CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Miscellaneous Application No. 85832 Of 2021

(on behalf of Appellant)

in

Customs Appeal No. 87940 Of 2017

(Arising out of Order-in-Original No. 213/2016-17/CC/NS-I/JNCH dated 20.03.2017 passed by Principal Commissioner of Customs (NS-I), Mumbai-III)

Mahale Filter System (India) Pvt. Ltd. **.....Appellant**
Gate No. 410/411, Mauje Urawade,
Tal. Mulshi, Pune Maharashtra-411042.

VERSUS

Commissioner of Customs-Nhava Sheva-I **.....Respondent**
JNPT, Custom House, Nhava Sheva- Raigad
Maharashtra-400707.

Appearance:

Shri T. Vishwanathan along with Shri Akhilesh Kangsia & Ms. Apoorva Parihar, Advocates for the Appellant
Shri Sydney D'Silva, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87471/2023

Date of Hearing: 11.11.2022
Date of Decision: 10.05.2023

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. The dispute involved in this case relates to classification of "Filter Paper" and "Filter Paper Impregnated". The department had classified the said goods under Customs Tariff Heading (CTH) No. 4823 and 4811 respectively, as against the classification claimed by the appellant under CTH 4805. The period of dispute involved in this case is from April,

2011 to June, 2016. The impugned order at paragraph 21 has recorded the allegations leveled in the show cause notice, which are to the effect that the importer-appellant had accepted the classification under CTH 4823 for Filter Paper and CTH 4811 for Filter Paper Impregnated; no arguments were placed by the importer to state that the goods are subjected to any of the processes, mentioned in note 3 to Chapter 48; that in respect of filter paper, the importer has self-assessed the same under CTH 4823, whenever the said goods were imported for captive consumption and that as regards the product filter paper impregnated, the importer had accepted that the said goods are to be classified under CTH 4811 and accordingly, paid the CVD amount at higher rate. On the basis of the charges made in the SCN and consideration of the submissions of the appellant, the adjudicating authority has confirmed the proposals made in the SCN.

3. In this case, the appellant has not disputed the classification of goods under CTH 4823 and 4811 and also conceded that based upon the classification adopted by the department under such CTH they had already paid the duty for the normal period. The appellant has assailed the impugned order on the ground that extended period of limitation cannot be invoked, in absence of any substantiation with regard to involvement of the appellant in the activities concerning suppression, fraud, collusion etc. and the demand should only be confined to the normal period.

4. The provisions regarding non-levy, short-levy or short-paid duty are contained in Section 28 of the Customs Act, 1962. Sub-section (1) Section 28 mandates that in case of non-levy, short-levy or short-paid duty, the proper officer shall, within one year from the relevant date, serve notice on the person, requiring him to show cause as to why he should not pay the amount specified in the notice. The period of service of notice of two years was substituted (w.e.f. 14.05.2016) by Section 120 of the Finance Act, 2016 for the words "one year". In the eventuality, where any duty has not been levied or not paid or has been short-levied or short-paid by reason of collusion; or any wilful mis-statement; or suppression of facts, the proper officer shall, within a period of five years from the relevant date, serve notice on the person,

requiring him to show cause as to why the amount as per the notice should not be recovered.

5. On conjoint reading of both sub-section (1) and sub-section (4) of Section 28 *ibid*, it transpires that recovery of duties can only be effected within a period of one year from the relevant date under normal circumstances. However, in case of presence of the ingredients itemized in sub-section (4) *ibid*, instead of the period of one year/two years, the proper officer can issue the show cause notice within a period of five years. In other words, issuance of notice within the normal period is the rule; whereas, issue of notice beyond the normal period, within the extended period of limitation is the exception. For invoking such extended period of limitation, the department has to adduce the material evidences to demonstrate that non-levy or non-payment of duties are owing to the reason of collusion or wilful mis-statement or suppression of facts on the part of the importer-appellant.

6. In the case of the appellant, the disputed goods were imported on the previous occasions by claiming the classification under CTH 48.05, which were accepted by the department and the exemption provided from payment of Additional Duty of Customs (CVD) in terms of Section 3(1) of the Customs Tariff Act, 1975 were also extended to the appellant. However, due to objections raised by the audit wing, the department had issued the show cause notice, proposing re-classification of filter paper under CTH 48.23 and filter paper impregnated under CTH 48.01. It is not the case of the department that the appellant had mis-declared the goods imported by them or suppressed any facts with regard to importation of such goods. Since, there is no mis-declaration insofar as description and value is concerned, in our considered view, mis-classification of the imported goods cannot be a defensible ground for invoking the extended period of limitation provided under sub-section (4) of Section 28 *ibid*. The demand can only be confined to the normal period of one year from the relevant date. With regard to the limitation aspect, we find support from the judgments relied upon by the learned Advocate for the appellants in the cases of Raghav Industrial Products Vs. CC – 2019-TIOL-2559-CESTAT-DEL, JBM Auto Ltd. Vs. Commissioner of Customs

(Imports) – Customs Appeal No. 50332 of 2019 (DB) – Final Order No. 50526/2019, Natraj Stationery Products Vs. CCE – 2017 (348) ELT 568 (T) and Komal Trading Co. Vs. CC – 2014 (301) ELT 506 (T). The ratio laid down in those decided cases is to the effect that claim of particular classification does not amount to mis-declaration and in such an eventuality, the extended period of limitation cannot be invoked for effecting recovery of the demands. Further, it is an admitted fact on record that the appellant had paid the duty attributable to the normal period of one year. Thus, under such circumstances, the adjudged demands confirmed beyond such normal period cannot be sustained.

7. The period 'two years', substituted for 'one year' with effect from 14.05.2016 by Section 120 *ibid*, shall not be applicable to the case in hand inasmuch as the imports were made prior to the period 14.05.2016 and since, such amendment is prospective in effect, retrospective cannot be given for consideration of the normal period of 'two years', in place of 'one year'.

8. In view of the foregoing discussions, we do not find any substance in the impugned order, insofar as it has confirmed the adjudged demands on the appellants by invoking the extended period of limitation. Therefore, the impugned order is set aside and the appeal is allowed on the ground of limitation. Miscellaneous application stand disposed off.

(Order pronounced in the open court on 10.05.2023)

(C J Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

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