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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : August 4, 2009.

1. Cus.A.A. No. 5/2009 & CM No.10644/2009, CM No.10645/2009

Commissioner of Customs . . . Appellant
through : Mr. Mukesh Anand, Advocate.

VERSUS

Mr. Laxmi Narain Agarwal . . . Respondent
through: None.

And

2. Cus.A.A. No. 6/2009 & CM No.10646/2009, CM No.10647/2009

Commissioner of Customs . . . Appellant
through : Mr. Mukesh Anand, Advocate.

VERSUS

Mr.Arvin Kumar Gupta . . . Respondent
through: None.

And

3. Cus.A.C. No. 7/2009 & CM No.10648/2009, CM No.10649/2009

Commissioner of Customs . . . Appellant
through : Mr. Mukesh Anand, Advocate.

VERSUS

Mr. Laxmi Float Glass Ltd. . . . Respondent
through: None.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?

Signature No. 2 Verified To be referred to the Reporter or not?

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

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A.K. SIKRI, J. (ORAL)

The respondents, who are the holders of DFRC license had, according to them, imported 'glazing glass'. In the bill of entry the description of the glass was given as "pyrolitic blue float glass (glazing glass)". The customs authorities checked and examined these goods and cleared the same as per the aforesaid description provided by the respondents treating it to be that 'glazing glass'. At the backside of the bill of entry, endorsement was given by the Customs Officers about the examination of the goods and finding the same to be 'green reflected float glass'.

However, later on a show cause notice was given and proceedings started against the respondents on the ground that the appellants had mis-described the material and in fact it was 'float glass'. This notice was admittedly given beyond the period of six months from the date of clearing of the goods. In these circumstances, the respondents objected to the aforesaid proceedings on the ground that the action was time barred as per the provisions of Section 28 of the Customs Act which mandates that such a step can be initiated only within six months.

The adjudicating authority did not accept the aforesaid submission of the respondents and imposed the duty and penalty. However, in appeals to the Customs and Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, the respondents have succeeded inasmuch as vide impugned orders dated 27.8.2008 passed in all those three cases, the Tribunal has held that action initiated by the adjudicating authority is barred by limitation.

Before we delve into the challenge laid by the Revenue to the aforesaid orders of the CESTAT, it would be appropriate to take note of Section 28 of the Act. It reads as under:

“28. Notice for payment of duties, interest etc.: 3

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has been paid, part paid or erroneously refunded, the proper officer may.-

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year,

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice: Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reasons of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.”

We may note here that though Section 28 of the Act stipulates prescribes six months period of limitation from the relevant date, the proviso thereto prescribes that the period in which the action can be taken would be five years in case duty has not been levied or has been short levied or the interest has not been charged or has been partly paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter.

The moot question is as to whether the cases of the respondents fall in the main provision or it is covered by the proviso. In these appeals preferred by the Revenue the aforesaid order of the CESTAT is challenged on the ground that the description of the goods given by the respondents would cover the same by the aforesaid proviso and, therefore, the period of five years was available to take action.

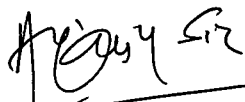
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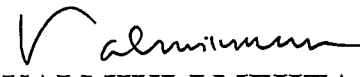
We are unable to accept this submission of the learned counsel for the appellant in the facts and circumstances of this case. As pointed out above the respondents had given complete description of the goods by mentioning “Pyrollitic blue float glass (Glazing glass)”. Even the Customs officers examined the goods and found the same to be green reflective float glass. It is not a case where the incomplete description of goods was given. It is not a case of mis-declaration or concealment of the description either. No doubt the respondents had given the classification of the goods under CPH 7020 whereas as per the appellant the goods were classifiable in CPH 7005.

There is more than one reason to reject the plea of the appellants. First of all, all these contention proceeds on the basis that glazing glass is classifiable under CPH 7020 whereas floating glass is classifiable under CPH 7005. In any case that would amount to claiming the benefit by wrong classification after giving complete description of the goods. Therefore, if there was a bona fide error on the part of the respondents in claiming classification under different head but after giving complete and true description of the goods imported, it was for the Custom officers to check the aforesaid aspect at the time of clearing the goods. It cannot be treated as mis-declaration or concealment. Even if there was error on the part of the customs officers in ignoring the aforesaid aspect, action could have only been taken within six months as provided under Section 28 of the Act. Insofar as proviso to that Section 28 is concerned that would not be applicable in the present case. As rightly pointed out by the Tribunal, goods were assessed as per the parameter of DFRC license which is cleared from endorsement at the back of the bill of entry which were examined by the Customs officer and it was tallied

with the description and details given in the DFRC license. Therefore, the action initiated by the appellant was clearly barred by limitation.

In these circumstances we do not find any infirmity in the order passed by the Tribunal. These appeals are accordingly dismissed in limine.


A.K.SIKRI, J


VALMIKI J.MEHTA, J

August 04, 2009
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