order-in-Appeal No. US/88/M-II/2013 dated 29.03.2013 passed by Commissioner of Central Excise (Appeals-II), Mumbai]

Godrej Industries Ltd. **.....Appellant**
Phirojshanagar, Eastern Express Highway,
Vikhroli (E),
Mumbai – 400 079.

VERSUS

Commissioner of Central Excise, Mumbai -II **.....Respondent**
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug, Parel,
Mumbai – 400 012.

Appearance:

Shri T. Vishwanathan, Advocate for the Appellant
Shri R.K.Dwivedy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87703/2019

Date of Hearing : 22.07.2019
Date of Decision : 22.07.2019

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein is engaged in the manufacture of excisable goods namely, Fatty Acid, Glycerin, Stearic Acid and Industrial Mono Carboxilic Fatty Acid (IMFA) etc., and for that purpose, is registered with the jurisdictional Central Excise department. The appellant is also registered under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 for import of Crude Palm Stearine (CPS) on payment of concessional rate of customs duty for use in manufacture of Industrial Fatty Acid. As per the requirements of the Rules, 1996 (supra), the appellant had furnished the requisite Bonds before the jurisdictional Central Excise authorities for availment of the concessional rate of duty prescribed therein. During the disputed period, the factory of the appellant was audited under EA-2000 and it was observed by the audit wing that the appellant was not entitled for the duty exemption in terms of Entry No. 30 (A) of the Notification No. 21/2002 dated 01.03.2002, as amended by Notification No. 91/2007-Cus. dated 02.08.2007. According to the department, the appellant should have imported CPS on payment of duty at the rate of 20% Adv., in terms of Entry No. 30 (c) *ibid,* in place of the concessional rate of duty @ 10% Adv. Since, the appellant had executed the Bond for import of CPS to be used in the manufacture of Industrial Fatty Acid, the department had cancelled the Bonds executed by the appellants and directed them not to import CPS against their application dated 19.12.2008. On the basis of audit objection, the department initiated show cause proceedings against the appellant, which culminated into the adjudication order dated 28.02.2012. Vide the said order, the original authority had confirmed the differential duty of customs of Rs. 2,62,89,473/- along with interest and also imposed equal amount of penalty on the appellant. On appeal against the said impugned order, the Ld. Commissioner of Central Excise (Appeals-II), Mumbai vide the impugned order dated 26.03.2013 has rejected the appeal and upheld the adjudged demands confirmed on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Ld. Advocate appearing for the appellant, at the outset, submitted that the adjudged demands confirmed under the *proviso* to Section 28 of the Customs Act, 1962 by invoking the extended period of limitation is clearly barred by the prescribed time limit under the normal circumstances inasmuch as the imports were made during the period from 04.09.2007 to 03.03.2009, whereas the SCN was issued on 06.10.2010, which is beyond the normal period of limitation i.e. 6 months from the relevant date. The Ld. Advocate further submitted that the impugned order has travelled beyond the dispute by classifying the imported goods under CTH 38.24. He also

submitted that the Assistant Commissioner of Central Excise does not have jurisdiction to issue the disputed SCN under Section 28 *ibid.*

3. On the other hand, the Ld. AR appearing for the Revenue reiterated the findings recorded by the authorities below in support of confirmation of the adjudged demands on the appellant.

4. Heard both sides and perused the records.

5. With regard to classification of the disputed goods, the learned Commissioner (Appeals) vide the impugned order dated 26.03.2013 has held that the same should be classifiable under Tariff Item 382311.11 and the applicable rate of duty would be 20% *Ad valorem*. For arriving at such conclusion, he has relied upon the judgement of the Hon'ble Supreme Court delivered in the case of CCE Vs. JOCIL LTD. – 2011 (263) ELT 9 (S.C.). In the grounds of appeal, the appellant did not specifically contest the issue regarding classification of the disputed goods as decided in the impugned order. Hence, we accept the classification issue decided in the impugned order.

6. We find that the show cause notice in respect of the imports made by the appellant during the period September 2007 to March 2009 was issued by the department on 06.10.2010, alleging contravention of the provisions of the Customs (Import of goods at concessional rate of duty) Rules, 1996 read with *proviso* to Section 28 of the Customs Act, 1962. The mechanism for recovery of short levy or non-levy of duties is contained in Section 28 *ibid*. As per the statutory requirements, the proper officer must serve the show cause notice under normal circumstances on the person chargeable with the duty within the period of 'six months' from the relevant date. The proviso clause attached to sub-section (1) of Section 28 *ibid* has extended the time limit for issuance of the notice up to the period of 'five years' under exceptional circumstances itemised therein. Insofar as applicability of the *proviso* clause appended to Section 28 *ibid* is concerned, it has been mandated in the statute that in place of the normal period of 'six months', the show cause proceedings can be initiated within the period of 'five years'. Such extended period of limitation can be invoked in the eventuality, where the duty has not been levied or short levied by reason of collusion; or any wilful mis-statement; or suppression of facts made by the importer or

exporter. In this case, while applying for registration under rules, 1996 (supra), the appellant had specifically informed the department vide their letter dated 19.07.2004 regarding the excisable goods manufactured by them, availment of the duty concession in respect of the disputed goods etc. Considering the application of the appellant, the jurisdictional Central Excise authorities have also issued the registration certificate under the cover of letter dated 22.07.2004. Further, we also observe that the department had issued the audit report dated 27.04.2009 to the appellant, alleging incorrect availment of Customs duty exemption provided under the notifications issued by the Central Government. From the correspondences exchanged between the appellant and the department in this regard available in the case records prove the facts beyond doubt that the entire *modus oprandi* adopted by the appellant for procurement of the imported goods at concessional rate of duty and manufacture of the final product in their factory by utilising such goods was within the knowledge of the department way back in 2004. Thus, under such circumstances, the allegation levelled against the appellant regarding suppression, mis-representation with wilful intention to evade payment of duty cannot be levelled against the appellant, justifying issuance of show cause notice beyond the period of six months from the relevant date. In absence of fulfilment of the conditions itemized in the *proviso* clause under Section 28 *ibid*, in our considered view, the show cause notice issued by the department by invoking the extended period of limitation cannot stand for judicial scrutiny and accordingly, the adjudged demands cannot be confirmed on the appellant. Further, the law is well settled by the Hon'ble Supreme Court in the case of CCE, Mumbai Vs. S.Narendra Kumar & Co. – 2011 (267) ELT 577 (S.C.) and CCE, Delhi Vs. Ishaan Research Lab (P) Ltd. – 2008 (230) ELT 7 (S.C.) that in case of classification of the goods under the Tariff Head, the extended period of limitation cannot be invoked and the proceedings can only be initiated for confirming the demands within the normal period. Further, it has also been held that claiming a particular exemption on the goods by the assessee does not give rise to a case of mis-declaration or suppression or mis-statement of facts.

In the facts and circumstances of the case, the entire demand confirmed by the department is barred by limitation of time.

7. In view of the foregoing discussions and analysis, the impugned order cannot be sustained on the ground of limitation and accordingly, we are setting aside the same and allowing the appeal filed by the appellant on the ground of limitation alone.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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