**(2015) 07 SC CK 0049**

**In the Supreme Court Of India**

**Case No :** Civil Appeal Nos. 54-57 of 2006 and Civil Appeal Nos. 665-668 of 2006

NRB Bearing Ltd. APPELLANT

Vs

Commissioner of Customs, Mumbai RESPONDENT

**Date of Decision :** 30-07-2015

**Acts Referred:**
Customs Act, 1962 — Section 130E, 28

**Citation :** (2015) 322 ELT 599

**Hon'ble Judges :** A.K. Sikri, J;Rohinton Fali Nariman, J

**Bench :** Division Bench

**Advocate :** V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, R. Ramchandran, Aditya Bhattacharya, Hemant Bajaj, Anandh K., Charanaya L. and Rajat Doshi, for the Appellant; Pinky Anand, A.S.G., Yashank Adhyaru, Sr. Adv., Arijit Prasad, Nisha Bagchi, V. Balaji, Swarupam

**Final Decision :** Partly Allowed

## Judgement

1. The present appeals have been filed by the Appellants-Assessee Under Section 130E(b) of the Customs Act, 1962 against the orders dated 8-4-2003 [2003 (159) E.L.T. 755 (Tribunal)] and 6-9-2005 in Appeal Nos. C/944 to 947/97-Mum passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short "the Tribunal") whereby the Tribunal has dismissed the application filed by the Appellants for rectification of mistake in the Final Order dated 8-4-2003 and allowed the appeals filed by the Department. It is clear from the aforesaid order of the Tribunal that the Tribunal decided the case on merits against the Appellants-Assessee and rejected the plea of limitation raised by the Assessee, as a whole. In view of this, learned Counsel for the parties had addressed us in details on both these aspects, namely, on merits as well as on limitation. After hearing the argument, we are convinced that insofar as show cause notice is concerned it was clearly time-barred and, therefore, it is not necessary to go into the merits of the dispute.

2. As far as issue of limitation is concerned, it may be pointed out that the import

 

of the machines was effected some time in the year 1993. Finalisation of proceedings, further filing of bill of entry, etc., was completed in the year 1994 and show cause notice was issued on 31st December, 1995. Admittedly, it was beyond the period of six months which period was prescribed under the Act at the relevant time. The Revenue had invoked the extended period of limitation on the ground that there was mis-statement of facts by the Assessee.

3. We have gone through the allegations made in the show cause notice in this behalf as well as reply to the said show cause notice. In the reply to the show cause notice, contesting the decision taken by the Revenue on limitation, the Assessee had raised the following defence:-

"Machines in question have been imported in accordance with the import regulations in force at the time of import under Open General Licence. The machines have been imported for the substantial expansion of the capacity to manufacture Needle Cages and Needle Bushes of NRB Bearings Ltd. The machines have been recommended by DGTD for concessional duty under project imports and rightly so. The import contracts for these machines have been duly registered with the customs and all formalities in this regard have been complied with. The movements of these machines from Dock to Waluj of Thane and from Waluj to Thane have been made under proper movement records which go to prove that there has been no suppression of any facts leave alone intentional or willful suppression. Hence the demand for the difference of duty is barred Under Section 28 of the Customs Act, 1962."

4. As mentioned above, insofar as the Commissioner is concerned, he had dropped the proceedings. On the aspect of limitation, the Commissioner on consideration of facts observed that there was no mis-declaration by the Assessee and, therefore, extended period of limitation was not available. On the other hand, from the order of the Tribunal we find that the Tribunal has simply referred to the judgment in the case of M/s. Jacsons Thevara Vs. Collector of Customs and Central Excise, AIR 1991 SC 647 : (1991) 32 ECC 89 : (1991) ECR 225 : (1992) 61 ELT 343 : (1991) 1 JT 309 : (1991) 1 SCALE 137 : (1991) 2 SCC 62 : (1991) 1 UJ 544 . The Tribunal simply stated that since in the said judgment (supra) this Court had held that extended period of limitation was applicable, only on that basis the contention of the Assessee herein is repelled and the order of the Commissioner reversed. The Tribunal has not at all discussed as to how the finding of the Commissioner is erroneous on facts.

5. It cannot be denied that there was no declaration by the Assessee. In view of the explanation given by the Assessee which is extracted above, we find that when the machinery was shifted from Waluj to Thane was a bona fide action of the Assessee and there was mis-statement in this behalf. We are, therefore, of the view that the Commissioner was right in his conclusion that extended period of limitation could not be invoked. On this ground alone, the appeals filed by the Appellants are to succeed. We, thus, set aside the orders dated 8-4-2003 and 6-9-2005 passed by the Tribunal and allow these appeals. No order as to costs.