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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29th March, 2023

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CUSAA 123/2018

**COMMISSIONER OF CUSTOMS,
ACC (IMPORT)**

..... Appellant

Through: Mr. Harpreet Singh, Sr.
SC with Mr. Arunesh
Sharma, Ms. Suhani
Mathur & Mr. Jatin Kumar
Gaur, Advs.

versus

ANURAG TRADING COMPANY Respondent

Through: Mr. Rahul Raheja &
Mr. Gaurav Prakash,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The appellant has filed the present appeal, impugning an order dated 10.08.2017 [final order no. C/A/55775-55776/2017-CU(DB)] passed by the learned Custom, Excise and Service Tax Appellate Tribunal (hereafter 'CESTAT') setting aside the demand of custom duty raised under Section 28B of the Customs Act 1962 (hereafter 'Customs Act'), on the ground that the proceedings initiated were barred by limitation.

2. The controversy in the present appeal relates to 39 Bills of Entry, whereby the respondent had imported goods for supply to the Ordinance Equipment Factory, Kanpur (hereafter 'OEF') without payment of duty.

3. The allegation against the respondent is that the respondent had availed the benefit of the notification no. 39/96-Customs dated 23.07.1996 and imported the goods by submitting forged

custom duty exemption certificates purportedly issued by the General Manager, OEF, Kanpur (hereafter '**the purchaser**').

4. Two Show Cause Notices were issued to the appellants. In terms of the first Show Cause Notice dated 08.07.2011, the respondents had demanded a sum of ₹21,05,024/-. This demand is related to six Bills of Entries which were filed during the period of 11.07.2006 to 28.06.2008. There is no dispute that the respondent had imported the goods without payment of customs duty and had also recovered the duty from OEF, Kanpur. The learned CESTAT had accordingly upheld the demand of customs duty, amounting to ₹21,05,024/- along with interest under Sections 28AB and 28AA of the Customs Act. In addition, the learned CESTAT had also upheld the levy of penalty equal to the customs duty levied under Section 114(A) of the Customs Act.

5. The respondents appealed against the impugned order to the limited extent that it upheld the demand of ₹21,05,024/- proposed in terms of the Show Cause notice dated 08.07.2011.

6. As noted above, the controversy is limited to the 39 Bills of Entries. In respect of the goods imported under the said Bills of Entries, the customs authority had raised a demand of ₹2,19,52,108/-. The Show Cause Notice in respect of these 39 Bills of Entries was issued on 06.03.2013. Admittedly, these Bills of Entry were filed during the period of August, 1996 to January, 2004.

7. The respondent had replied to the said Show Cause Notice by a letter dated 10.07.2015. There is also a controversy whether the respondent had recovered any duty from OEF, Kanpur for the supply of equipment imported under these Bills of Entries. Some of the equipment – which were imported under the said Bills of

Entries – were supplied to OEF, Kanpur, pursuant to a global tender inquiry requiring the bidders to quote a cum-duty price. The respondent claims that it had not raised any bill/ invoice reflecting the customs duty over and above the consolidated bid price. Therefore, the finding that the respondent had recovered customs duty from OEF is erroneous.

8. However, this Court is not required to examine the said issue as the respondent has not preferred any appeal impugning the findings of the learned CESTAT in this regard.

9. It is noticed that the concerned adjudicating authority had considered the respondent's reply to the Show-Cause Notice dated 06.03.2013 and had passed an order on 10.07.2015. The respondent had filed an appeal against the said order before the learned CESTAT which was disposed of by the impugned order.

10. The learned CESTAT had found that the demand raised was beyond the period of limitation. It has observed that although no time limit had been prescribed under Sections 28B of the Customs Act; the time limit as prescribed under Section 28 of the Customs Act could be considered for the said purpose. The learned CESTAT had referred to the decisions in, *Gem Cables & Conductors Ltd. v. CC Hyderabad; 1994 (72) ELT 848 (Mad.); Tamilnadu Asbestos (pipes) v. CCE Trichy 2009 (238) ELT 473 (Tri-Chennai); and Siddeshwar SSK Ltd. v. CCE Aurangabad 1997 (92) ELT 616 (Tri)* in support of its view

11. The learned CESTAT had noted that although the said decisions were rendered in context of Section 11(D) of the Central Excise Act, 1944, the said provision was *parametria* to Section 28B of the Customs Act.

12. Mr. Harpreet Singh, learned counsel for the appellant,

submits that there is no period of limitation prescribed under Section 28B and, therefore, the learned CESTAT had erred in setting aside the demand on the ground that it was barred by limitation.

13. We are unable to accept the aforesaid contention. It is well-settled that even though in a case where no period of limitation is prescribed under the statute, the required action must be taken within a reasonable period.

14. The decision in the case of *State of Punjab & Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd.; (2007) 11 SCC 363*, is instructive. In that case the Hon'ble Supreme Court had observed as under:

“17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.”

15. It is relevant to note that the period of limitation as provided under Section 28 of the Customs Act is a period of five years from the relevant date. It is, thus, apparent that the learned CESTAT had proceeded on the basis that a reasonable period for taking an action under Section 28B of the Customs Act would also be a period of five years.

16. Thus, even if it is accepted that the limitation period under Section 28 of the Customs Act cannot *per se* be imputed to any action under Section 28B of the Customs Act, there can be no cavil that action should be taken within a reasonable period. In this case, it is apparent that the learned CESTAT found that the period of five years, which is the prescribed period of limitation under Section 28 of the Customs Act, would be a reasonable period.

17. As stated above, the 39 Bills of Entries were filed during the period of August, 1996 to January, 2004. The Show Cause Notice dated 06.03.2013, has been issued approximately nine years after the last Bill of Entry. In the given facts, we are unable to accept that the appellant had issued the notice within a reasonable period.

18. In view of the above, there is no substantial question of law that arises for consideration by this Court in this appeal.

19. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 29, 2023

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