HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CUSTOMS APPEAL No. 4 OF 2021

C/W

CUSTOMS APPEAL No. 1 OF 2022

CUSTOMS APPEAL No. 2 OF 2022

IN CSTA No. 4/2021

BETWEEN:

1. THE COMMISSIONER OF CUSTOMS,
   BANGALORE-CUS,
   C. R. BUILDING, QUEENS ROAD,
   P B No.5400,
   BANGALORE-560001.

...APPELLANT

(BY SRI AKASH B SHETTY, STANDING COUNSEL)

AND:

1. SHRI M. S. SWAMINATHAN,
   3M INDIA LTD.,
   CONCORDS BLOCK, UB CITY,
   No.24 VITTALMALLYA ROAD,
   BENGALURU-560 001.

...RESPONDENT

(BY SRI RAVI RAGHAVAN, ADVOCATE)

THIS CSTA / CUSTOMS APPEAL UNDER SECTION 130 OF THE CUSTOMS ACT, PRAYING TO SET ASIDE IN FINAL ORDER No.20343-20345/2020 DATED 20/03/2020 PASSED BY CESTAT SOUTH REGIONAL BENCH, BENGALURU IN CUSTOMS APPEAL No.25677/2013 VIDE ANNEXURE-B BY ALLOWING THIS APPEAL OF THE REVENUE WITH EXEMPLARY COSTS.

IN CSTA No. 1/2022

BETWEEN:

1. THE COMMISSIONER OF CUSTOMS
   C.R. BUILDING,
   QUEENS ROAD,
   P.B. No.5400,
   BENGALURU 560 001.

...APPELLANT

(BY SRI AKASH B SHETTY, STANDING COUNSEL)

AND:

1. M/S 3M INDIA LTD.,
   CONCORDS BLOCK,
   UB CITY, No.24,
   VITTAL MALLYA ROAD,
   BENGALURU 560 001.

...RESPONDENT

(BY SRI RAVI RAGHAVAN, ADVOCATE)

THIS CSTA / CUSTOMS APPEAL UNDER SECTION 130 OF THE CUSTOMS ACT, PRAYING TO SET ASIDE IN FINAL ORDER No.20343/2020 DATED 20/03/2020 PASSED BY CESTAT SOUTH REGIONAL BENCH, BENGALURU IN CUSTOMS APPEAL No.25625/2013 VIDE ANNEXURE-B BY ALLOWING THIS APPEAL OF THE REVENUE WITH EXEMPLARY COSTS.

IN CSTA No. 2/2022

BETWEEN:

1. THE COMMISSIONER OF CUSTOMS
C.R. BUILDING,
QUEENS ROAD,
P.B.No.5400,
BENGALURU 560 001.

...APPELLANT

(BY SRI AKASH B SHETTY, STANDING COUNSEL)

AND:

1. SHRI KULVEEN SINGH BALI,
3M INDIA LTD.,
CONCORDS BLOCK,
UB CITY, No.24,
VITTALMALLYA ROAD,
BENGALURU 560 001.

...RESPONDENT

(BY SRI. RAVI RAGHAVAN, ADVOCATE)

THIS CSTA / CUSTOMS APPEAL IS FILED UNDER SECTION 130 OF THE CUSTOMS ACT PRAYING TO SET ASIDE IN FINAL ORDER No.20344/2020 DATED 20/03/2020 PASSED BY CESTAT SOUTH REGIONAL BENCH, BENGALURU IN CUSTOMS APPEAL No.25676/2013 VIDE ANNEXURE-A BY ALLOWING THIS APPEAL OF THE REVENUE WITH EXEMPLARY COSTS.

THESE APPEALS COMING ON FOR HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

Heard Sri.Akash B. Shetty, learned Standing Counsel for the appellant-Commissioner of Customs and Sri. Ravi Raghavan, learned counsel for the respondents in all the appeals.

2. These appeals have been filed by the Revenue, challenging the common Final Order Nos.20343-20345/2020, dated 20.03.2020, passed by the Customs, Excise and Service Tax Appellate Tribunal, Bengaluru (hereinafter referred to as 'CESTAT'). Customs Appeal No.1/2022 is directed against the Company, whereas CSTA Nos.4/2021 and 2/2022 pertain to the Authorized Signatory and the Head of Regulatory Affairs and Quality Assurance of M/s.3M India Limited.

3. For the sake of convenience, the brief facts stated are with reference to the case of M/s. 3M India Limited.

4. This Court, by order dated 29.06.2022, admitted the appeals on the following substantial questions of law:

"IN CSTA 4/2021

"(1) Whether, on the facts and in the circumstances of the case and law, the Tribunal was justified in holding that the show cause notice dated 30.09.2011 could not have covered the period commencing from October, 2006 to February 2010 being the extended period?

(2) Whether, on the facts and in the circumstances of the case and law, the Tribunal was justified in setting aside the imposition of penalty and duty on the respondent after having held that the impugned products skin barriers micropore surgical tapes were not covered under the notification No.21/2002-CUS dated 1.3.2002 for exemption?

(3) Whether on the facts and in the circumstances of the case, the judgment reported in 2019(370) ELT 1257 in the case of M/s. Sutures Pvt. India Ltd., Vs. Commissioner of Central Customs Chennai is correctly decided?"

(4) Whether on the facts and in the circumstances of the case, the Tribunal has seriously fallen in error in holding that respondent had not got cleared the consignment under the self assessment procedure?"

"IN CSTA 1/2021

"(1) Whether, on the facts and in the circumstances of the case and law, the Tribunal has fallen in error in not following Rule 23 of CESTAT procedure Rules 1982, which restricts production of additional evidence directly before Appellate Tribunal?

(2) Whether, on the facts and in the circumstances of the case and law, the Tribunal was justified in holding that the Show Cause Notice dated 30.9.2011 could not have covered for the period commencing from October, 2006 to February 2010 being the extended period?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the imposition of penalty and duty on the respondent after having held that he impugned products skin barriers

micropore surgical tapes were not covered under the Notification No.21/2002-Cus dated 1.3.2002 for exemption?"

(4) Whether on the facts and in the circumstances of the case, the judgment reported in 2019(370) ELT 1257 in the case of M/s. Sutures Pvt. India Ltd., Vs. Commissioner of Central Customs Chennai is correctly decided?

(5) Whether on the facts and in the circumstances of the case, the Tribunal has seriously fallen in error in holding that respondent had not got cleared the consignment under the self assessment procedure?"

"IN CSTA 2/2021

"(1) Whether, on the facts and in the circumstances of the case and law, the Tribunal has fallen in error in not following Rule 23 of CESTAT procedure Rules 1982, which restricts production of additional evidence directly before Appellate Tribunal?

(2) Whether, on the facts and in the circumstances of the case and law, the Tribunal was justified in holding that the Show Cause Notice dated 30.9.2011 could not have covered for the period commencing from October, 2006 to February 2010 being the extended period?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the imposition of penalty and duty on the respondent after having held that he impugned products skin barriers micropore surgical tapes were not covered under the Notification No.21/2002-Cus dated 1.3.2002 for exemption?"

(4) Whether on the facts and in the circumstances of the case, the judgment reported in 2019(370) ELT 1257 in the case of M/s. Sutures Pvt. India Ltd., Vs. Commissioner of Central Customs Chennai is correctly decided?

(5) Whether on the facts and in the circumstances of the case, the Tribunal has seriously fallen in error in

holding that respondent had not got cleared the consignment under the self assessment procedure?"

5. The respondent is engaged in the import and trading of various surgical and medical products, including surgical tapes under the brand names "Micropore, Transpore, Medipore, Microfoam, Durapore, and Tegaderm." The Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') gathered information that "Hypoallergenic Surgical Adhesive Tapes," sold as general-purpose surgical tapes for affixing gauze dressings, etc., were being imported by mis-declaring them as "Ostomy Product, List 37, Sl. No. 22 – MICRPORE, TRANSPORE, AND TEGADERM," which are appliances used in the management of ostomy cases. It was alleged that the respondent was wrongly availing the benefit of Notification No. 21/2002-Cus, dated 01.03.2002, which provides for a concessional rate of duty on certain goods used in the management of ostomy surgery cases, as specified in the notification.

5.1 It was further contended that Micropore surgical tapes are classifiable under Customs Tariff Heading (CTH) 3005 90 60 of the Customs Tariff. Sr. No. 363A of Notification No.

21/2002-Cus, dated 01.03.2002, as amended, provides exemption to goods, viz., Medical Equipment (excluding Foley Balloon Catheters) and other goods specified in List 37, from payment of Customs duty in excess of 5%, as indicated in column 4 of the table to the notification. According to DRI, under the aforesaid notification, the concessional rate of 5% Basic Customs Duty (BCD) and NIL rate of Countervailing Duty (CVD) is available only to "Skin Barrier Micropore Surgical Tapes" used as ostomy appliances for managing Colostomy, Ileostomy, Ureterostomy, And Ileal Conduit Urostomy Stoma cases.

5.2 The Revenue issued summons dated 15.09.2009 to the respondent, directing the production of records relating to the imports of "surgical tapes." The Authorized Signatory of the respondent appeared before the DRI and produced documents pertaining to the imports of "Micropore, Transpore, Medipore, Microfoam, Durapore, and Tegaderm," which included Bills of Entry, Bills of Lading, Invoices, Packing Lists, as well as brochures of the imported products, namely Micropore and Tegaderm. Statements were recorded under Section 108 of the

Customs Act, 1962 (hereinafter referred to as 'the Act'). The Authorized Representative stated that the surgical tape rolls were procured from the respondent's parent company and its associate/subsidiary companies worldwide and were cleared as "Skin Barrier Micropore Surgical Tapes" after availing the benefit of Notification No.21/2002-Cus, dated 01.03.2002. Subsequently, a show-cause notice was issued under Section 28 of the Act, availing the extended period under sub-section (4) of Section 28. Thereafter, an order was passed holding that the respondent was not eligible for the benefit of Notification No. 21/2002-Cus, dated 01.03.2002. The order held that the imported goods, being Hypoallergenic Non-Woven Tapes under the brand names Micropore, Transpore, and Tegaderm, were liable for confiscation under Section 111(m) of the Act and that differential duty was leviable under Section 28. Additionally, a penalty of Rs.9,33,25,582/- along with interest was imposed under Section 114A of the Act. Further, a penalty of Rs.55,00,000/- was imposed on the Authorized Signatory and the Head of Regulatory Affairs and Quality Assurance of M/s. 3M India Limited under Section 112(b) of the Act.

5.3 The respondent preferred an appeal against the order-in-original dated 14.12.2012 before the CESTAT. By the impugned order dated 20.03.2020, the CESTAT held that the imported products do not fall within the category of exempted goods and are not "Skin Barrier Micropore Surgical Tapes" as notified under Notification No.21/2002-Cus. However, the CESTAT also held that the extended limitation under sub-section (4) of Section 28 of the Act is not attracted in the present case. Challenging the aforesaid order of the CESTAT, the Revenue is before this Court in the present appeals.

6. Sri Akash B. Shetty, learned Standing Counsel appearing for the appellant, submits that the products imported do not fall within the category of exempted goods described as "Skin Barrier Micropore Surgical Tapes." It is contended that the respondent has made an incorrect claim, asserting that "Skin Barriers" and "Micropore Surgical Tapes" are two distinct products, whereas the notification does not contain a comma after "Skin Barriers." Consequently, the respondent claims that the products in question are exempt under Notification No.21/2002-Cus. Learned Standing Counsel further submits

that the interpretation advanced by the respondent clearly demonstrates that the imported products cannot be construed as falling within the exempted goods under the notification. Such mis-declaration to avail the concessional rate of duty was detected by the DRI, and the argument based on the presence or absence of a comma is wholly untenable. It is also submitted that all previous imports were cleared on the basis of self-declaration, and there was no occasion for physical verification of the imported goods to examine the applicability of the exemption under Notification No. 21/2002-Cus.

6.1 Learned counsel further submits that the CESTAT, after recording a finding that the goods in question are not eligible for exemption as "Skin Barrier Micropore Surgical Tapes," committed an error in setting aside the order on the ground of limitation. It is contended that the finding recorded by the CESTAT regarding the description of the goods clearly establishes that the respondent has made a willful misstatement, thereby attracting the extended limitation under sub-section (4) of Section 28 of the Act.

7. Per contra, Sri Ravi Raghavan, learned counsel appearing for the respondents, submits that the imported products are used as surgical and medical products and have always been considered as Ostomy Products. He contends that the goods in question are essentially Micropore Surgical Tapes, with "Skin Barrier" being only an additional feature. Learned counsel further submits that, irrespective of the nomenclature of the product, the intended use of the product is the relevant criterion to determine eligibility for exemption under Notification No.21/2002-Cus. It is submitted that the Revenue has not disputed that the imported products are used as Ostomy Products for managing Colostomy, Ileostomy, Ureterostomy, and Ileal Conduit Urostomy Stoma cases. Accordingly, as all the products are Ostomy Appliances, the exemption under Notification No. 21/2002-Cus was rightly availed of by the respondent.

7.1 Learned counsel further submits that these products have been imported over a long period, much prior to the issuance of Notification No. 21/2002-Cus, and were consistently classified as such. It is contended that the Revenue has, on

multiple occasions, cleared the goods after inspection without raising any dispute regarding their classification. Learned counsel submits that, after more than a decade, it is not open to the Revenue to contend that the earlier declarations, which were accepted, are incorrect, or to allege a willful misstatement in order to invoke the extended limitation under sub-section (4) of Section 28 of the Act.

7.2 Learned counsel further submits that, although the respondent does not assail the finding of fact recorded by the CESTAT regarding the exemption under Notification No. 21/2002-Cus, that alone cannot constitute an ingredient of "willful misstatement" so as to enable the Revenue to invoke the extended limitation under sub-section (4) of Section 28 of the Act.

7.3 Learned counsel further submits that the CESTAT, having taken note of the aforesaid aspects, has rightly held that the extended limitation under sub-section (4) of Section 28 of the Act is not attracted in the present case.

8. It is observed that, if the substantial questions of law framed in CSTA No.1/2022 are answered, the substantial questions raised in CSTA Nos.4/2021 and 2/2022 would also stand answered. Accordingly, we proceed to address the questions in CSTA No. 1/2022.

Reg. Question No.1:

9. The Revenue contends that the Tribunal accepted additional evidence for the first time during the appeal, which, according to the Revenue, is not permissible under Rule 23 of the CESTAT Procedure Rules, 1982. From the order of the CESTAT, it is observed that the Tribunal recorded two findings of fact regarding the nature of the products under dispute to determine the applicability of the exemption under Notification No.21/2002-Cus. In the course of recording these findings, the CESTAT examined the products placed before it and held that the products in question are not eligible for exemption under the said notification. The additional material/evidence placed before the Tribunal led to a finding in favour of the Revenue. In these circumstances, this Court finds no merit in the grievance raised by the Revenue on a technical issue, particularly when

the outcome of the examination of the additional evidence is in its favour. Consequently, we find no error or illegality in the order of the Tribunal and answer the substantial question accordingly against the Revenue.

Reg. Question No.2:

10. The period involved in the present case is from October 2006 to February 2010, and the show-cause notice was issued on 13.09.2011. Section 28 of the Customs Act, 1962 (hereinafter referred to as 'the Act') empowers the proper officer to recover duties that have not been levied or paid, or that have been short-levied, short-paid, or erroneously refunded. Sub-section (1) of Section 28 provides that the proper officer may determine and levy such duty or interest within one year from the relevant date. An exception is carved out under sub-section (4) in cases involving collusion, willful misstatement, or suppression of facts. In such cases, the time limit for issuing a show-cause notice is extended to five years from the relevant date. In the present case, the question concerns the applicability of sub-section (4). The respondent contends that the very same products were earlier claimed as

exempt under Notification No.21/2002-Cus, and, on multiple occasions, the consignments were cleared after examination by the Revenue. It is submitted that, until the DRI raised a dispute, the declarations of the goods under Notification No. 21/2002-Cus were accepted by the Revenue. Learned counsel contends that, having accepted such declarations for a long period, the Revenue cannot now allege willful misstatement or suppression of facts by the respondent.

10.1 In ***Designco v. Union of India and Ors. [W.P(C) 14477/2022]***, High Court of Delhi examined the scope of sub-section (4) of Section 28 of the Act can be invoked only if prescribed authority come to the conclusion that the goods had escaped duty by reason of collusion, wilful misstatement or suppression of fact. It is further held that under sub-section (4), the exercise of power is relegated upon the respondent finding that on assessment made under the Act suffers from the vice of collusion, wilful misstatement or suppression of fact. A misclassification or an incorrect classification would also not and *ipso facto* amount to collusion, wilful misstatement or suppression of fact.

10.2 The Revenue contends that the respondent imported the goods and claimed exemption under Notification No.21/2002-Cus, despite being ineligible. It is submitted that when this issue was initially raised, the respondent argued that "Skin Barriers" and "Micropore Surgical Tapes" are two distinct products and that their claim for exemption was therefore justifiable under the notification. However, the Revenue contends that it was demonstrated before the CESTAT that there exists a product described as "Skin Barrier Micropore Surgical Tapes," and the CESTAT has accepted this aspect. Consequently, the Revenue submits that the declaration and claim for exemption under Notification No.21/2002-Cus amounts to a willful misstatement and suppression of facts, thereby attracting the extended limitation of five years under sub-section (4) of Section 28 of the Act.

10.3 In addressing this issue, the CESTAT has recorded a finding of fact. The CESTAT observed that, over the past several years, the consignments were subjected to physical examination by the Revenue prior to clearance, without raising any objection to the claim of exemption under

Notification No.21/2002-Cus, thereby creating an impression that the products were eligible for exemption. The CESTAT further held that the Revenue's contention that all consignments were cleared under the self-assessment procedure without examination is without any basis. We concur with the view taken by the CESTAT for multiple reasons.

10.4 Firstly, it is not in dispute that similar products have been imported over several years and exemptions under Notification No.21/2002-Cus have been consistently claimed. The Revenue has cleared these goods and allowed the benefit of the exemption. It is only by virtue of proceedings initiated by the DRI that a different interpretation regarding the classification of the goods has been advanced. The CESTAT has recorded a finding that the imported products are not eligible for exemption under the notification, and this finding has been accepted by the respondent. There is no substantive material, including expert opinion, either in the order-in-original or before the CESTAT, to conclusively determine the exact nature of the goods. Mere acceptance of the finding by the respondent cannot, by itself, be construed as

a willful misstatement or suppression of facts. There is no material to indicate that the respondent was fully aware of the ineligibility of the products under the notification and, notwithstanding that, claimed the exemption. Even if it were so, considering that the respondent has been importing similar products for several years and the same were cleared without objection and allowed the benefit of exemption, a subsequent change in opinion cannot be equated with a willful misstatement. If the question arises whether a mere change of opinion would amount to a willful misstatement or suppression of facts, the answer must necessarily be 'no'. The emergence of a different opinion at a later stage regarding the nature of the product cannot retroactively characterize earlier conclusions, even if erroneous, as a willful misstatement or suppression of facts.

10.4.1 In ***Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut, [(2005)7 SCC 749]***, the Hon'ble Supreme Court while interpreting *pari materia* provision under the Central Excise Act held that when the classification list continued to have been approved regularly

by the department, it could not be said that manufacturer was guilty of suppression of fact. It is further held that while dealing with the meaning of the expression suppression of fact, the term must be construed strictly, it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. It is further held that "suppression of fact can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known both parties, the omission by one to do what he might have done not that he must have done would not render it suppression". It is held that mere failure to declare does not amount to wilful suppression, there must be some positive act from the side of the assessee to find wilful suppression.

10.4.2 If we test the facts in the present case, the goods in question were classified as has been classified in the present bill of entry and consignments were subjected to inspection, giving an impression and *bona fide* believe to the respondent that his declaration is acceptable. Merely, the DRI has a different perspective to see the classification of goods, even it is to be held as incorrect declaration, in the light of the

pronunciation referred to above, it is far fetched to hold wilful misstatement or suppression of fact. The revenue has not discharged its burden to prove the applicability of the pre-conditions to invoke sub-section (4) of Section 28 of the Act.

10.5 The matter essentially involves a dispute regarding the classification of the product, which is sought to be relied upon to invoke the exceptions of "willful misstatement" or "suppression of facts." The threshold for applying these exceptions is significantly higher than merely an incorrect declaration. An incorrect declaration or an erroneous claim is distinct from a willful misstatement or suppression of facts. Even if it were held that the claim made under the notification was incorrect, that alone would not suffice to attract the provisions relating to willful misstatement or suppression of facts under sub-section (4) of Section 28 of the Act.

10.5.1 In ***Continental Foundation Joint Venture Sholding, Nathpa H.P. v. Commissioner of Central Excise, Chandigarh-I***, ***[(2007)10 SCC 337]*** held that an incorrect statement cannot be equated with a wilful misstatement. Wilful

misstatement implies making of an incorrect statement with the knowledge that statement was not correct. It is further held that mere omission to give correct information is not suppression of fact unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. Further held that when the facts are known to both parties, omission by one party to do what he might have done would not render its suppression. The burden to prove presence of ingredients of sub-section (4) is imposed on the revenue as it invokes the extended period of limitation.

10.6 In ***Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur, [(2013)9 SCC 753]*** by referring to earlier pronouncements, it is held that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of assessee to find wilful suppression. Unless deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty is made out the extended period of limitation is not available.

10.7 The Hon'ble Supreme Court emphasised its earlier finding in ***Easland Combines Coimbatore v. Collector of Central Excise, Coimbatore, [(2003)3 SCC 410],*** wherein it is held as,

> *"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period* of *limitation*."

10.7.1 It is further held that in view of the use of the word "willful" introduces a mental element and hence requires looking into mind of appellant by gauging its actions, which is an indication of one's state of mind. Accordingly, it is concluded by imposing burden of presence of ingredients to invoke extended limitation in the show-cause notice. The show-cause notice is not part of the record hence we have no occasion to examine the compliance of the ingredients of sub-section (4).

10.8 The CESTAT, having considered the aforesaid aspects, has rightly held that, in view of the past conduct of the Revenue itself, the extended limitation under sub-section (4) of Section 28 of the Act is not attracted. Accordingly, the CESTAT was justified in setting aside the order-in-original to the extent it invoked the extended limitation. We find no other ground to take a different view. The substantial question of law is, therefore, answered in favour of the respondent and against the appellant-Revenue.

Reg. Question No.3:

11. In view of our finding on Question No. 2, that the period of limitation under sub-section (4) of Section 28 of the Act is not attracted in the present case, the corresponding penalty for the said period is also not leviable under Section 114A of the Act. In that view of the matter, we confine ourselves to answering this question as a consequential issue.

Reg. Question No.4:

12. This question pertains to a decision rendered by the CESTAT, Chennai Bench, which is not under appeal before this Court. We find no justification in the manner in which the

question of law is framed, seeking to invite this Court to express an opinion on the correctness of the decision of the Chennai Bench. As an independent remedy is available to the Revenue to challenge the order of the CESTAT, Chennai Bench, we hold that the above question of law does not arise from the order impugned. Accordingly, we decline to answer the same.

Reg. Question No.5:

13. The assessee contends that the earlier consignments importing similar products were cleared after examination and were granted exemption under Notification No.21/2002-Cus, upon satisfaction of its applicability. It is further submitted that, at a later stage, the Revenue cannot contend otherwise. On the other hand, the Revenue contends that the consignments were cleared under self-assessment and that no physical examination was conducted. The CESTAT has, however, recorded a finding of fact on this issue. This question concerns only the factual aspects, and no perversity has been pointed out or demonstrated that would warrant interference with the fact-finding of the CESTAT.

13.1 As the nature of the question indicates, it cannot be treated as a substantial question of law unless perversity is alleged and made out. We find that the Revenue has not even alleged perversity in the finding. In the absence of such a pleading, Question No. 5 cannot be regarded as a substantial question of law. Accordingly, the same is ***rejected***.

14. In light of our findings in CSTA No.1/2022, the questions raised in CSTA Nos.4/2021 and 2/2022 are answered accordingly.

15. For the foregoing reasons, the following:

O R D E R

The appeals of the revenue are hereby dismissed by answering the questions as above.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

VBS/List No.: 1 Sl No.: 38