CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86290 of 2016

[Arising out of Order-in-Original No.19/2015-16/RT-11/NS-GEN dated 24.02.2016 passed by Principal Commissioner of Customs, (Nhava Sheva (General)]

Ajit Donde **.... Appellant**
The Capital, 1802/1901, Plot No.C-70, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

Versus

Commissioner of Customs, **.... Respondent**
(Nhava Sheva-General), Mumbai
Jawaharlal Nehru Custom House , Nhava Sheva,
Dist.-Raigad, Maharashtra – 400707.

WITH

Customs Appeal No. 86291 of 2016

[Arising out of Order-in-Original No.19/2015-16/RT-11/NS-GEN dated 24.02.2016 passed by Principal Commissioner of Customs, (Nhava Sheva (General)]

Pfizer Ltd. **.... Appellant**
The Capital, 1802/1901, Plot No.C-70, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

Versus

Commissioner of Customs, **....Respondent**
(Nhava Sheva-General), Mumbai
Jawaharlal Nehru Custom House , Nhava Sheva,
Dist.-Raigad, Maharashtra – 400707.

APPEARANCE:

Shri Prasad Paranjape, a/w Ms Sonakshi Singh, Advocates for the Appellants

Shri Dinesh Nanal, 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/85512-85513/2026

Date of Hearing: 11.03.2026

Date of Decision: 11.03.2026

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants M/s. Pfizer Limited had imported bulk quantity of Minipress XL tablets under various Bills of Entry (B/Es) and cleared the same from M/s. Arshiya International Ltd., a Free Trade Warehousing Zone (FTWZ). The appellants had undertaken the activity of packing of such bulk medicaments into the blister packaging in their factory, before being sold for human consumption. On importation of the subject goods, the appellants had claimed the exemption for payment of Additional Duty of Customs (SAD) in terms of Notification No. 45/2005-Customs dated 16.05.2005, as amended. The benefit of exemption under the said notification claimed by the appellants was denied by the department on the ground that the subject goods were stock transferred from the FTWZ and since the same were not sold on payment of VAT, the benefit provided thereunder should not be available. According to the department, since the appellants had wrongly claimed the benefit of notification dated 16.05.2005, show cause proceedings were initiated seeking for denial of the benefit of SAD exemption, confirmation of the differential duty demand along with interest, and for imposition of penalties. Show Cause Notice (SCN) dated 02.06.2015 issued to the appellants had also sought for imposition of penalty on Shri Ajit Donde under Section 112 & 114AA of the Customs Act, 1962. The matter arising out of the SCN dated 02.06.2015 was adjudicated by the learned Principal Commissioner of Customs (NS-Gen), JNCH, Nhava Sheva vide the impugned order dated 24.02.2016, in confirming the proposals made in the SCN. Feeling aggrieved with the said impugned order 24.02.2016, both the appellants have preferred these appeals before the Tribunal.

2.1 Learned Advocate appearing for the appellants submitted that the benefit provided under the notification dated 16.05.2005 should be available inasmuch as the imported medicaments procured in bulk packs were transferred to the blister packs and thereafter, were ultimately sold by the appellants to the retail consumers on payment of Sales Tax/VAT. Thus, he submitted that since the requirement of the notification dated 16.05.2005 has been duly complied with, the benefit of SAD exemption should be available to the appellants. In this context, he has relied upon the order of the Co-ordinate Bench of this Tribunal, in the case of M/s. *CRI Limited Vs. Commr. Of Customs (Airport & Administration), Kolkata* 2020 - (12) TMI 805 – CESTAT KOLKATA and *M/s. Linc Pen & Plastics Ltd. Vs. Commissioner of Customs (Airport & Cargo Complex), Kolkata* – 2025 (2) TMI 1293 – CESTAT KOLKATA.

2.2 Learned Advocate strenuously argued that the proceedings initiated by the department by invoking the extended period of limitation cannot be sustained inasmuch as there is no element of fraud, suppression, willful mis-statement etc., with intent to avail the benefit of the SAD exemption provided under the notification dated 16.05.2005. To state that the proceedings initiated by the department are barred by limitation of time, learned Advocate has relied upon the Co-ordinate Bench Order of the Tribunal in the case of *Baccarose Perfumes & Beauty Products Vs. Commr. Of Cus., Kandla* – 2014 (301) E.L.T. 691 (Tri. Ahmd), which was also subsequently affirmed by the Hon'ble Gujarat High Court, reported in 2014 (314) E.L.T. 27 (Guj.).

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the imported goods were not sold by the appellants and stock transferred from the FTWZ to their factory for carrying out the activity of blister packaging, the requirements of the notification dated 16.05.2005 have not been complied with and as such, the adjudged demands confirmed in the impugned order sustain.

4. Heard both sides and examined the case records.

5. Notification No. 45/2005-Customs dated 16.05.2005 grants exemption from payment of whole of the SAD leviable on the imported goods, subject to the condition that such goods should be sold within the Domestic Tariff Area (DTA) and such goods should not be exempted from payment of Sales Tax/VAT leviable by the State Government. The appellants have claimed that since the imported goods, upon packing into the blister packs were sold to the ultimate consumers on payment of Sales Tax/VAT, the requirement of notification dated 16.05.2005 have been duly complied with. On the contrary, the adjudicating authority in the impugned order has taken the stand that from the FTWZ, the imported goods were stock transferred to their factory and in absence of any sale of the same on payment of appropriate Sales Tax/VAT, the benefit provided under the said notification dated 16.05.2005 should not be available. With regard to availment of the benefit of notification dated 16.05.2005, we are in agreement with the findings recorded in the impugned order that the condition precedent for availment of such benefit is sale of "such goods" on payment of Sales Tax/VAT. In the case in hand, since the appellants had stock transferred the goods from the FTWZ to their factory, without involving any element of sale, we are of the considered opinion that

the benefit provided under notification dated 16.05.2005 should not be available. The facts involved in the orders of this Tribunal (supra) relied upon by learned Advocate are distinguishable from the facts of the present case inasmuch as the goods in question involved in those cases were not stock transferred for subsequent carrying out of the manufacturing activity.

6. However, we are in agreement with the submissions made by the learned Advocate that the show cause proceedings initiated by the department are barred by limitation of time. In the case in hand, the bulk tablets were cleared by the appellants from the FTWZ during the period between 27.12.2012 to 01.08.2013. The SCN was issued by the department, seeking recovery of the duty demand on 02.06.2015. The provisions for recovery of non-levied, not paid, short-levied or short paid duties are contained in Section 28 of the Act of 1962. In sub-section (1) (a) of Section 28 *ibid*, it has been provided that where any duty has not been levied or has been short-levied or short-paid, the proper officer shall, within a period of one year from the relevant date, serve notice on the person chargeable with the duty, calling upon it to show cause as to why the short-paid/short-levied duty shall not be recovered. Sub-section (4) of Section 28 *ibid* provides that wherever non-payment or short-payment of duty is attributable to the reason of collusion or any willful mis-statement or suppression of facts, the proper officer is empowered to issue the SCN, within a period of five years from the relevant date. On reading of the said statutory provisions, it would transpire that issuance of SCN within the normal period of one year is the 'rule' and invocation of the extended period is the 'exception', for which it is incumbent on the department officer to substantiate that in fact, there are involvement of the ingredients such as collusion, willful mis-statement, suppression of facts etc., on the part of the importer in non-payment/short-payment of the duty amount. On perusal of the case records, we find that the appellants in their letter dated 28.11.2012 had filed the declarations before the customs officer having jurisdiction over the FTWZ, explaining their activities to be undertaken with regard to the bulk tablets imported by them. However, in the said letter, it had also been declared that the blister packages would be sold for retail sale on payment of appropriate VAT. Further, we also find that in the letter dated 20.09.2013, that the units under the FTWZ had represented the Ministry of Commerce, with regard to availment of the benefit of SAD exemption provided under the notification dated 16.05.2005. Furthermore, we also find that there were exchange of correspondence between the Development Commissioner, FTWZ and the Ministry, with regard to the ambiguity created in availment of

the benefit provided under the said notification dated 16.05.2005. Thus, under such circumstances, it cannot be said that non-payment of duty by the appellants is attributable to the reasons itemized in sub-section (4) of Section 28 of the Act of 1962. Thus, in our considered view, the demand, if any, can only be confirmed by taking recourse to sub-section (1) (a) of Section 28 *ibid* and the extended period of limitation cannot be invoked. In the case in hand, since the entire period covered under the SCN is beyond the normal period prescribed under the statute, the proceedings initiated by the department, which culminated into the impugned order dated 24.02.2016 cannot be sustained on the ground of limitation. We find that the Co-ordinate Bench of this Tribunal in the case of *Baccarose Perfumes & Beauty Products* (supra) has allowed the appeal in favour of the said appellants, holding that the proceedings initiated beyond the normal period cannot be sustained. The said order dated 11.09.2012 of the Tribunal has also been upheld by the Hon'ble Gujarat High Court (supra), pursuant to the tax appeal filed by the Commissioner of Customs. Since, the Co-ordinate Bench of the Tribunal in the case of *Baccarose Perfumes & Beauty Products (supra)*, by dealing with notification dated 16.05.2005 has held that the extended period of limitation provided under Section 28 of the Act of 1962 cannot be sustained, we are of the view that different interpretation cannot be placed at this juncture for deciding the appeals filed by the appellants differently.

7. In view of the foregoing discussions, the impugned order confirming the adjudged demands on both the appellants are liable to be set aside on the grounds of limitation. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants, solely on the ground of limitation, with consequential benefit, if any, as per law.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM