

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 88217 of 2013

(Arising out of Order-in-Original No. 09/Commissioner/Goa/CX/2012-13 dated 28.02.2013 passed by the Commissioner, Customs, CE & ST, Goa)

M/s Sunder's InternationalAppellant
Plot no. 31A, Bicholim Indl. Estate,
Bicolim, Goa

VERSUS

Commissioner of Customs, GoaRespondent
ICE House, EDC Complex, Plot no. 6
Patto Panaji Goa

WITH

Excise Appeal No. 88891 of 2013

(Arising out of Order-in-Original No. 09/Commissioner/Goa/CX/2012-13 dated 28.02.2013 passed by the Commissioner, Customs, CE & ST, Goa)

Commissioner of Customs, CentralAppellant
Excise & Service Tax, Goa
ICE House, EDC Complex, Plot no. 6
Patto Panaji Goa

VERSUS

M/s Sunder's InternationalRespondent
Plot no. 31A, Bicholim Indl. Estate,
Bicolim, Goa

AND

Excise Appeal No. 88888 of 2013

(Arising out of Order-in-Original No. 09/Commissioner/Goa/CX/2012-13 dated 28.02.2013 passed by the Commissioner, Customs, CE & ST, Goa)

Commissioner of Customs, CentralAppellant
Excise & Service Tax, Goa

**ICE House, EDC Complex, Plot no. 6
Patto Panaji Goa**

VERSUS

**Moti Govind Bhatia
c/o M/s Sunder's International
Plot no. 31A, Bicholim Indl. Estate,
Bicolim, Goa**

.....Respondent

APPEARANCE:

Shri M L Grover, Advocate for the appellant
Shri Bhilegaonkar Deepak, Addl. Comm(AR) for the respondent

CORAM:

**HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER No: A/86344-86346/2023

DATE OF HEARING : 07.07.2023

DATE OF DECISION : 06.09.2023

Per: AJAY SHARMA

These three appeals have been filed by the department and the assessee respectively assailing part of the impugned Order dated 27.5.2013 passed by the Commissioner of Customs, Central Excise and Service Tax, Goa.

2. The issue that arises for consideration in these appeals is whether the Adjudicating Authority i.e. the Commissioner is justified in not deciding the show cause notice completely but in piecemeal leaving many issues open viz. not ascertaining the MRP and also not adjudicating the issue of time bar/extended period by leaving the same open?

3. A common challenge has been made in all these appeals about the manner of adjudication of the show cause notice by the Adjudicating Authority i.e. the Commissioner. Show cause notice dated nil was issued to the assessee stating inter alia that they have misclassified the products manufactured by them, undervalued the said product by not adopting MRP based assessment under section 4A of Central Excise Act, 1944 and also clandestinely clear them from the factory to evade the Central excise duty. The said show cause notice involves both normal as well as extended period of limitation. The learned Commissioner while adjudicating the show cause notice dropped the demand of Rs.1,36,29,729/- on the ground that it relates to trading done from the head office and upheld the classification as claimed by the department under Chapter Heading 8528 and also upheld that the goods in issue i.e. television sets should have been cleared with MRP affixed on it in accordance with section 4A *ibid* and directed the department to determine the MRP under Rule 4 of Central Excise(Determination of Retail Sale Price of Excise Goods) Rules, 2008 and to demand duty on the same after allowing admissible abatement. The issues about time bar and penalties have been left open by the said Adjudicating Authority till the department determines MRP and issues demand notice under section 11A of Central Excise Act, 1944.

4. We have heard learned counsel for the Assessee and learned Authorised Representative appearing for revenue and

perused the case records including the written submissions and case laws placed on record. So far as the demand of Rs.1,36,29,729/- which has been dropped by the adjudicating authority on the ground that it relates to trading done from the head office is concerned, the same has attained finality as the department did not challenge the same in either of their appeals rather they specifically mentioned in their grounds of appeal that the said finding is proper and legally correct.

5. Now we are dealing with the rest of the impugned order and have to see whether the Adjudicating Authority has passed the impugned order in accordance with law or not. Learned counsel for the appellant submits that for not deciding the issue of extended period and leaving open the issues of determination of RSP/MRP and re-determination of the MRP under Rule 4 *ibid* for the entire past period, these appeals have been filed. According to him Adjudication cannot be done in piecemeal. According to learned counsel the Notification No.49/2008-CE(NT) dt. 24.12.2008, which has been relied upon by the department, specified the goods on which the provision of Section 4A *ibid* would apply and since the product in issue do not fall within the ambit of Sr.No.97 of the said notification therefore Section 4A *ibid* has no application at all and there is no need for affixing any MRP/ RSP on the packing. Learned counsel also submits that they sought for cross-examination of the investigation officers for ascertaining as to how they arrived at the RSP/MRP but the same was not granted. According to learned counsel the

extended period could not have been invoked as the classification of product by the appellant was within the knowledge of the department as they were regularly filing their ER-1 returns and that wrong classification itself cannot be a ground for invoking extended period particularly when there was no malafide intention or suppression of facts as its merely a question of interpretation.

6. Learned Authorised Representative appearing for revenue/department submits that the adjudication authority erred in keeping the aspect of time bar and penalties open pending determination of MRP/RSP. He further submits that the methodology adopted by the department, for ascertaining the MRP of similar products of other manufacturers, to work out the duty liability of the appellant was as per law. According to learned Authorised Representative the adjudicating authority ought to have decided the duty liability alongwith interest and penalty since it is the function of the adjudicating authority being the quasi judicial authority. He further submits that it is settled legal position that the adjudication of show cause notice cannot be done in piecemeal but in its entirety.

7. Time and again the Hon'ble Supreme Court has deprecated the practice of piecemeal adjudication. If the piecemeal adjudication is permitted and department is permitted to demand duty after carrying out the exercise as directed in the impugned order, then another issue will crop up whether another

show cause notice be issued for the very same period/goods for which earlier show cause notice has already been adjudicated. We are of the view that the adjudicating authority ought to have worked out the MRP and after allowing admissible abatement should have worked out the duty demand instead of issuing directions to the department to do the same after determining the same under Rule 4 *ibid*. After working out the duty, the adjudicating authority ought to have adjudicated on the issue of penalty or interest also. Aforesaid shortcomings in the impugned order have been challenged by both the sides. According to the learned Authorised Representative, the impugned order is not tenable as it cannot be implemented/enforced since issuance of another demand, as directed by the adjudicating authority, after determining the duty, would lead to initiation of new proceedings and that that adjudicating authority ought to have decided the entire issue i.e. duty amount alongwith interest and penalty at the time of passing the impugned order instead of delegating the same. Another thing which do not find favour with us is that *cenvat* credit of CVD has been allowed by the adjudicating authority for the period in issue without deciding the issue of demand, as before allowing it so many things have to be looked into by the said authority, which have not been discussed anywhere in the impugned order. The invocation of extended period of limitation, which is very important aspect of the matter, has also been left open whereas the same ought to have been decided before going into the other issues because if the

assessee succeeds on that issue then there would have been very less period or no period left for adjudicating the issue on merits. Piecemeal adjudication is the least of the judicial virtues which we do not approve. The learned Commissioner has completed only a part while another part either has been left open or left to the department and by this approach he would be triggering another round of litigation. So far as the denial of cross-examination of the officers who investigated the case, is concerned we are unable to find any valid justification for denying the same to the assessee because justice should not only be done but must be seen to be done.

8. In view of the discussions made hereinabove, if we decide these appeals on merit, we would be perpetuating the erroneous course adopted by the learned Commissioner, on the contrary we disapprove such kind of adjudication by the adjudicating authority. At the cost of repetition we again mention that since the dropping of the demand of Rs.1,36,29,729/- has been accepted by the department and no appeal has been filed against it, therefore the same has attained finality. In view of the discussions made in earlier paragraphs the impugned order, to the extent it has been challenged before us, is set aside and remanded back to the adjudicating authority for deciding the same afresh after following the principle of natural justice and giving proper opportunity of hearing to the assessee. It is needless to mention that we have not gone into the merits of the

issues involved herein and the adjudicating authority is at liberty to decide the same on its own merits.

9. The appeals are accordingly allowed by way of remand to the extent mentioned hereinabove.

(Pronounced in open Court on 06.09.2023)

(C J MATHEW)
MEMBER (TECHNICAL)

(AJAY SHARMA)
MEMBER (JUDICIAL)

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