Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10211 of 2016-DB

(Arising out of OIA-AHD-CUSTM-000-APP-167-226-15-16 dated 09.11.2015 passed by Commissioner of CUSTOMS-AHMEDABAD)

SONY INDIA PRIVATE LIMITED **..........Appellant**

A-31, MOHAN CO-OPERATIVE INDUSTRIAL ESTATE,
MATHURA ROAD, NEW DELHI-NEW DELHI

VERSUS

C.C. –AHMEDABAD **........Respondent**

CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

WITH

1. **CUSTOMS Appeal No. 10212 of 2016 (SONY INDIA PRIVATE LIMITED);**
2. **CUSTOMS Appeal No. 10213 of 2016 (SONY INDIA PRIVATE LIMITED);**
3. **CUSTOMS Appeal No. 10214 of 2016 (SONY INDIA PRIVATE LIMITED);**
4. **CUSTOMS Appeal No. 10215 of 2016 (SONY INDIA PRIVATE LIMITED);**
5. **CUSTOMS Appeal No. 10216 of 2016 (SONY INDIA PRIVATE LIMITED);**
6. **CUSTOMS Appeal No. 10217 of 2016 (SONY INDIA PRIVATE LIMITED);**
7. **CUSTOMS Appeal No. 10218 of 2016 (SONY INDIA PRIVATE LIMITED);**
8. **CUSTOMS Appeal No. 10219 of 2016 (SONY INDIA PRIVATE LIMITED);**
9. **CUSTOMS Appeal No. 10220 of 2016 (SONY INDIA PRIVATE LIMITED);**
10. **CUSTOMS Appeal No. 10221 of 2016 (SONY INDIA PRIVATE LIMITED);**
11. **CUSTOMS Appeal No. 10222 of 2016 (SONY INDIA PRIVATE LIMITED);**
12. **CUSTOMS Appeal No. 10223 of 2016 (SONY INDIA PRIVATE LIMITED);**
13. **CUSTOMS Appeal No. 10224 of 2016 (SONY INDIA PRIVATE LIMITED);**
14. **CUSTOMS Appeal No. 10225 of 2016 (SONY INDIA PRIVATE LIMITED);**
15. **CUSTOMS Appeal No. 10226 of 2016 (SONY INDIA PRIVATE LIMITED);**
16. **CUSTOMS Appeal No. 10227 of 2016 (SONY INDIA PRIVATE LIMITED);**
17. **CUSTOMS Appeal No. 10228 of 2016 (SONY INDIA PRIVATE LIMITED);**
18. **CUSTOMS Appeal No. 10229 of 2016 (SONY INDIA PRIVATE LIMITED);**
19. **CUSTOMS Appeal No. 10230 of 2016 (SONY INDIA PRIVATE LIMITED);**
20. **CUSTOMS Appeal No. 10231 of 2016 (SONY INDIA PRIVATE LIMITED);**

21. **CUSTOMS Appeal No. 10232 of 2016 (SONY INDIA PRIVATE LIMITED);**
22. **CUSTOMS Appeal No. 10233 of 2016 (SONY INDIA PRIVATE LIMITED);**
23. **CUSTOMS Appeal No. 10234 of 2016 (SONY INDIA PRIVATE LIMITED);**
24. **CUSTOMS Appeal No. 10235 of 2016 (SONY INDIA PRIVATE LIMITED);**
25. **CUSTOMS Appeal No. 10236 of 2016 (SONY INDIA PRIVATE LIMITED);**
26. **CUSTOMS Appeal No. 10237 of 2016 (SONY INDIA PRIVATE LIMITED);**
27. **CUSTOMS Appeal No. 10238 of 2016 (SONY INDIA PRIVATE LIMITED);**
28. **CUSTOMS Appeal No. 10239 of 2016 (SONY INDIA PRIVATE LIMITED);**
29. **CUSTOMS Appeal No. 10240 of 2016 (SONY INDIA PRIVATE LIMITED);**
30. **CUSTOMS Appeal No. 10241 of 2016 (SONY INDIA PRIVATE LIMITED);**
31. **CUSTOMS Appeal No. 10242 of 2016 (SONY INDIA PRIVATE LIMITED);**
32. **CUSTOMS Appeal No. 10243 of 2016 (SONY INDIA PRIVATE LIMITED);**
33. **CUSTOMS Appeal No. 10244 of 2016 (SONY INDIA PRIVATE LIMITED);**
34. **CUSTOMS Appeal No. 10245 of 2016 (SONY INDIA PRIVATE LIMITED);**
35. **CUSTOMS Appeal No. 10246 of 2016 (SONY INDIA PRIVATE LIMITED);**
36. **CUSTOMS Appeal No. 10247 of 2016 (SONY INDIA PRIVATE LIMITED);**
37. **CUSTOMS Appeal No. 10248 of 2016 (SONY INDIA PRIVATE LIMITED);**
38. **CUSTOMS Appeal No. 10249 of 2016 (SONY INDIA PRIVATE LIMITED);**
39. **CUSTOMS Appeal No. 10250 of 2016 (SONY INDIA PRIVATE LIMITED);**
40. **CUSTOMS Appeal No. 10251 of 2016 (SONY INDIA PRIVATE LIMITED);**
41. **CUSTOMS Appeal No. 10252 of 2016 (SONY INDIA PRIVATE LIMITED);**
42. **CUSTOMS Appeal No. 10253 of 2016 (SONY INDIA PRIVATE LIMITED);**
43. **CUSTOMS Appeal No. 10254 of 2016 (SONY INDIA PRIVATE LIMITED);**
44. **CUSTOMS Appeal No. 10255 of 2016 (SONY INDIA PRIVATE LIMITED);**
45. **CUSTOMS Appeal No. 10256 of 2016 (SONY INDIA PRIVATE LIMITED);**
46. **CUSTOMS Appeal No. 10257 of 2016 (SONY INDIA PRIVATE LIMITED);**
47. **CUSTOMS Appeal No. 10258 of 2016 (SONY INDIA PRIVATE LIMITED);**
48. **CUSTOMS Appeal No. 10259 of 2016 (SONY INDIA PRIVATE LIMITED);**

49. CUSTOMS Appeal No. 10260 of 2016 (SONY INDIA PRIVATE LIMITED);
50. CUSTOMS Appeal No. 10261 of 2016 (SONY INDIA PRIVATE LIMITED);
51. CUSTOMS Appeal No. 10262 of 2016 (SONY INDIA PRIVATE LIMITED);
52. CUSTOMS Appeal No. 10263 of 2016 (SONY INDIA PRIVATE LIMITED);
53. CUSTOMS Appeal No. 10264 of 2016 (SONY INDIA PRIVATE LIMITED);
54. CUSTOMS Appeal No. 10265 of 2016 (SONY INDIA PRIVATE LIMITED);
55. CUSTOMS Appeal No. 10266 of 2016 (SONY INDIA PRIVATE LIMITED);
56. CUSTOMS Appeal No. 10267 of 2016 (SONY INDIA PRIVATE LIMITED);
57. CUSTOMS Appeal No. 10268 of 2016 (SONY INDIA PRIVATE LIMITED);
58. CUSTOMS Appeal No. 10269 of 2016 (SONY INDIA PRIVATE LIMITED);
59. CUSTOMS Appeal No. 10270 of 2016 (SONY INDIA PRIVATE LIMITED);

(Arising out of OIA-AHD-CUSTM-000-APP-167-226-15-16 dated 09.11.2015 passed by Commissioner of CUSTOMS-AHMEDABAD)

APPEARANCE:
Shri Deepak Thackur, Advocate for the Appellant
Shri. V.G. Iyengar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. A/ 10963-11022 /2023

DATE OF HEARING: 25.04.2023
DATE OF DECISION:25.04.2023

RAJU

These appeals have been filed by Sony India Private Limited against order of Commissioner (Appeals) denying them the benefit of rectification under Section 149 of the Customs Act, 1962 and also denying them the benefit of Notification No. 12/2012-CE dated 17.03.2012 in respect of imports made by them for the purpose of CVD.

2. Learned Counsel pointed out that the issue regarding admissibility of the benefit of Notifications like Notification 12/2012-CE (supra) has been settled by the decision of Hon'ble Apex Court in the case of SRF Limited 2015 (14) SCC 596. In the said decision of Hon'ble Apex Court,

in similar circumstances has held that conditions like the conditions, prescribed in Notification 12/2012-CE which requires non-availment of cenvat credit, which cannot be fulfilled by an importer cannot come in way of availing the benefit of Notification for the purpose of imports. He pointed out that the appellants are importers and they could not have possibly satisfied the conditions prescribed in the Notification 12/2012-CE and therefore, the benefit of said Notification cannot be denied. Learned counsel argued that identical issue has been decided by this Bench of Tribunal in the case of Sedna Impex vide Order No. A/10106-10190/2022 dated 18.02.2022.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered the rival submissions. We find that the issue regarding admissibility of Notifications has prescribed conditions relating to non-availment of cenvat credit has been decided by Hon'ble Apex Court in the case of SRF Limited 2015 (14) SCC 596. In the said case Hon'ble Apex Court has observed as follows:

> *1. In both these appeals, identical question of law has come up for consideration. For sake of convenience, we will take note of the facts appearing in Civil Appeal No. 9440 of 2003.*
>
> *2. The appellant herein had imported Nylon Filament Yarn of 210 deniers falling under Chapter 54 of the Customs Tariff. The appellant claimed nil rate of additional duty of customs by relying on exemption in terms of Sl. No. 122 of Notification No. 6/2002-CE dated 1-3-2002. The Deputy Commissioner of Customs passed orders dated 12-4-2002 holding that the appellant was not entitled for exemption from payment of additional duty/countervailing duty (CVD) since it was not fulfilling Condition 20 of the aforesaid notification. The Commissioner (Appeals) confirmed the aforesaid order of the Deputy Commissioner and dismissed the appeal of the appellant vide orders dated 12-9-2002. In further appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT"), even CEGAT has affirmed the order of the authorities below and dismissed the appeal.*
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> *3. Entry/Sl. No. 122 in the Notification No. 6/2002 reads as under-*

Sl. No.	Chapter of Heading No. Or Sub-Heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
122	5401.10 5402.41 5402.49 5402.59 5402.61 or 5402.69	Nylon filament yarn or polypropylen	Nil	-	20

		e multifilament yarn of 210 deniers with tolerance of 6%			

As per the aforesaid entry, the rate of duty is nil. 4. Condition 20 of this Notification, which was relied upon by the authorities below in denying the exemption from payment of CVD, is to the following effect:

> *20. If no credit under Rule 3 or Rule 11 of the CENVAT Credit Rules, 2002,has been taken in respect of the inputs or capital goods used in the manufacture of these goods."*

The aforesaid condition is to the effect that the importer should not have availed credit under Rule 3 or Rule 11 of the CENVAT Credit Rules, 2002, in respect of the capital goods used for the manufacture of these goods.

5. In the present case, the admitted position is that no such CENVAT credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid notification is that in the case of the appellant, no such credit is admissible under the CENVAT Rules. On this basis, CEGAT has come to the conclusion that when the credit under the CENVAT Rules is not admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in Ashok Traders v. Union of India', wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw naphtha used in HDPE in the foreign country, Central excise duty leviable under the Indian Law can be levied or paid." Thus, CEGAT found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.

6. We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this Court in Thermax (P) Ltd. v. Collector of Customs which was affirmed by the Constitution Bench in Hyderabad Industries Ltd. v. Union of India.

7. In a recent judgment pronounced by this very Bench in Aidek Tourism Services (P) Ltd. v. Commr. of Customs, the principle which was laid down in Thermax (P) Ltd.2 and Hyderabad Industries Ltd was summarised in the following manner: (Aidek Tourism case, SCC pp. 436-37, paras 17-18)

> *"17. The ratio of the aforesaid judgment in Thermax (P) Ltd. was relied upon by this Court in Hyderabad Industries Ltd. while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein.*
>
> *18. In Hyderabad Industries case (SCC pp. 23-24, paras 10-11), the Court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The Explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the Explanation is that the article is produced or manufactured in India. The second limb to the Explanation deals with the situation where 'a like article is not so produced or manufactured. The use of the word "so" implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the Explanation, if an imported article is one which has been manufactured or produced, then*

> *it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon"*
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> *(emphasis in original)*

8. We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that the appellants were entitled to exemption from payment of CVD in terms of Notification No. 6/02. The appeals are allowed and the demand of CVD 9 raised by the respondent authorities is set aside."

5. In this background, we find that the order of Commissioner(Appeals) which disallows the benefit of Notification 12/2012-CE for the purpose of availing CVD Exemption cannot be sustained. The said order is therefore, set aside. Appeals are allowed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

NEHA