

**IN THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
REGIONAL BENCH
COURT NO. I**

**Customs Appeal No. 44 of 2010-DB
With
Customs Appeal No. 45 of 2010-DB**

**Arising out of OIA no. 480-481/2009/COMMR-A-/KDL, Dated: 30.10.2009
and
Passed by Commissioner of CUSTOMS-KANDLA**

**Date of Hearing: 01.04.2019
Date of Decision: 01.04.2019**

**AJANTA MANUFACTURING LTD
AJANTA CORPORATE HOUSE, 8-A, NATIONAL HIGHWAY
MORBI, GUJARAT 363642**

Vs

**COMMISSIONER OF CUSTOMS
KANDLA
CUSTOM HOUSE, NEAR BALAJI TEMPLE
KANDALA GUJARAT**

Appellant Rep by: Shri Anand Nainawati, Adv.

Respondent Rep by: Shri S K Shukla, Authorized Representative

**CORAM: S K Mohanty Member (T)
C J Mathews Member (J)**

Cus - The assessee had imported High Allumina Balls classifying the same under CTH 69022020/30 - On examination of same goods, department contended that the goods should appropriately be classifiable under 69149090 of CTH - Accordingly, SCNs were issued seeking for confirmation of differential amount of duty on account of the rate of duty prescribed for different chapter sub-headings - While importing the subject goods, assessee had claimed clarification under CTH 6902020/30, which was proposed to be classified under 69149090 in SCNs and that while adjudicating the matter, the Original Authority had travelled beyond the scope of SCN and classified the subject goods under CTH 69099090 - For such change in classification, no opportunity or no separate notice was issued to assessee before adjudication of the matter - Therefore, on appeal, Commissioner (A) had allowed the appeal by way of remand on the ground that fair opportunity was not granted by Original Authority for change in classification of subject goods - Consequent upon passing of the order, fresh SCN was issued, seeking for classification of subject goods under CTH 69099090 - The said notice was issued beyond the period of 6 months from the date of filing of the Bill of Entry, and was issued under the Section 28 of

the Act - It is not the case of Revenue that non-payment/ short-payment of duty by assessee was owing to the reason of misstatement or suppression of facts in as much as the initial SCNs issued by department clearly indicated the description of the goods imported by assessee, classification of such goods under the CTH, and claim of exemption provided for such goods - Thus, the subsequent SCN issued beyond the normal period should not stand for judicial scrutiny and accordingly, proceedings initiated based thereon cannot be sustained as barred by limitation of time - With regard to the other issue i.e change in classification of the subject goods during the course of adjudication proceedings, since classification made in assessment order was not proposed in the SCN, the said order cannot go beyond the scope and ambit of SCN and should only confine to the findings, whether the proposals made in SCNs for different classification should sustain - Since the Adjudicating Order had entirely changed the classification of the product, as proposed in SCN from 69149090 to 69099090, without issuing any notice to assessee, differential duty confirmed under the changed classification should also not stand for judicial scrutiny. - Accordingly, it is held that the impugned order confirming the differential duty is not proper and justified: CESTAT

Appeals allowed

Case law cited:

Prince Khadi Woolen Handloom Prod. Coop. Indl. Society Vs CCE 1996 (88) ELT 637 (S.C)... Para 4

FINAL ORDER NOS. A/10656-10657/2019

Per: S K Mohanty:

These appeals are directed against the impugned order dated 30.10.2009 passed by the Commissioner of Customs (Appeals), Kandla. The appellant has filed the appeal, being number C/44/2010 on the ground that the show cause proceedings initiated vide notice dated 15/07/2008 is barred by limitation of time in as much as the period of importation of subject goods, i.e. High Allumina Balls was during period July, 2007; whereas, the notice was issued on 15/07/2008, which is clearly barred by limitation of time, having being issued beyond the period of prescribed time limit of 6 months. With regard to Appeal no. C/45/2010, the appellant has contented that the Adjudication Order had travelled beyond the scope of show cause notice and as such, the demand confirmed against the appellant cannot be sustained.

3. Brief facts of the case are that the appellant had imported High Allumina Balls, classifying the same under CTH 69022020/30. On examination of the same goods, department contended that the goods should appropriately be classifiable under 69149090 of CTH. Accordingly, the Show Cause Notices were issued, seeking for confirmation of the differential amount of duty on account of the rate of duty prescribed for the different chapter sub-

headings. The Show Cause Notices issued by the department were adjudicated, wherein the Original Authority had classified the product entirely under a new Chapter sub-heading i.e. 69099090 and accordingly, confirmed the differential duty on the appellant. Feeling aggrieved by the Adjudication Order, the appellant had preferred appeals before the Ld. Commissioner (A), which were allowed vide order dated 25/04/2008 by way of remand to Original Authority. Pursuant to the said Order-in- Appeal, the department took up de novo adjudication proceedings and issued fresh show cause notice, seeking for recovery of the differential duty under section 28 ibid. With regard to the other appeal, the stand taken by the appellant is that the department cannot make out a new case which was not canvassed in the Show Cause Notice and no opportunity was given before change in classification of the product under altogether a differed chapter sub- heading.

4. Ld. Advocate appearing for appellant submits that since there is no element of collusion or willful mis-statement or suppression of facts, with intent to evade payment of duty, the demand under the subsequent Show Cause Notice should only be confined to normal period provided under section 28 ibid. Thus, he submits that since the department has issued the Show Cause Notice beyond the normal period prescribed under the statute, the same is barred by limitation of time. To support the stand that Show Cause Proceedings are not maintainable on the ground of limitation, he has relied on the judgment of Hon'ble Supreme Court in the case of *Prince Khadi Woolen Handloom Prod. Coop. Indl. Society Vs CCE 1996 (88) ELT 637 (S.C)*.

4.1 With regard to the other appeal i.e. C/45/2010, Ld. Advocate submits that since the adjudication order was passed, classifying the subject goods under entirely a new entry in the CTH, which was not proposed in the Show Cause Notice, seeking for confirmation of the demand, the impugned order passed on the basis of such show cause notice cannot be sustained.

4.2 On the other hand, Ld. AR appearing for the Revenue reiterates the finding recorded in the impugned order.

5. Heard both sides and perused the case records.

5.1 It is an admitted fact on record that while importing the subject goods, the appellant had claimed clarification under CTH 6902020/30, which was proposed to be classified under 69149090 in the Show Cause Notices and that while adjudicating the matter, the Original Authority had travelled beyond the scope of the Show Cause Notice and classified the subject goods under CTH 69099090. For such change in classification, no opportunity or no separate notice was issued to the appellant before adjudication of the matter. Therefore, on appeal, the Ld. Commissioner (Appeals) vide order dated 25/04/2008, had allowed the appeal by way of remand on the ground that fair opportunity was not granted by the Original Authority for change in classification of the subject goods. Consequent upon passing of the order

dated 03/08/2007, fresh Show Cause Notice dated 15/07/2008 was issued, seeking for classification of the subject goods under CTH 69099090. The said notice was issued beyond the period of 6 months from the date of filing of the Bill of Entry, and was issued under the Section 28 of the Act. So far as Section 28 of the Act is concerned, the statute mandates that in case of non-payment or short payment of the duty amount, the department should issue Show Cause Notice within 6 months from the relevant date. The proviso clause appended to section 28 ibid provides that in case of non levy, short levy of duty, etc., on account of collusion or willful mis-statement or suppression of facts by the importer, the period of "6 months" should be read as "5 years". In the instant case, it is not the case of Revenue that non-payment/ short-payment of duty by the appellant was owing to the reason of misstatement, suppression of facts, etc., in as much as the initial Show Cause Notices issued by the department clearly indicated the description of the goods imported by the appellant, classification of such goods under the CTH, and claim of exemption provided for such goods. Thus, under the circumstances of the case, the subsequent Show Cause Notice dated 15/07/2008 issued beyond the normal period should not stand for judicial scrutiny and accordingly, proceedings initiated based thereon cannot be sustained as barred by limitation of time.

5.2 With regard to the other issue i.e change in classification of the subject goods during the course of adjudication proceedings, we are of the view that since classification made in the assessment order was not proposed in the Show Cause Notice, the said order cannot go beyond the scope and ambit of the Show Cause Notice and should only confine to the findings, whether the proposals made in the Show Cause Notices for different classification should sustain or not. Since the Adjudicating Order had entirely changed the classification of the product, as proposed in the Show Cause Notice from 69149090 to 69099090, without issuing any notice to the appellant, we are of the view that differential duty confirmed under the changed classification should also not stand for judicial scrutiny. Accordingly, it is held that the impugned order confirming the differential duty is not proper and justified.

5.3 In view of above discussions, we do not find any merits in the impugned order passed by the Ld. Commissioner (A). Accordingly, after setting aside the same, the appeals are allowed in favour of the appellant.