

**IN THE SUPREME COURT OF INDIA**

**Civil Appeal No. 6136 of 2008  
Civil Appeal Nos. 726-727 of 2011**

**COMMISSIONER OF CUSTOMS (P) MUMBAI**

**Vs**

**M/s ZENITH LTD & ANR ETC**

**S A Bobde, L Nageswara Rao & R Subhash Reddy, JJ**

**Dated: December 05, 2018**

**Appellant Rep. by: Mr. K. Radhakrishna, Sr. Adv. Mr. Arijit Prasad, Adv. Ms. Binu Tamta, Adv. Ms. Shirin Khajuria, Adv. Mr. Pankaj Pandey, Adv. Mr. B. Krishna Prasad, AOR**

**Respondent Rep. by: Mr. M.P. Devanath, Adv. Mr. Abhishek Anand, Adv. Mr. Udit Jain, Adv. Mr. Praveen Kumar, AOR Mr. Arunabh Chowdhury, Adv. Mr. Abhishek Roy, Adv. Ms. Shruti Choudhry, Adv. Mr. Vaibhav Tomar, Adv. Ms. Ruby Singh Ahuja, AOR Mr. Awanish Sinha, Adv. Mr. Prem Ranjan Kumar, Adv. Mr. Himanshu Shekhar, AOR**

**Cus - The respondent-assessee used certain Special Import Licences of Gold bars and Silver bars on payment of concessional rate of duty under Notfn No 117/94 dated 27.04.1994 - The Revenue claimed that the licenses were forged & had been fabricated - SCNs were issued to the assessee, stating that the Joint Director General of Foreign Trade had enquired into the genuineness of the licenses and had written a letter stating that no special import license had been issued to the assessee-importers - Hence the SCN alleged that the assessee were ineligible for the concessional rate of duty & were liable to pay full amount of duty - The SCN also alleged that the duty had been short-levied due to the wilful mis-declaration & suppression of facts by the assessee - Hence the SCN proposed penalty u/s 114A - Duty demand was raised u/s 28(1) with interest u/s 28AB of the Act - On adjudication, the demands were confirmed - On appeal, the Tribunal set aside the duty with penalty on grounds of limitation - Hence the Revenue's appeal.**

**Held - It is seen that in the SCN, the Revenue satisfactorily described the wrong transactions indulged in by the assessee and also demonstrated the illegal benefit obtained by them in respect of rate of duty - Now, if the assessee-importers are entitled to demonstrate that the allegations levelled against them could not be established based on the SCN, the same nonetheless does not entitle them to the relief of having the adjudication order being set aside on limitation - Besides, the Revenue claimed to have detected fraud on 26.1.1998 and have issued SCN on 20.04.1999 which is with 1.5 years of the period prescribed under the proviso to Section 28 of the Customs Act - Hence the order passed by the Tribunal is quashed: SC Larger Bench**

## Revenue's appeals dismissed

### JUDGEMENT

These appeals arise from the impugned orders dated 13.9.2005 and 12.5.2010 passed by the Customs, Excise & Service Tax Appellate Tribunal (for short, the 'CESTAT'), West Zonal Bench at Mumbai. By the said orders, the CESTAT has allowed the appeals of the respondents importers on the ground that the demand of duty is barred by limitation. It also set aside the penalties imposed under sections 114A and 112(a) on the importers.

In brief, the two respondents had used certain Special Import Licences (SILs) of gold bars and silver bars on payment of concessional rate of duty under Notification No.117/94 dated 27.4.1994. Apparently, the authorities detected during the investigation that the said SILs were forged and fabricated. The authorities therefore issued a show cause notice on 20.4.1999. In the said show cause notice, it was recited that the Joint Director General of Foreign Trade, Kanpur, who was asked to confirm the genuineness of the licences, wrote a letter F.No.VIG.-0254/KAN/JDG/1993/70 dated 26.1.1998 stating that no special import licence had been issued to the importers. Therefore it was averred in the show cause notice that the concessional rate of duty could not have been availed and the importers were liable to payment of full duty.

There was an averment in the show cause notice that the duty has been "short levied" on the imported goods due to willful mis-declaration and suppression of facts and on the strength of forged documents. Therefore, respondent - M/s Zenith Ltd, appears liable to pay penalty under section 114A and the duty is recoverable from them in terms of section 28(1) read with the provision thereof along with the interest in terms of section 28AB of the Customs Act. A similar averment is also there in respect of other respondent viz., M/s Adani Exports Ltd..

The demands were confirmed by the Commissioner of Customs at Mumbai vide orders dated 23.2.2002, 18.3.2002 and 22.3.2002. Against the said orders, the respondents-importers preferred the appeals to the CESTAT. The CESTAT agreed with the respondents on the point of limitation and set aside the orders levying duty and penalty on the respondents.

Therefore, in these instant appeals, the sole question is whether the finding of the CESTAT that the demand was barred by limitation is sustainable or not.

The provision for limitation on the relevant date reads as follows :

*"28. Notice for payment of duties not levied, short-levied or erroneously refunded.- [(1) When any duty has not been levied or has been shortlevied or erroneously refunded, the proper officer may, -*

***(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;***

***(b) in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty which has not been levied or which has been so short-levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:]***

***Provided that where any duty has not been levied or has been short-levied or has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect [as if for the words “proper officer”, the words “Collector of Customs”, and] for the words [“one year” and “six months”], the words “five years” were substituted.”***

Relying on the proviso, Mr. Arunabh Chowdhury, learned counsel appearing for the respondent, contends that firstly, there is no allegation that there was any willful mis-statement or suppression of facts by the importers or by the agent or employee of the importers.

On the face of the show cause notice dated 20.4.1999, this is not correct submission made by Mr. Chowdhury, learned counsel for the respondent, since there is a clear allegation in paragraph 43 of the said show cause notice to that effect.

Secondly, according to Mr. Chowdhury, learned counsel for the respondent, the said show cause notice did not specify who had made the willful mis-statement or suppression of facts. The allegations as to who committed the forgery or fraud are not clearly spelled out in the show cause notice.

We find that the authorities have sufficiently described the wrong transactions and the allegedly illegal benefit obtained by the importers in respect of the rate of duty, from paragraph 43 onwards in the said show cause notice. Undoubtedly, if the importers will be entitled to demonstrate that the allegations against them cannot be established on the basis of the show cause notice, that however does not entitle them to the relief of setting aside of the order against them on the ground of limitation.

We find that the authorities claimed to have detected the fraud on 26.1.1998 and they have issued show cause notice on 20.4.1999 which is within one and half years of the period prescribed under the proviso of section 28 of the Customs Act.

In the circumstances, we allow these appeals, set aside the impugned orders passed by the CESTAT and direct the CESTAT to decide the matter on its own merits in accordance with the law.

Needless to state that all contentions of the parties are left open.

