IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.91 OF 2014

The Commissioner of Central Excise
Customs and Service Tax ...Appellant.
versus
Firomenich Aromatics (India) Pvt. Ltd. ..Respondent.

.....

Mr. A.S. Rao for the Appellant.
None for the Respondent.

.....

CORAM : B.R. GAVAI &
A.S. GADKARI, JJ.

23rd March, 2015.

P.C. :

The Appellant Revenue has approached this Court being aggrieved by the order passed by the learned CESTAT, Ahmedabad dated 27th December 2013 thereby allowing the appeal filed by the Respondent who had in turn challenged the order passed by the Commissioner (Appeals), Central Excise and Customs, Daman.

2. The facts in brief giving rise to the present Appeal are as under :

It was found in the audit that during the period 2001-02 the Respondent had warehoused the goods beyond the period as provided under sub-section (2)(ii) of Section 61 of the Customs Act, 1962. As such, show cause notice came to be issued to the Respondent On 19th October, 2005 calling upon it to show cause as to why interest amounting Rs.10,80,331/- should not be demanded and as to why penalty should not be imposed under Section 117 of the Customs Act. The adjudicating authority confirmed the issue and imposed the penalty. An appeal was preferred by the Respondent before the Commissioner (Appeals). By order dated 1st February, 2008 the Commissioner (Appeals) dismissed the appeal of the Respondents. The Respondents thereafter preferred an appeal before the CESTAT which is allowed by the impugned order. Hence, the present Appeal.

3. Mr. Rao, learned counsel appearing for the Revenue submits that though a limitation of one years is provided under Section 28 for taking the action, no such limitation is provided under sub-section (2) of Section 61 of the Customs Act. The learned counsel, therefore, submits that the learned Tribunal has grossly erred in holding that the show cause notices were beyond limitation. The learned counsel, therefore, submits that the question of law as to whether the Tribunal was justified in holding that the show cause notices issued were beyond limitation, in the absence of any provision to the effect, Section 61 of the said Act arises for consideration in the present Appeal.

5. We have perused the impugned order.

6. The learned Tribunal while allowing the appeal has held that though no limitation is provided for under sub-section (2) of Section

61, the authorities are required to take action within a reasonable period. The learned CESTAT while allowing the appeal has relied upon the judgment of the Madras CESTAT in the case of **C.C., Madras v. TVS Whirlpool Limited** [**1996(86) E.L.T. 144 (Tribunal)**] wherein the CESTAT has held that when no limitation is prescribed under the provisions, then an action has to be taken within a reasonable period and such reasonable period would very much vary from six months to five years. While holding so, the learned CESTAT has relied on the judgment of the Apex Court in the case of **Government of India v. Citedal Fine Pharmaceuticals** reported in **1989 (42) E.L.T. 515 (SC)**. The Apex Court in the said case has in unequivocal terms held that when there is an inordinate delay in issuance of notice of demand, it would be open to the assessee to contend that it is bad in law on the ground of delay. The judgment of the Madras CESTAT in the said case was challenged before the Apex Court and the Apex Court in the case of **Commissioner v. TVS Whirlpool Limited** [**2000(119) E.L.T.A 177 (SC)**] while dismissing the appeal filed by the Revenue the Hon'ble Supreme Court has observed thus : “It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the Claim in the appeals and they are dismissed with costs.”

7. In the present case, the demand for interest pertains to the dues

which were paid on various dates between 16th August, 2002 to 13th August, 2003. It would thus be clearly seen that insofar as there is a delay of more than three years from the date on which the first cause of action arose and more than two years from the date on which the last cause of action arose. The delay has not at all been explained. In that view of the matter, it cannot be said that the learned Tribunal was unjustified in holding that the delay in issuing show cause notice was not sustainable in law.

8. In the result, we do not find that a case is made out for interference. The learned Tribunal has rightly relied on the judgment of the Apex Court in allowing the appeal filed by the Respondent.

The Appeal is, therefore, without merit and dismissed.

(A.S. Gadkari, J.) **(B.R. Gavai, J.)**