

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21473 of 2016

(Arising out of Order-in-Appeal No. 428/2016 passed by the
Commissioner of Customs (Appeals), Bangalore.)

M/s. Sewing Systems Pvt. Ltd.

"SPRINGDALE" No.51,
Residency Road, 1st Cross,
Bangalore - 560 025.

Appellant(s)

VERSUS

The Commissioner of Customs

C.R. Building,
Queens Road,
Bangalore - 560 001.

Respondent(s)

APPEARANCE:

Mrs. Yovini Rajesh Chander Kumar, Advocate for the Appellant.
Shri Maneesh Akhouary, Superintendent (AR) for the Respondent.

**CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20628 / 2024

DATE OF HEARING: 20.06.2024

DATE OF DECISION: 12.08.2024

PER : R. BHAGYA DEVI

This appeal is filed against Order-in-Appeal No.428/2016
dated 08.06.2016.

2. The appellant, M/s. Sewing Systems Private Ltd. are engaged in the business of importing garment accessories falling under Customs Tariff Heading (CTH) 5407, 5516 and 5903 and these goods were imported from Inland Container Depot, Bangalore by filing warehousing Bills of Entry and warehoused the goods at their private bonded warehouse. Later on, the goods were de-bonded by filing Ex-bond Bills of Entry. The

appellant while ex-bonding the said goods paid Basic Customs Duty (BCD), Countervailing Duty (CVD) and Cess as applicable but claimed exemption from payment of Additional duty of customs (SAD) of 4% leviable under sub-section (5) of Section 3 of Customs Tariff Act, 1975 vide Notification No.20/2006 dated 01.03.2006. However, later it was noticed that the said goods were not covered under the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and hence, they were liable to pay Additional duty of customs (SAD) of 4%. Accordingly, show-cause notice was issued and the impugned order confirmed the duty element of 4% on the said goods for the period April 2011 to March 2013. The authorities also invoked suppression on the ground that the Bills of Entry were cleared under self-assessment and the appellant had claimed the exemption of the Notification, admittedly, which they were not eligible for, thus, there was misdeclaration and hence, the extended period was invoked.

3. The learned counsel submitted that Notification No.20/2006 dated 01.03.2006 and exemption Notification No. 21/2012 dated 17.03.2012 provide exemption from payment of SAD of 4% for all the goods specified in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. At the time of debonding, the Bills were assessed accordingly and cleared on payment of BCD, CVD and other cesses. The amendment brought to the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act 1957, with effect from 08.04.2011 was amended vide 13th Schedule to the Finance Act, 2011. The appellant claimed that the benefit is still available to them in as much as there is no change in the exemption Notification claimed by them. It is also submitted that extended period cannot be invoked, since the benefit was claimed under *bona fide* belief and there was no misstatement or suppression of any facts by the appellant and relied upon the decision of the Tribunal in the case of **ACR Cargoways**

Private Limited vs. Commissioner of Customs (Sea Imports) Chennai: 2003 (158) ELT- 505.

3.1 It is also submitted that when the description of goods is given correctly and the exemption is claimed on the Bill of Entry, it is for the proper officer to examine and assess the duty correctly. Since the Bill of Entry has already been assessed and cleared on payment of duty, the Revenue cannot open the assessment on the ground of suppression or misdeclaration and relied on the decision in the case of **Northern Plastic Ltd. vs. Collector of Customs and Central Excise: 1998 (101) ELT 549 (S.C.)** and **Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur: 2013 (288) ELT 161 (S.C.)**.

4. Countering these arguments, the Authorised Representative on behalf of the Revenue submits that there is no doubt that the benefit of Notification was not eligible to the appellant during the above disputed period but the appellant had also admitted and paid duty for the normal period. Relying on the decision of the Hon'ble Supreme Court in the case of **Commissioner of C. Ex., New Delhi vs. Hari Chand Shri Gopal: 2010 (260) ELT 3 (S.C)** and **Commissioner of Cus. (Import), Mumbai vs. Dilip Kumar & Company: 2018 (361) ELT 577 (S.C.)**, submitted that the exemption Notification has to be strictly interpreted and therefore, in the present case reading the exemption Notification along with the amendment to the First Schedule clearly implies that the appellant is not eligible for the benefit of the Notification. He also realised on the decision in the case of **Sparkle International vs. Commissioner of Customs, Amritsar: 2015 (12) TMI 174 CESTAT, New Delhi**, where it has been clearly held that the appellant was not eligible for the benefit of Notification No.20/2006-Cus. dated 01.03.2006.

4.2 With regard to limitation, it is submitted that since the goods were cleared on self-assessment and it is the responsibility of the appellant to claim the correct exemption and clear the goods, the question of not being aware of the amendment cannot be justified. Therefore, the Commissioner (Appeals) was right in confirming the demands for the extended period and imposing of penalty under Section 114A of the Customs Act, 1962. He also relied on the decisions in the case of **Interglobe Aviation Ltd. vs. Pr. Commissioner of Cus., Bangalore: 2022 (379) ELT 235 (Tri.-Bang.)** and **Panasonic Sales & Services India P. Ltd. vs. C.C. (Import), Nhava Sheva: 2009 (245) ELT 495 (Tri-Mum.)** to substantiate their claim that under self-assessment, it is the responsibility of the appellant to claim the correct exemption Notification.

5. Heard both sides. The issue to be decided is the availment of benefit of exemption of Additional Duty of Customs (SAD) leviable under Section 3(5) of Customs Act, 1962. The period of dispute in this case is April 2011 to March 2013 and the appellant had claimed the benefit of Notification No.20/2006-Cus. dated 01.03.2006 (Sl. No. 50) and Notification No. 21/2012 dated 17.03.2012 (Sl. No. 12), the relevant clause are reproduced below:

**Notification New Delhi, the 1st March, 2006
No. 20/ 2006-Customs 10 Phalguna, 1927 (Saka)**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said

Customs Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the Table aforesaid:

Sl. No.	Chapter	Description	Rate of Duty
50	Any Chapter	All goods specified in the First Schedule to the Additional Duty of Excise (Goods Special Importance) Act, 1957 (58 of 1957)	Nil

**Government of India, Ministry of Finance
(Department of Revenue) New Delhi,
17th March, 2012**

Notification No. 21 /2012- Customs G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notifications of the Government of India, in the Ministry of Finance (Department of Revenue), No. 20/2006-Customs, dated the 1st March, 2006, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 1st March, 2006, and No. 29/2010-Customs, dated the 27th February, 2010, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 92 (E), dated the 27th February, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act, as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the Table aforesaid: Provided that in respect of the goods specified in S. Nos. 2, 46, 70, 87 and 98, imported on or after the 1st day of May, 2012, the exemption contained herein shall apply if the importer, declares,- (i) the State of destination where such goods are intended to be sold for the first time after importation on payment of value added tax; and (ii) his value added tax registration number in that State.

Sl. No.	Chapter	Description	Rate of Duty
(1)	(2)	(3)	(4)
12	Any Chapter	All goods specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)	Nil

As per the above Notifications, there is no doubt that all goods classified under any Chapter specified in the First Schedule to the Additional Duty of Excise (Goods Special Importance) Act, 1957 (58 of 1957) are exempted from Additional duty of customs. This First Schedule by the Finance Act, 2011, the relevant clause is reproduced below:

THE FINANCE ACT, 2011
[Act No. 8 of 2011]
[8th April, 2011]

An Act to give effect to the financial proposals of the Central Government for the financial year 2011-2012. Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I
Preliminary

1. **Short title and commencement.** — (1) This Act may be called the Finance Act, 2011.

(2) Save as otherwise provided in this Act, sections 2 to 35 shall be deemed to have come into force on the 1st day of April, 2011.

Chapter IV
Indirect Taxes
The Thirteenth Schedule
[See section 78]

In the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957,—

- (a) heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto shall be omitted;
- (b) tariff item 1702 90 10 and the entries relating thereto shall be omitted;

(c) headings 5007, 5111, 5112, 5208, 5209, 5210, 5211, 5212, 5407, 5408, 5512, 5513, 5514, 5515, 5516, 5801, 5802, 5803, 5804, 5806, 5810, 5901, 5902, 5903, 5907, 6001, 6002, 6003, 6004, 6005 and 6006 and all sub-headings and tariff items thereof and the entries relating thereto shall be omitted.

5.1 The exemption benefit of the Notification No.20/2006-Cus. dated 01.03.2006 (Sl. No. 50) and Notification No.21/2012 dated 17.03.2012 (Sl. No. 12), as seen above are available only to those goods which are specified in the First Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957). The First Schedule was amended vide Section 78(c) of the Finance Act, 2011 dated 08.03.2011 wherein the following goods were omitted.

“(c)headings 5007, 5111, 5112, 5208, 5209, 5210, 5211, 5212, 5407, 5408, 5512, 5513, 5514, 5515, 5516, 5801, 5802, 5803, 5804, 5806, 5810, 5901, 5902, 5903, 5907, 6001, 6002, 6003, 6004, 6005 and 6006 and all sub-headings and tariff items thereof and the entries relating thereto shall be omitted.”

5.2 In view of the above, the question of extending the benefit of Notification to the goods that were omitted does not arise. Therefore, the appellant's claim that the amendment to the First Schedule has no implication on the exemption Notification is absolutely of no legal basis in as much as the exemption Notification read with the amendment made to the First Schedule makes them ineligible for the benefit of the above Notification. There is no dispute that the Bills of Entry filed by the appellant was for clearance of textile materials classifiable under Chapter Headings 5407, 5516 and 5903 which specifically stand omitted by the above amendment. Hence, the Commissioner (Appeals) had rightly denied the benefit of the Notification. As rightly submitted by the Revenue, in view of the numerous decisions of the Hon'ble Supreme Court, any exemption Notification has to be strictly interpreted. Therefore,

as discussed above, the appellant is not eligible for the benefit of the Notification during the disputed period.

6. The second issue is whether there was any misstatement or misdeclaration of facts so as to invoke extended period of limitation. The period of dispute is April 2011 to March 2013 wherein the appellant had filed Ex-bond Bills of Entry during the relevant period clearly showing the description of goods, the Chapter Heading and had paid BCD along with CVD and claimed the benefit of Notification No.20/2006-Cus. dated 01.03.2006 or Notification No. 21/2012 dated 17.03.2012 on SAD as the case may be. These Ex-Bond Bills of Entry placed on record have been clearly endorsed by the offices of the Customs as proof of assessment and allowed the goods to be cleared. Since, the description, specific chapter heading and respective duties liable to be paid are clearly mentioned and assessed to duty by the officers, the question of reopening the assessments for the extended period does not arise. There are no material facts that have been mis-declared or misrepresented except to state that in self-assessment, the appellant should have been vigilant and claimed only those benefits that were available to them. The Hon'ble Supreme Court in the case of **Uniworth Textiles Ltd.** (supra) observed as follows:

"19. Thus, Section 28 of the Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. The former is canvassed in the main body of Section 28 of the Act and is met with a limitation period of six months, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. **For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.**

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25. Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific

and explicit averments challenging the *fides* of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In *Aban Loyd Chiles Offshore Limited and Ors.* (supra), this Court made the following observations :

"21. This Court while interpreting Section 11-A of the Central Excise Act in *Collector of Central Excise v. H.M.M. Ltd.* (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement or suppression of fact with intent to evade the payment of duty. It has been observed :

'...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults

enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso....”

(Emphasis supplied)

26. Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and **that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant”.**

(Emphasis supplied)

6.1 In the present case, as seen from the records placed before me and from the averments made by the Commissioner (Appeals) in the impugned order, there is nothing on record to prove that there was wilful default on the part of the appellant and hence, the demand cannot be sustained beyond the normal period. Accordingly, confiscation under Section 111(m) of Customs Act, 1962 and penalty imposed under Section 114A of the Customs Act, 1962, are set aside.

7. The appeal is allowed by way of remand only for the purpose of re-quantification of demand along with the interest for the normal period.

(Order pronounced in Open Court on 12.08.2024.)

**(R. BHAGYA DEVI)
MEMBER (TECHNICAL)**

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