CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 88272 of 2014

(Arising out of Order-in-Appeal No. 2378 (Gr.I)/2014 (JNCH)/IMP-2277 dated 11.06.2014 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II.)

M/s Inspira Bio-Pharm Pvt. Ltd. **.... Appellant**
107-A, Marne Chambers, Marine Lines,
Mumbai- 400 020.
and
Gala No. L., Phase 2, Munisuvrat Complex,
Rahali, Anjur Phata, Bhiwandi,
Thane- 421 301.

Versus

Commissioner of Customs (Import) **.... Respondent**
Jawaharlal Nehru Custom House,
Tal-Uran, Dist.-Raigad,
Maharashtra- 400 707.

Appearance:

Shri Durgesh Nadkarni, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85436/2024

Date of Hearing: 15.04.2024
Date of Decision: 15.04.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant herein had imported 500 kg. of Balsam Tolu (Oleoresin) and claimed classification of the said goods under CTH 13019049 in the Bill of Entry No. 4430905 dated 23.08.2011 filed with the Customs department. The appellant had also claimed the benefit provided under Sr. No. 27 of the Notification No. 21/2002-Cus., dated 01.03.2002. On examination of the imported goods, the department observed that the said notification is applicable only for 'Oleo Pine Resin' and not for 'Oleo resin (Balsam Tolu)'. Since the appellant had claimed the concessional rate of duty in terms of notification dated

01.03.2002, the Department had issued a Less Charge notice dated 20.12.2012 under Section 28 of the Customs Act, 1962, calling upon the appellant as to why the differential amount should not be recovered from them. Subsequently, the Department had issued a show cause notice under Section 28 *ibid* on 16.01.2013, which was adjudicated vide the original order dated 04.04.2013, wherein the lower adjudicating authority had denied the benefit of notification dated 01.03.2002 and confirmed the differential duty amounting to Rs. 1,59,860/- along with interest and also imposed penalty of Rs.25,000/- under Section 112 *ibid* on the appellant. On appeal against the said original order dated 04.04.2013, the learned Commissioner (Appeals) vide the impugned order dated 11.06.2014 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order dated 11.06.2014, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocated appearing for appellant submitted that the classification of the goods adopted by the Department is not in dispute, and the appellant through this appeal is contesting issuance of show cause notice on the ground that there is no element of suppression, fraud etc., and thus, both less charge notice as well as show cause notice are clearly barred by limitation of time as per the provisions of Section 28 *ibid*.

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. We find that the appellant in this appeal has made a very specific prayer that the recovery proceedings initiated by the department are barred by limitation of time. In this context, the appellant has submitted that there is no allegation either in the less charge notice or in show cause notice that the appellant had indulged itself in the activities, concerning suppression of facts, fraud etc., with the intent to de-fraud the government revenue. We find that the submission made by the appellant is correct that both the notices

issued by the Department have not invoked the extended period of limitation for confirmation of the adjudged demands. Insofar as recovery of duty under Section 28 *ibid* is concerned, the time line has been prescribed therein for service of notice on the person from whom the proposed duty amount is to be recovered. The phrase 'relevant date' for such purpose has been clarified in the explanation appended thereto. Clause (a) in explanation 1 has clarified the 'relevant date' to mean non-levy of duty in a case, where the proper officer makes an order for clearance of the goods. The phrase 'not levied' was substituted with the words 'not levied or not paid or short levied or short paid' by the Finance Act, 2016 (28 of 2016) w.e.f. 14.05.2016. In the present case, the Bill of Entry was filed by the appellant on 23.08.2011. Thus, the case of the appellant falls under the un-amended explanation provided in clause (a), which is confined only for 'non-levy of duty'. In the case of the appellant, there is no question of non-levy of duty inasmuch as duty was levied at the concessional rate in terms of notification dated 01.03.2002 and the assessed duty was paid by them. Since, the Bill of Entry was filed on 23.08.2011, as per the requirement of Section 28 ibid read with clause (a) in the explanation 1 appended thereto, the show cause notice was required to be issued within a period of one year from the date of such filing. In this case, it is an admitted fact on record that the less charge notice and the show cause notice were issued to the appellant on 20.12.2012 and 16.01.2013 respectively. Since, such notices were issued beyond the period of one year from the relevant date of filing the Bill of Entry and passing of the assessment order, in our considered view, issuance of such notices are clearly barred by limitation of time and as such, proceedings cannot be initiated against the appellant for confirmation of the adjudged demands. In addition to our above findings, we also appreciate that the clause (d) in the explanation 1 shall also not be of any help to the department, inasmuch as the said clause clarified the relevant date to mean the date of payment of duty, which admittedly in this case was paid at the time of filing the bill of entry, and therefore the notices issued beyond the period of one year from such date would be clearly barred by limitation of time. Further, we also find that both the notices (referred supra) were not invoked the extended period of limitation for recovery of the adjudged demands.

6. We find that the issue arising out of the present dispute with regard to suppression of facts, mis-statement etc., justifying invocation of the extended period of limitation, is no more open for any debate, in view of the judgment of Hon'ble Supreme Court delivered in the case of *Collector of Central Excise, Jaipur Versus Rajasthan Textiles Mills* - 1997 (94) E.L.T. 481 (S.C.), holding that when show cause notice is not fulfilling the ingredients provided under Section 11A(1) of Central Excise Act, 1944 (*pari materia* with sub-section (4) of Section 28 ibid), then demand cannot be sustained on the ground of limitation.

7. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands made beyond the normal period of limitation. Therefore, the appeal is allowed in favour of appellant only on the ground on limitation.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha