CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11442 of 2017-DB

CUSTOMS (Cross) Application No.10676 of 2017

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-006-17-18 dated 17.04.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Dow Chemical International Pvt Ltd **...Appellant**

1st Floor, Block B, 02, Godrej Business District,
Pirojshanagar, Lbs Marg, Vikhroli (W)
MUMBAI
MAHARASHTRA

VERSUS

C.C.-Kandla **...Respondent**

Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A / 12575 /2023

DATE OF HEARING:12.10.2023
DATE OF DECISION:08.11.2023

RAMESH NAIR

The issue involved in the present case is that whether the rejection of refund claim in respect of 4% SAD on the ground of limitation i.e beyond 1 year from the date of payment of customs duty is legally incorrect or otherwise.

2. Shri Vikas Mehta, learned Consultant appearing on behalf of the appellant submits that the appellant have filed the refund claim within 1 year from date of sale of the goods. Therefore, the refund could not have been

rejected on the ground of time bar. He submits that it is not practically possible to file a refund claim within 1 year from the date of payment of duty, if the goods is not sold. Therefore the refund arises only when the goods is sold. Therefore, 1 year of limitation should apply from the date of the sale of the goods and not the date of payment of duty. He submits that the refund was rejected by the lower authority by relying upon the decision of Hon'ble High Court of Mumbai in the case of CMS Info System Ltd- 2017 (349) ELT 236 (Bom.), against the said judgment, the party has filed appeal before Supreme Court and the same is pending. He further submits that in another case of M/s Sony India Pvt Ltd-2015 (304) ELT 660 (Del.). The Hon'ble Delhi High Court has struck down the time limit of 1 year prescribed by Notification No. 93/2008-Cus, against the judgment of Delhi High Court SLP filed by department has been dismissed by the Hon'ble Supreme Court. In another case of M/s. Pee Gee International -2016 (343) ELT 72 (Del.), Hon'ble High Court of Delhi relying on the Sony India P Ltd (supra), held that 1 year would apply from the date of further sale and payment of VAT and not from the date of payment of SAD. He submits that the Sony India judgment was relied upon in the following decision:

- Hon'ble High Court of Delhi, in S.R. Traders, 2022 (4) TMI 1167, while upholding the decision of Hon'ble Tribunal
- Hon'ble High Court of Delhi, in Premier Timber and Trading Pvt. Ltd., 2022 (7) TMI 885
- Hon'ble High Court of Delhi, in Thermoking, 2023 (384) ELT 315 (Del.)
- Hon'ble High Court of Delhi in Bhimeshwari Overseas, 2023 (8) Centax 175, duty upheld by Hon'ble Supreme Court (2023) 8 Centax, 176
- Hon'ble High Court of Delhi in Nanak Electronics Pvt Ltd., (2023) 9 Centax 54, duly upheld by Hon'ble Supreme Court (2023) 9 Centax 55
- Keshar Deo Ramesh Kumar, 2023 (3) TMI 382-CESTAT NEW DELHI
- S.K Rasayan Udhog Pvt Ltd., 2023 (3) TMI 336- CESTAT NEW DELHI

- John’s Cashew Company, 2021 (10) TMI 772-CESTAT BANGLORE

3. Shri Sanjay Kumar, Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record. We find that the limited issue to be decided in the present case is whether the 1 year limitation should apply for granting the refund of 4 % SAD from the date of payment of customs duty or from the date of sale of goods and payment of VAT. We find that in order to grant the refund of 4 % SAD an assessee is required to submit the sales invoices and proof of payment of VAT/ Sales Tax. In this position, if the goods is not sold then the assessee cannot filed a refund claim, and even, if it is filed as a precautionary measure the department will not entertain such refund claim, for the reason that there will be neither sale invoice nor payment of VAT. Considering this position the Delhi High Court in the case of Sony India, held that the period of limitation of 1 year from the date of payment of duty shall not apply, whereas 1 year shall apply from the date of sale of the goods. The judgment of Delhi High Court has been upheld by the Hon’ble Supreme Court. It is further observed that the Hon’ble Supreme Court has upheld the judgment in the case of M/s. Bhimeshwari Overseas and Nanak Electronics Pvt Ltd passed by the Hon’ble Delhi High Court. Therefore, the view taken by the Delhi High Court was affirmed by the Hon’ble Supreme Court in the various judgments cited (supra). As regard the reliance placed by the revenue in the case of CMS Info System Ltd, we find that with due respect though the Hon’ble Bombay High Court expressed the view that one year limitation shall apply from the date of payment of custom duty, however in the light of the consistent view taken by

the Delhi High Court and upholding the same by the Hon'ble Supreme Court the judgment of Delhi High Court will prevail.

5. Considering the above legal position of the issue, we are of the view that the appellant's refund claim is not time barred as the same was filed while within 1 year from the date of sale of the goods.

6. Accordingly, the impugned order is set aside. The appeal is allowed and CO also stands disposed of.

(Pronounced in the open Court on 08.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK