CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86203 of 2016

(Arising out of Order-in-Appeal No. 62 to 64 (Adj-Imp)/2016(JNCH)-Appeal-II dated 19.02.2016 passed by the Commissioner of Customs (Appeals-II), Mumbai-II)

M/s Aries Agro Ltd. **.... Appellant**
Aries House, Plot No. 24,
Deonar, Govandi (East),
Mumbai – 400 043

Versus

Commissioner of Customs, Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Uran,
Dist. Raigad, Maharashtra – 400 707

APPEARANCE:

Shri T. Vishwanathan a/w Akhilesh Kangsia, Advocates for the Appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

WITH

Customs Appeal No. 86330 of 2016

(Arising out of Order-in-Appeal No. 62 to 64 (Adj-Imp)/2016(JNCH)-Appeal-II dated 19.02.2016 passed by the Commissioner of Customs (Appeals-II), Mumbai-II)

Commissioner of Customs, Nhava Sheva **.... Appellant**
JNCH, Nhava Sheva, Uran,
Dist. Raigad, Maharashtra – 400 707

Versus

M/s Aries Agro Ltd. **.... Respondent**
Aries House, Plot No. 24,
Deonar, Govandi (East),
Mumbai – 400 043

APPEARANCE:

Shri Dinesh Nanal, Authorized Representative for the Appellant

Shri T. Vishwanathan a/w Akhilesh Kangsia, Advocates for the Respondent

CORAM:

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

FINAL ORDER NO. A/85814-85815/2026

Date of Hearing: 06.05.2026

Date of Decision: 06.05.2026

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the importer-appellant is engaged *inter alia*, in the manufacture of various micronutrients and fertilizers. The importer-appellant also imports fertilizers and sell the same in the local market. During the disputed period, the importer-appellant had imported "Sulphur Bentonite" and classified the same under CTI 2503 00 90 and avail the concessional rate of Basic Customs Duty (BCD) @ 5% in terms of Notification No. 21/2002-Cus., dated 01.03.2002. The classification of the said goods claimed by the appellant was disputed by the Department and accordingly, Show Cause Notice (SCN) dated 20.02.2023 was issued, proposing re-classification of the said goods under CTI 2503 00 10. The matter arising out of the SCN dated 20.02.2013 was adjudicated vide Order-in-Original dated 25.11.2014, wherein the proposals made in the SCN dated 20.02.2013 were confirmed. On an appeal against the said adjudication order dated 25.11.2014, the learned Commissioner (Appeals) vide the impugned order dated 19.02.2016 has partly allowed the appeal in favour of the importer-appellant, holding that the appellant should be eligible for the concessional rate of BCD in terms of Notification No. 21/2002-Cus. dated 01.03.2002 in respect of the said goods imported by them. However, the impugned order has classified the product under CTH 2303 0010, as per the claim made by the Revenue. Insofar as the change in classification of the subject goods, the importer-appellant has filed appeal against the impugned order before the Tribunal. Revenue has assailed the impugned order on the ground that the additional duty demand (CVD) was not confirmed against the importer-appellant.

2. Learned Advocate appearing for the importer-appellant submitted that the learned Commissioner (Appeals) has categorically held that the extended period of limitation under Section 28 of the Customs Act, 1962 cannot be sustained and accordingly, prayed for setting aside the classification issue decided by the learned Commissioner (Appeals). With regard to the appeal filed by Revenue for confirmation of the CVD demand, learned Advocate submitted that since the entire demand confirmed in the adjudication order was beyond the normal period of limitation, the adjudged demands confirmed in the adjudication order and upheld in the impugned order cannot be sustained for recovery from the importer-appellant.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. The period of dispute involved in the present appeal is from 10.02.2010 to 25.08.2011. On perusal of the case records, we find that the Department had issued SCN on 20.02.2013, seeking confirmation of the duty demand on the importer-appellant. The said SCN dated 20.02.2013 was issued under sub-section (4) of Section 28 of the Act of 1962. Insofar as invocation of sub-section (4) of Section 28 *ibid* is concerned, it has been mandated that where any duty has not been levied or not paid or short levied or short paid by reason of collusion, or any willful misstatement or suppression of facts, SCN can be issued beyond the normal period of limitation provided under sub-section (1) of Section 28 *ibid*. We find that the learned Commissioner (Appeals) at paragraph 18 in the impugned order has held that extended period under the provision of Section 28 of the Act of 1962 cannot be invoked against the importer-appellant. The relevant paragraph recorded in the impugned order dated 19.02.2016 is quoted herein below: -

> *"18. From the above, it transpires that the Director, Shri Jimmy Mirchandani of M/s. Aries Agro Limited, Mumbai, was aware of the material fact that the elemental sulphur contained in the imported product Sulphur Bentonite was obtained from the refining of crude oil and also aware with the tariff classification of the product as evident from the evidences on record discussed above including the confessional statement of Shri Makrand Subandh, purchase Manager of M/s. Aries Agro Limited and he (Shri Makrand Subandh) was working under his directions and supervision and therefore, it appears that Shri Jimmy Mirchandani was instrumental in the duty evasion and knowingly and deliberately suppressed the facts and willfully mis-stated in the import documents presented before the Customs authorities with an intent to evade payment of Custom Act, 1962 is an omission on his part which has rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Hence, the said acts on the part of Shri Jimmy Mirchandani have rendered him liable for penalty under Section 112(a) and/or 144A of the Customs Act, 1962. It also appears that he has knowingly and intentionally abetted to made, signed used the declarations, statement or documents, presented before the Customs authorities, which he knew were false and incorrect. Hence, the said acts on the part of Shri Jimmy Mirchandani have rendered him liable for penalty under Section 114AA of the Customs Act, 1962."*

6. Since the learned Commissioner (Appeals) has accepted the fact that extended period of limitation cannot be invoked, inasmuch as there is no element of suppression, willful mis-statement etc., the show-cause proceedings were not required to be invoked against the importer-appellant, seeking for confirmation of the adjudged demand. Since the entire period of dispute is barred by limitation of time, we do not find any merits in the appeal filed by the Revenue on the ground that the SCN *ab initio* is void, being issued beyond the normal period prescribed under sub-section (1) of Section 28 *ibid*. Further, there is no substantiation in the SCN that the ingredients itemized in sub-section (4) of Section 28 *ibid* are present, justifying invocation of the extended period of limitation.

7. In view of the foregoing discussions, the appeal filed by the importer-appellant is allowed on the ground of limitation and appeal filed by the Revenue is dismissed. We have confined our findings only to limitation aspect, without going into merits of the case.

8. Both the appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha