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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road, BANGLORE-560009

COURT-2

Customs Appeal No. 2527 of 2010

[Arising out of the Order-in-Appeal No.12/2010-Customs dated 13.9.2010 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin – 600 018.]

The Kerala Minerals & Metals Ltd. **....Appellant**
Sankaramangalam, Chavara, Kollam, Kerala.

Vs.

The commissioner of Customs **....Respondent**
Air Cargo Complex Shangumukham,
Thiruvananthapuram.

Appearance:

Mr. Prinsun Philips, Advocate **....For Appellant**
Mr. K. A. Jathin, AR **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 05/09/2023 Date of Decision: 09/01/2024

FINAL ORDER No. 20040 of 2024

Per R. BHAGYA DEVI:

The appellant, is a limited company fully owned by the Government of Kerala, are engaged in the business of mining and manufacturing of a Titanium Dioxide. They imported 'Huy glass 1105 M-Membrane Bags' (Filter Bags) which were classified under Customs Tariff Heading 5911 9090. On scrutiny of the documents, it was noticed that the item filter bags are not made of textile fabrics but they were made of fibreglass non-woven which are rightly classifiable under Customs Tariff Heading 8421. Accordingly, the classification is finalised under Customs Tariff Heading 8421 and differential duty was demanded, which was upheld by the Commissioner (Appeals) in the impugned order. Aggrieved by this order, appellant is before this forum.

2. The learned counsel on behalf of the appellant submits that the filter bags imported by the appellant are used as straining cloth in a strainer for separation of solid material of micron size from gaseous stream, which is similar to the cloth used in paper making machine; hence, it is rightly classifiable under Customs Tariff Heading 59. It is also submitted that the Bill of Entry was assessed and duty was paid by the appellant; and later, notice was issued on 10.1.2007 which was beyond six months and therefore, it is barred by limitation. However, the adjudicating authorities held that the notice was within the prescribed time limit of one year as is applicable to State Government Undertaking as per Section 28(1)(a).

3. The learned Authorised Representative for the Revenue submitted that the filter bags are made of 100% fibreglass material, felt needled to woven support and laminated with PTFE, which is used for filtering titanium dioxide powder and letting only hot air to atmosphere and reiterating the findings of the Commissioner (Appeals) submitted that it is rightly classifiable under Customs Tariff Heading 8421 and the demand was within the limitation period of one year.

4. Heard both sides. The issue to be decided is the classification of the product “HUY Glass 1105 Membrane Bags (Filter Bags)” imported by the appellant. The appellant admits the fact that filter bags are made of 100% Fibre Glass Material, for needled to woven support and laminated with PTFE, cut to size and sewed along the seams for use as strainer for separating fine dusty particles from gas. The Commissioner (Appeals) had rightly observed that the goods are basically used in the dryer system to prevent fine powder escaping into the atmosphere and admittedly used to filter the titanium dioxide powder from the gas. Section Note 1(r) as seen below specifically excludes glass fibre articles of glass fibres, other than embroidery with glass thread as a visible ground of fabric. The relevant portion of the Customs Tariff Headings are reproduced herein below:

Section XI

Textiles and Textile Articles

1. This Section does not cover :

(a) animal brush making bristles or hair (heading 0502); horsehair or horsehair waste (heading 0511);

(b) human hair or articles of human hair (heading 0501, 6703 or 6704), except straining cloth of a kind commonly used in oil presses or the like (heading 5911);

(r) glass fibres or articles of glass fibres, other than embroidery with glass thread on a visible ground of fabric (Chapter 70); The relevant entries are reproduced below:

5911 40 00 - Filtering or Straining cloth of a kind used in oil presses or the like, including that of human hair

5911 90 - Other :

5911 90 10 --- Paper maker's felt, woven

5911 90 20 --- Gaskets, washers, polishing discs and other machinery parts of textile articles

5911 90 90 --- Other

- Filtering or purifying machinery and apparatus for liquids:

8421 21 -- For filtering or purifying water : 8421 21 10 --

- Ion exchanger plant or apparatus

8421 21 20 --- Household type filters

8421 21 90 --- Other

8421 22 00 -- For filtering or purifying beverages other than water

8421 23 00 -- Oil or petrol-filters for internal

combustion engines 8421 29 00 -- Other

- Filtering or purifying machinery and apparatus for gases:

8421 31 00

8421 32 00

Intake air filters for internal combustion engines

Catalytic converters or particulate filters, whether or not combined, for purifying or filtering exhaust gases from internal combustion engines

8421 39 -- Other :

8421 39 10 --- Air separators to be employed in the processing, smelting or refining of minerals, ores or metals; air strippers

8421 39 20 --- Air purifiers or cleaners

8421 39 90 --- Other

-	Parts :
8421 91 00 --	Of centrifuges, including centrifugal dryers u 7.5% - 8421 99 00 – Other

From the above Chapter headings, it can be seen that articles of glass fibres are excluded from Chapter 59 and 8421 specifically includes air purifiers and therefore, the goods admittedly which are made of 100% glass fibres and which is meant for filtering the gaseous items are rightly classifiable under CTH 8421.

5. The second issue is with regard to limitation applicable under Section 28(1)(a), the Commissioner (A) has held that Section 28(1)(a) empowers them to issue notice within one year in the case of Government, any individual, educational, research or charitable institution or hospital. Hence, the appellant being a State Government Undertaking, the notice issued within one year was a valid notice. The appellant is incorporated as a company under the Companies Act, 1956 and though they are State Government Undertaking are incorporated as a company under the Companies Act, 1956. The Hon'ble Kerala High Court in the **Food Corporation of India (FCI) vs. Angamali Municipality: 1994 (1) KLT 977** rejected the claim of FCI that it is not liable to pay tax, the Hon'ble High Court observed as follows:

“10. After a conspectus of the various provisions of the Food Corporation Act, the Supreme Court held the corporation was not a Government department. A government department has to be an organisation which is not only completely controlled and financed by the Government but has also no identity of its own..... The Corporation on the other hand is an autonomous body capable of acquiring, holding and disposing of property and having power to contract..... But the Act has given the Corporation an individuality, apart from the Government, so that it cannot be equated with the central government though it may be an agency or instrumentality thereof....”

5.1 In view of the above observations by the Hon'ble Kerala High Court and considering the fact that the appellant was registered under the Companies Act, 1956, the question of considering as Government undertaking for issuance of notice is rejected. Accordingly, the impugned order is upheld as far as the classification is concerned and rejected on the ground of limitation.

6. The appeal is allowed partly.
(Order pronounced in open court on 09.01.2024.)

(P. A. AUGUSTIAN) MEMBER (JUDICIAL)

(R. BHAGYA DEVI MEMBER (TECHNICAL)