CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 1007 of 2007

(Arising out of Order-in-Original No. 10/Commissioner/Goa/CX/2007 dated 30.07.2007 passed by the Commissioner of Customs, Central Excise & Service Tax, Panaji- Goa.)

Himachal Futuristic Communication Ltd. **.... Appellant**
Plot No. 35-37,
Verna Industrial Estate, Verna, Goa.

Versus

Commissioner of Customs, Goa **.... Respondent**
ICE House, EDC Complex,
Patto Plaza, Panaji- Goa.

Appearance:

Shri H.G. Dharmadhikari, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

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Customs Appeal No. 1008 of 2007

(Arising out of Order-in-Original No. 10/Commissioner/Goa/CX/2007 dated 30.07.2007 passed by the Commissioner of Customs, Central Excise & Service Tax, Panaji- Goa.)

Rajesh Tatia **.... Appellant**
Dy. General Manager,
M/s. Himachal Futuristic Communication Ltd,
Plot No. 35-37,
Verna Industrial Estate, Verna, Goa.

Versus

Commissioner of Customs, Goa **.... Respondent**
ICE House, EDC Complex,
Patto Plaza, Panaji.

Appearance:

Shri H.G. Dharmadhikari, Advocate for the Appellant

Shri Ashwini Kumar, 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/86328-86329/2022

Date of Hearing: 19.12.2022
Date of Decision: 19.12.2022

Per: S.K. MOHANTY

Brief facts of the case, leading to these appeals, are summarized herein below:

1.2 The appellants herein, are engaged in the manufacture of Optical Fibre Cables (OFC) and for that purpose, were registered with the Central Excise department in terms of Section 6 of the Central Excise Act, 1944 read with Rule 9 of the Central Excise Rules, 2002. The appellants had claimed the classification of the said excisable goods under Heading 8544 of the Central Excise Tariff Act, 1985. In the present case, the appellants had imported the raw materials required for manufacture of the OFC, by claiming the benefit of duty exemption provided under Notification No. 24/2005-Customs dated 01.03.2005. At serial No. 3 in the said notification, different description of items was considered for duty exemption. The goods classified under 854470 were also considered for such benefit of duty exemption. Sl. No. 5 in the said notification has provided that in respect of the goods procured duty free as per Sl. No.3 above, the importer has to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (for short, 'IGCR, 1996').

1.3 Proper classification of OFC, whether to be classifiable under heading 8544 or 9001, was the subject matter of dispute and there were divergent views expressed by different Benches of the Tribunal. Accordingly, the matter was referred to the Larger Bench of the Tribunal, and in the case of *Commissioner of Customs, Mumbai Vs. Vodafone Essar Gujarat Ltd.* [2017-TIOL-4586-CESTAT- MUM.- LB], the Larger Bench had answered the reference, by stating that OFC used for telecommunications are not classifiable under CTH 8544 and they would fall under CTH 9001.

1.4 Since the appellants had claimed the classification of the disputed goods under CTH 8544 and claimed the duty exemption provided under Notification dated 01.03.2005, the department had initiated show cause proceedings, proposing for recovery of customs duties along with interest and for imposition of penalties on the appellants. The matter arising out of the SCN dated 01.05.2006 was adjudicated vide the Order-in-Original dated 30.07.2007 (for short, referred to as 'the impugned order'), wherein the original authority has confirmed the customs duty demand amounting to Rs.82,17,348/- along with interest under Section 28 (2) of the Customs Act, 1962 read with Section 28AB ibid respectively. Besides, the impugned order has also imposed equal amount of penalty on the appellant's company under Section 114 ibid and penalty of Rs.10,000/- under Section 117 ibid on the other appellant Shri Rajesh Tatia, Senior Manager-Accounts of the appellant company.

1.5 Feeling aggrieved with the impugned order, both the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that the appellants have not contested the classification of the imported goods under heading 9001. However, they pleaded that there is no suppression of fact and as such, the proceedings initiated by the department under the extended period of limitation cannot be sustained for confirmation of the adjudged demands. We find that the appellants had made statutory declarations under the IGCR, 1996 that the optical fibre manufactured by them were of tariff heading 8544 7090 of the Central Excise Tariff Act, 1985. They had also made similar declaration in the periodic ER-1 returns filed before the department. To the same effect, were the declaration in terms of the different bonds executed by them, under ICGR, 1996. At no point of time, the appellant had declared that the OFC manufactured by them were not made up of individually sheathed Optical fibre. The relevant fact is that OFC manufactured by the appellants were not made up of individually sheathed optical fibre and consequently, they were not eligible to the benefit of subject notification dated 01.03.2005, in respect of the raw materials used for the manufacture of the OFC. This fact came to the knowledge of the jurisdictional Customs and Central Excise authorities only upon investigations/inquiries conducted in this case, consequent upon the receipt of intelligence. Therefore, we are of the view that the elements of suppression of

facts, wilful mis-statement etc., were very much present in this case and the adjudged demands have been rightly confirmed by the department in invoking the extended period of limitation.

4. The SCN dated 01.05.2006 issued by the department to the appellants had invoked both Section 28 ibid as well as Rule 8 of the IGCR, 1996. At the time of importation of goods, the appellants had submitted requisite bonds under the IGCR, 1996, binding themselves to pay the differential duty along with interest, in the case, the imported goods shall not be used for the intended purpose. Since, OFC is classifiable under heading 9001 and such classification has not been considered for duty exemption as per the Notification dated 01.03.2005, we are of the view that the department's stand in invoking both the above statutory provisions are justified, in support of confirmation of the adjudged demands on the appellants.

5. In view of the foregoing discussions, we do not find any infirmity in the impugned order, in so far as it has confirmed the adjudged demands on the appellants. Therefore, the appeals filed by the appellants are dismissed.

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

(C J Mathew)	**(S.K. Mohanty)**
Member (Technical)	**Member (Judicial)**

SM