

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 53217 of 2015 [SM]

[Arising out of Order-in-Original No. 08-2015-AD-COMMR-EXP-ICD-TKD dated 04/06/2015 passed by the Commissioner of Customs (Export), ICD, TKD, New Delhi]

M/s. Kothari Foods & Fragrance Pvt. Ltd.

...Appellant

201, City Center
63/2, The Mall Kanpur

Vs.

Commissioner of Customs (Export),

...Respondent

ICD Tughlakabad
New Delhi

APPEARANCE:

None for the Appellant

Shri K. Poddar, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION : 27.09.2019

FINAL ORDER No. 51295/2019

RACHNA GUPTA

None is present for the Appellant. Learned D.R has brought to the notice that this appeal has been remanded back by the Hon'ble High court of Delhi vide the final order dated 26.11.2018. It is impressed upon the Revenue had approached the High court being aggrieved of final order order of this Tribunal bearing no. A/56364-56365/2017 dated 01.09.2017. On merits, the appeal of Revenue has been allowed the matter has been remanded only for the limited purpose of adjudicating certain other issues, including particularly the question of limitations. It's also impressed upon that infact there is no other issue as has been raised by the Appellant in the

grounds of appeal. Since the demand against him stands already confirmed and since there is no notice for any appeal to have been filled by the assessee against the Hon'ble High court possibility of Appellant to no more be interested in pursuing the present appeal can not be ruled out.

In view of the submissions, the order of Hon'ble High court is perused and the appeal in hand is disposed of in the following terms:

A show cause notice bearing no. 556 dated 21.06.2013 was served upon the Appellant observing the contravention on part of Appellant exporter for the provisions of para 4.55 point 3 hand book of restructure volume 1(2004-2009)/ volume 1 of FTP 2009-2014 which enjoined the exporters to disclose technical characteristics, quality and specifications of the essential oil said to have been used in manufacture of Paan Masala/Gutka in their shipping bills at the time of export and thereafter while applying for the duty free import authorisation (DFA licences) under chapter 4 of Foreign trade policy 2004 to 2009 .

Accordingly, the confiscation of goods & the imposition of penalty upon the Appellant was proposed. The proposal was confirmed by the original adjudicating authority vide order no. 08/2015 dated 04.06.2015. The said order was set aside vide the Order of single member bench of this Tribunal bearing No. A/56364-56365/2017 dated 01.09.2017. Being aggrieved the department approached the Hon'ble High court of Delhi. It is observed that

Hon'ble High court has been of the considered view that the arguments of Revenue have merits and deserves acceptance. The contention of the exporter that the declaration requirement of the exception notification is applicable only if the exported goods are included in the list of items enumerated in paragraph 4.55.3 was not accepted by the Hon'ble High court. In furtherance whereof the following questions were framed :

"(i) Did the Customs Excise and Sales Tax Appellate Tribunal (hereinafter „CESTAT“) fall into error in its interpretation of Notification No. 40/2006-Cus dated 01.05.2006, and also with respect to para 4.55.3 of the Handbook of Procedure for Export and Import;

(ii) Did the CESTAT err in law in its appreciation of specifications that the exporter had to provide and the declaration required, in terms of the above Notification No. 40/2006-Cus read with para 4.55.3 of the Handbook of Procedure for Export and Import) in the circumstances of the case?"

The same have been decided in affirmative i.e. in favour of Revenue and against the assessee. The matter has been remanded for certain other issues, including particularly the question of limitations to be reconsidered by this Tribunal as is apperent from para 19 of the said order of Hon'ble High Court

At this stage, grounds of appeal are perused. There is no other issue as has been raised by the Appellant then the merits/facts/circumstances as were required for the adjudication of the aforementioned two issues except that in para 23 thereof the issue of bar of limitation has been raised on the ground that no ingredients of section 28 of the Customs and Excise Act has been invoked. No doubt the show cause notice in the present case has been issued after a period of expiry of two years as mentioned in the said section. But the show cause notice itself has alleged the suppression of facts on part of the exporter. The same has even

been confirmed by the original adjudicating authority as in Para-21 of the order dated 04.06.2015 it is appreciated that the non-disclosure of the technical characteristics as a consciously done at of the exporter. It has also been held in Para-22 thereof :

On scrutiny of the said correspondences it was observed that DGFT, Kanpur had issued SCNs dated 18.07.2012 to the Exporters under Section 13 of Foreign Trade Development & Regulation (FTD&R) Act 1992 wherein, it has been inter-alia, alleged that the technical characteristic, quality and specifications of the essential oil used in the export product had not been mentioned on the Shipping Bills in contravention of 4.55.3 handbook of procedure 2004/09 thereby suppressing the facts from the licensing authority while availing facility of transferable DFIA; that by doing so the said DFIA's were obtained by suppression of facts and utilized for the purpose for which they were not used.

When this order was challenged before the Hon'ble High court in para-6 of the order by high court, the commissioner's view that DFI licences were obtained by suppression and distortion of facts has been observed with no contrary finding to the said observations. From the record, I found no other reason to differ from the said observations of suppression and distortion of facts and the act being a consciously done act of the exporter. Hence, I am of the view that department has committed no error by invoking the extended period of limitation.

The order of remand is otherwise clear that the tribunal is bound by the decision already given by the high court. Hence, merits are no more to be touched as stands finally decided. Limitation is found to be extendable. As a result of entire above discussion, the appeal stands dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)