IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-16.12.2019

CWP No.21115 of 2019(O&M)

1.

Gupta Smelters Pvt. Ltd.

......Petitioners.

Versus

Commissioner of Customs and Anr.

......Respondents.

2.

CWP No.21138 of 2019(O&M)

Laurus Industries Pvt. Ltd.

......Petitioner.

Versus

Commissioner of Customs, Ludhiana & Anr.

......Respondents.

3.

CWP No.22694 of 2019(O&M)

Ganesh Fertichem (I) Pvt. Ltd.

......Petitioner.

Versus

Commissioner of Customs, Ludhiana & Anr.

......Respondents.

4.

CWP No.22810 of 2019(O&M)

Ganesh Agro.

......Petitioner.

Versus

Commissioner of Customs, Ludhiana & Anr.

......Respondents.

5.

CWP No.22923 of 2019(O&M)

S.K. Motor Oil Company.

......Petitioner.

Versus

Commissioner of Customs & Anr.

......Respondents.

6.

CWP No.26928 of 2019(O&M)

DEE KAY Exports.

......Petitioner.

Versus

Commissioner of Customs, Ludhiana & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Jagmohan Bansal, Advocate &
Mr. Deepak Gupta, Advocate for Petitioner (s)
(in all the Petitions).

Mr. Sunish Bindlish, Advocate for the respondents
(in CWP Nos.21115, 21138 of 2019 &
CWP No.22923 of 2019).

Mr. Tajender K. Joshi, Advocate for respondent in
(CWP Nos.22694, 22810 & 26928 of 2019).

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JASWANT SINGH, J.(ORAL)

1. This common order shall dispose of the aforesaid writ petitions bearing CWP Nos.21115, 21138, 22694, 22810, 26928 and 22932 of 2019 involving common issue. The Petitioner(s) (private limited companies/partnership concern/proprietorship concern) are importers (in all the cases) having imported goods through Dry Port, Ludhiana, by filing the present writ petitions under Article 226 of the Constitution of India are seeking quashing of Show Cause Notice(s) of finalization of provisionally assessed Bills of Entry, beyond a period of five years.

2. For the sake of convenience**,** the facts are borrowed from CWP No.21115 of 2019. The petitioner-private limited company during the period 2011-2013 vide twenty four (24) Bills of Entry at Dry Port, Ludhiana imported "Zinc Skimming/Zinc Ash". Similarly in all the other writ petitions the petitioner(s) importers have imported Zinc Skimming/Zinc Ash, except in CWP No.22923 of 2019, wherein the importer has imported Pressed Distillated Oil during the period 2012.

The Custom Authorities at the Port held that the declared description of goods and its assessible value was wrong with an intention to evade the customs duty and thereby framed provisional assessment under Section 18 of the Customs Act, 1962 (for short the 1962 Act) during the periods 2011-2013 and released the goods after drawing samples, which were got tested from CRCL, New Delhi. The respondent department issued Notice dated 07.03.2019 (**P-3**) for framing final assessment. The petitioner filed reply dated 22.03.2019 (**P-4**) pointing out that the respondents in view of the judgment of this Court rendered in case of petitioner itself has no power to frame final assessment after the expiry of 05 years from the date of Bill of Entry. The respondents have issued another letter/Notice dated 15.7.2019 (**P-5**) regarding finalization of the provisional assessment, which is impugned in the present petition.

3. Reply/Written Statement on behalf of the respondents has been filed in **<u>CWP Nos.22694, 22810, 22923 & 26928 of 2019</u>** in Court. Copies of the same furnished to the counsel opposite. Same are taken on record.

4. Counsel for the petitioner contended that present case is squarely covered by a Division Bench Judgment of this Court in case of **Gupta Smelters Pvt. Ltd. Vs. Union of India &Anr.** <u>**CWP No.4137 of 2017**</u> decided on <u>**31.08.2018**</u> **(Annexure P-6**).

5. Counsel for the respondents *inter alia* contended that Section 18 of the Customs Act, 1962 does not prescribe any limitation period to frame final assessment**;** the department has not accepted judgment of this Court in case of **Gupta Smelters case (Supra)** and an appeal has been filed before Hon'ble Supreme Court**;** the final assessment was not framed because matter regarding valuation of "zinc skimming" was pending before Authorities, in view of final order dated 24.03.2011 passed by learned CESTAT in the case of M/s Sonia Overseas Pvt. Ltd.; regarding valuation of similar goods by the expert committee**;** the Department has not issued show cause notice under Section 28 of the Customs Act, 1962 whereas in terms of principles of natural justice notice for framing final assessment has been issued.

6. Having heard learned Counsel for the parties and scrutinized the record, we find that this Court in case of **Gupta Smelters (Supra**) after noticing all the arguments of Respondents and relying upon judgment of this Court in the case of **GPI Textiles Ltd.** Vs. **Union of India CWP No.10530 of 2017** decided on **02.08.2018** has held that final assessment under Section 18 of Customs Act, 1962 cannot be made after the expiry of five years from the date of bill of entry. Admittedly, in the present case Bills of Entry were filed 7-8 years back from the date of impugned notice(s) and neither there was any petition of petitioners pending before Competent Court nor was any stay of any court, thus there was no reason to withhold framing of final assessment. The respondent-Department is deflecting from its responsibility by taking plea of one order dated 24.03.2011 passed by Tribunal-CESTAT, in case of M/s Sonia Overseas Pvt. Ltd. Said order nowhere inhibits respondent from framing final assessment of any importer. The Bills of Entry in question are having no concern with order passed by said order of Tribunal. Interestingly, the respondent did not raise this plea while earlier matter of petitioner company was adjudicated on identical issue by this Court, even though at that point of time also the position was same. The respondent-Department has taken this frivolous plea just to conceal their negligence/incompetency and mislead this Court, which cannot be appreciated. Hence the said plea is rejected.

7. The issue involved in all the present petitions is squarely covered by judgment of this Court in case of **Gupta Smelters Pvt. Ltd. Vs. Union of India & Anr., CWP No.4137 of 2017** decided on **31.08.2018 (P-6),** thus all the petitions deserve to be allowed and accordingly **allowed.** The impugned notices for framing final assessment of provisional assessment are hereby quashed in all the cases.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 16, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*