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

REGIONAL BENCH- COURT NO. 2

## Customs Appeal No. 10106 of 2019

(Arising out of OIA-AHD-CUSTM-000-APP-101-105-18-19 Dated-31/08/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**Krupa Chaton Manufacturing Company Private Limited .....Appellant**
5/32, 2nd Panjrapolelane, C.P. Tank Road,
MUMBAI, MAHARASTRA

*VERSUS*

**C.C.-Ahmedabad .....Respondent**
Custom House,, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

**WITH**

- **CUSTOMS APPEAL NO. 10107 OF 2019 (Kurpa Chaton Manufacturing Company Private Limited)**
- **CUSTOMS APPEAL NO. 10108 OF 2019 (Kurpa Chaton Manufacturing Company Private Limited)**
- **CUSTOMS APPEAL NO. 10109 OF 2019 (Kurpa Chaton Manufacturing Company Private Limited)**
- **CUSTOMS APPEAL NO. 10110 OF 2019 (Kurpa Chaton Manufacturing Company Private Limited)**
- **CUSTOMS APPEAL NO. 13034 OF 2018 (Kurpa Chaton Manufacturing Company Private Limited)**

(Arising out of OIA-AHD-CUSTM-000-APP-101-105-18-19 Dated-31/08/2018 passed by Commissioner ( Appeals ) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

**APPEARANCE:**
Shri. S. Suriyanarayanan, Advocate for the Appellant
Shri. N.P. Makwana, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

**Final Order No. 12468-12473 /2024**

DATE OF HEARING:14.10.2024
DATE OF DECISION:23.10.2024

**C.L. MAHAR**

The above appeals have been taken together as the facts in the above mentions appeals are identical. The issue before us for consideration is whether the appellant is entitled for the refund of SAD paid by them at the time of the import in terms of the Notification No. 102/2007-Cus. dated 17.09.2007. The department is of the view that the refund claims have been filed by the appellant with the Customs beyond the stipulated time limits of one year from the date of the payment of the duty and the lower authorities have rejected the claim of the appellant only on this ground that the period of one year from the date of the payment of the SAD have not been followed by the appellant and therefore the refunds of the SAD paid at the time on the importation has been rejected at the ground of the limitation.

2. Learned Advocate appearing for the appellant has submitted that the Hon'ble Delhi High Court in case of Sony India has held that the period of limitation of one year will start from the date of the sale of the goods in the open market when the VAT is paid on the sale of such goods.

2.1 The Learned Advocate has claimed that the appellant has paid the appropriate Sales Tax/VAT on the imported goods at its time of subsequent sale of the same in the open market. It has also been mentioned that all the refund claims provides sale invoices with the corresponding Bills of Entry number for the co-relation, It has been emphasizes that imported goods on which SAD was pad were sold in the open market on payment of appropriate Sales Tax/VAT and as per the provisions of the Notification No. 102/2007-Cus. dated 01.04.2007, the appellants are entitled for refund of SAD which was paid by them at the time of importation of the subject goods.

2.2 The Learned Advocate has also contended that matter is no longer *res Integra* as the Larger Bench of this Tribunal in case of Ambey Sales Versus CC-2024 (6) TMI 257-CESTAT, Chandigarh-LB has already decided the issue in hand in favour of the appellant.

3. We have also heard the departmental representative who has reiterated the finding as given in the Order-In-Appeal.

4. Having heard both the sides. I find that the matter is no longer *res-integra*, as the Larger Bench of this Tribunal in case of Ambey Sales Versus CC-, Ludhiana reported in 2024 (6) TMI 257-CESTAT, Chandigarh-LB has decided the issue and the relevant finding of the same are reproduced here below:

> *14. As noticed above, the sole question that arises for consideration in this appeal is whether the limitation of one year stipulated in the notification dated 01.08.2008 would be applicable in matters relating to refund daims of additional duty. The Assistant Commissioner rejected the refund claims for the reason that they were filed after the period of one year from the date of payment of duty and thereby not in terms of the condition stipulated in the aforesaid notification. The Commissioner (Appeals) has upheld the order passed by the Assistant Commissioner holding that the condition stipulated the notification cannot be considered to be merely procedural and was required to be adhered to. The judgment of the Delhi High Court in Sony India was distinguished for the reason that it was a case relating to a period prior to the amendment made in the notification dated 14.09.2007 by notification dated 01.08.2008, whereas the present matter relates to imports made after the amendment was made by notification dated 01.08.2008. This notification provides that the claim for refund of additional duty has to be filed before the expiry of one year from the date of payment of the additional duty.*
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> *15. At this stage it would be appropriate to take note of the provisions of section 3(8) of the Tariff Act as it stood at the relevant time and it is as follows:*
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> > *"3(8)The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*
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> *16. Section 27 of the Customs Act deals with claims for refund of duty and the relevant portion is as follows:-*
>
> > ***"27. Claim for refund of duty.-***
> >
> > *(1) Any person claiming refund of any duty or interest,-*
> >
> > *(a) Paid by him; or*
> >
> > *(b) borne by him,*
> >
> > *may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest"*

*17. The provisions of the notification dated 14.09.2007 as amended on 01.08.2008 and the aforesaid provisions of the Tariff Act and the Customs Act were examined by the Delhi High Court in Sony India. It was held that since additional duty levied under section 3(5) of the Tariff Act is refundable only on a subsequent sale, no limitation can possibly be imposed for filing a refund claim from the date of payment of such additional duty. The High Court further observed that neither section 27 of the Customs Act nor the provisions of the amended notification dated 01.08.2008 can impose a limitation period and such limitation can only be introduced by legislation. The High Court also noticed that the expression "so far as may be in section 3(8) of the Tariff Act was significant and this would mean that the provisions of Customs Act would be applicable only "to the extent possible". Thus, the High Court concluded that the period of limitation contemplated under section 27 of the Customs Act would not be applicable to a refund made under the notification dated 01.08.2008, more particularly when the customs authority also understood that section 27(1) of the Customs Act would not be applicable. The relevant portions of the judgment of the Delhi High Court in Sony India are reproduced below:-*

*10. That the importer is required to produce invoices of sale, documents evidencing payment of sales tax/VAT etc. clearly indicates that the benefit of this notification can be availed only once sale of the imported goods is complete. The exemption is clear in its intent to allow a refund of the SADC paid under Section 3(5) of the CTA because the importer has suffered the incidence of SADC (meant to counter-balance sales tax/VAT leviable on a like article in India) on import, and then of actual sales/VAT on sale of these imported goods. In this light, it is necessary to examine the CUSAA 3/2014 applicability of any limitation period, whether under the amending notification or under section 27 of the Customs Act.*

*xxxxxxxxxx*

*12. The provisions of the Customs Act on the rules and mechanism for refund is incorporated by reference into the CTA only "so far as may be applicable Since SADC levied under section 3(5) is refundable only on subsequent sale (l.e. the point at which sales tax/VAT liability arises), it is the opinion of this Court that no limitation period can possibly be imposed for advancing a refund claim. This is because the right to claim refund only accrues to the importer once sale, an entirely market driven event, is complete. Given the vagaries of the market, the importer has limited control over when the sale is complete. To uphold a limitation period starting from the date of payment of duty, as prescribed in the amending notification, would amount to allowing the commencement of a limitation period for refund claims before the right of refund has even accrued. To this extent, this Court is of the opinion that the refund provisions under the Customs Act are inapplicable to the duties levied under Section3(5) of the CTA. Thus, neither section 27 nor a notification under section 25(1), CUSAA 3/2014 Page 8 such as the amending notification no. 93/2008-Cus dated 1.08.2008 can be used to impose a limitation period on the right to claim refund of additional duty of customs paid under Section 3(5). If a limitation period is sought to be imposed in respect of refund claims in a case where the importer advances a refund of SADC paid owing to having incurred sales tax/VAT liability on subsequent sale of goods, it must be introduced by legislation, given the expropriatory consequences of such a limitation period.*

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*14. The expression "so far as may be" in this context, under Section 27 is significant as well as instructive. The levy under CUSAA3/2014 section 3 (5) is conditional upon the Central Government's opinion that it is necessary to "counter balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article.."; the rate of duty - where more than one levy exists, would be the highest of such rates and the terms of imposition of SADC would be spelt out in the notification. In this case, the regime existing before the notification of 2008 did not specify any period of limitation and perhaps advisedly so. Some customs authorities apparently started applying section 27, drawing inspiration from section 3(8) which led to confusion. In Notification No. 102/2007-Customs dated 14.09.2007 there was no period of limitation; by Circular No.6/2008-Customs, an amending notification providing for one year period from the date of payment of the additional duty of customs was issued, through Notification No.93/2008- Customs dated 1.8.2008, amending Para 2(c) of the 2007 Notification. The net effect of these was that a one year period was insisted upon for refund applications. That period was calculable from date of payment of duty (SAD). Dr Partap Singh & Anr v. Director of Enforcement, Foreign Exchange Regulation Act & Ors., 1985 (3) SCC 72 is an authority for the proposition that the use of the phrase "so far as may be" in a later statute, with reference to provisions in an earlier statute, means that the provisions of the referred (earlier) statue are to be followed "to the extent possible.*

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*16. Section 27(1) of the Customs Act prescribes a time limit of expiry of "one year, from the date of payment of such duty or interest...". Section 27(18) lists out three contingencies when the one year limit applies with modified effect. That provision has the effect of shifting the date from which the refund claim is to be reckoned. All that can be inferred from the term "so far as maybe" would be that specific provisions relating to the mechanism applicable for refund, in the Customs Act, applied; not the period of limitation. The Customs authorities had never understood Section 27(1) as to mean that a one year period of limitation was applicable. Audio plus (supra) and United Chemicals Industries (supra) are both testimony to this. It is the circulars/notifications of 2008 and No. 16/2009 which for the first time harped on the one year period of limitation. Circular No 6/2008, dated 28-4-2008 issued by the C.B.E. & C. stated that:*

> *"4. Time-Limit*
>
> *4.1 in the Notification No. 102/2007-Cus, dated 14-9-2007, no specific time-limit has been prescribed for filing a refund application, Under the circumstances, a doubt has been expressed that whether the normal time-limit of six months prescribed in Section 27 of the Customs Act, would apply. In the absence of specific provision of Section 27 being made applicable in the said notification, the time-limit prescribed in this section would not be automatically applicable to refunds under the notification. Further, it was also represented that the goods imported may have to be dispatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a*

> *specific provision prescribing maximum time-limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsoid stocks would not be eligible for refunds."*

*Notification No. 93/2008, dated 1-8-2008 was issued prescribing the period of limitation as one year from the date of payment of additional duty of Customs.*

> *17. Plainly, therefore, Section 27 was understood as not applying to SAD cases, even though It was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No. 93), the Customs authorities started insisting that such limitation period which was prescribed with effect from 01.08.2008 (by notification) became applicable. There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The CUSAA 3/2014 imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail.*
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> *18. For these reasons, this Court holds that the amending notification must be read down to the extent that it Imposes a limitation period. The question of law framed is therefore, answered in favour of the assessee and against the revenue. The appeal accordingly succeeds and is allowed without any order as to costs."*
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> *(emphasis supplied)*

*18. The Special Leave Petition filed by the department to assail the aforesaid judgment of the Delhi High Court in Sony India was dismissed by the Supreme Court on 23.02.2016 on the ground of limitation, but the question of law was kept open.*

*19. In Pee Gee Intemational vs. The Commissioner of Customs ICD Tughlakabad [2016 (343) E.L.T. 72 (Del.)], the Delhi High Court followed its earlier judgment in Sony India and held that the limitation of one year provided for in the notification dated 01.08.2018, would not be applicable. The relevant observations are as follows:*

> 5. This Court has recently in its judgment Sony India Pvt. Ltd. v. The Commissioner of Customs, New Delhi (CUSAA 3/2014, decided on 16-4-2014[2014(304) E.LT. 660 (Del.)]) held that the expression "so far as may be" occurring in Section 3(5) of the Customs Tariff Act cannot ipso facto bring in or refer to the period of limitation prescribed in Section 27 of the Customs Act. It was held that the nature of the duty is unlike the regular Incident of customs duty, which is definite; special additional duty is to be compensated the moment conditions for refund are fulfilled. The prevailing view of the Revenue based upon which it issued Circulars and Notifications in 2008 that the period of limitation of one year was to be calculated based upon the date

> of payment of the S.A.D. and not based upon the date of further sale or payment of VAT, was held to be erroneous. In this view of the matter, it is held that the appeal, at least as far as the undisputed amounts with respect to the 5 bills of entry are concerned, requires to be allowed. xxxxxxxxx"
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> *(emphasis supplied)*

*20. This is also what was held by a Division Bench of the Tribunal in Radial Rubber Industries. The contention of the department that the decision of the Delhi High Court in Sony India would not be applicable to matters after the notification dated 01.08.2018 was issued, was repelled and the relevant observations are as follows:*

> *"22. Learned Authorised Representative of the Department has also submitted that the judgment of the Delhi High Court in Sony India would not be applicable for the reason that the refund in that case was filed at a time when the amended notification dated 1 August, 2008 had not been issued.*
>
> *23. This submission cannot be accepted for the simple reason that the Delhi High Court has not allowed the refund claims for the said reason. It has allowed the refund claims as the limitation of one year provided for in the amended notification dated 1 August, 2008 has to be read down in as much as the right to claim refund could accrue to an importer only when the subsequent sale is completed and given the vagaries of the market, the importer has limited control over when the sale would be complete. It is for this reason that the Delhi High Court held that to allow the limitation period to start from the date of payment of duty as prescribed under the amended notification, would allow commencement of a limitation period for refund even before the right to claim refund actually accrued. The Delhi High Court, therefore, held that neither section 27 of the Customs Act nor the amended notification dated 1 August, 2008 can Impose a limitation period on the right of an importer to claim refund of Additional Duty and In any case such limitation can only be introduced by legislation."*
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> *(emphasis supplied)*

*21. The decision of the Bombay High Court in CMS Info System was also examined by the Tribunal in Radial Rubber Industries. It was noticed that the requirement of the other conditions set out in the notification regarding documents to be provided with the refund claim were not in issue before the Bombay High Court because the refund claimed before the Bombay High Court had been rejected merely for the reason that it was not filed within time.*

*22. The appeal filed by the department before the Delhi High Court against the decision of the Tribunal in Radial Rubber Industries was dismissed by the Delhi High Court on 19.04.2022 and the decision is reported in Commissioner of Customs, New Delhi vs. Radial Rubber Industries, though SLP (C) 4651 of 2023 filed by the department against the judgment of the Delhi High Court is pending before the Supreme Court*

*23. Subsequently, the Delhi High Court also examined this issue in Bhimeshwari Overseas. After following the earlier decision of the Delhi High Court in Sony India, the High Court dismissed the appeal filed by the department the relevant portions of the judgment are reproduced below:*

*"6. The principal issue involved in the present appeal relates to the applicability of time period to claim refund of the Special Additional Duty of Customs (SAD) on goods Imported in terms of the Notification No. 102/2007-CUS.*

*7. Aggrieved by the rejection of refund claimed by the Adjudicating Authority, the respondent preferred an appeal before the Commissioner of Customs (Appeals), New Delhi. The learned Commissioner of Customs (Appeals), relying upon the judgment passed by this Court in Sony India Pvt. Ltd. v. Commissioner of Customs: 2014 (304) ELT 660, allowed the appeal filed by the respondent by order dated 24.10.2017. The appeal filed by the appellant challenging the order dated 24.10.2017 was dismissed by the learned CESTAT by its order dated 21.02.2018 (Impugned order).*

*8. The impugned order indicates that the learned CESTAT had followed its earlier decision in Commissioner of Customs, New Delhi v. M/s. Siya Paper Mart Pvt. Ltd.: final order No. 58613/2017 dated 27.12.2017. The said decision in Commissioners of Customs, New Delhi v. Mis. Siya Paper Mart Pvt. Ltd. (supra) was rendered following the decision of this Court in Sony India Pvt. Ltd. v. Commissioner of Customs: 2014 (304) ELT 660, whereby this Court had held that the rejection of refund of the SAD, on the ground of limitation, was not sustainable.*

*9. Concededly, the decision of this Court in Sony India Pvt. Ltd. v. Commissioner of Customs (supra), covers the controversy whether the time limit prescribed under Section 27 of the Customs Act, 1962 is applicable in case of refund of the SAD.*

*10. Mr. Pratap Singh Ahluwalia, learned counsel appearing for the appellant, states that the Customs Authorities had filed a Special Leave Petition seeking leave to defend against the decision of this Court in Sony India Pvt. Ltd. v. Commissioner of Customs (supra). However, the said petition was dismissed by the Supreme Court by an order dated 26.02.2016 on the ground of delay, but the question of law was left open.*

*11. He also points out that the Bombay High Court in CMS Infosystem Ltd. v. Union of India: 2017 (349) ELT 236 (BOM) has taken a contrary view.*

*12. This Court has, in a number of matters, dismissed the appeals filed by the Customs Authorities In view of the decision in Sony India Pvt. Ltd. v. Commissioner of Customs (supra). In Commissioner of Customs v. S.R. Traders: CUSAA 36 of 2021, decided on 18.04.2022, a Coordinate Bench of this Court has observed that decision in Sony India Pvt. Ltd. v. Commissioner of Customs (supra) would be binding on other benches of this Court. In CUSAA 69/2019 captioned as Commissioner of Customs v. Tanvir Trading Import, this Court observed that it found no reasons to differ with the aforesaid view and, accordingly, dismissed the appeal.*

*13. We are of the view that the present appeal is required to meet a similar fate."*

*(emphasis supplied)*

*24. The Special Leave Petition filed by the department to assail the aforesaid judgment of the Delhi Hig Court in Bhimeshwari Overseas was dismissed by the Supreme Court and the decision is reported in Commissioner of Customs (Import), ICD, New Delhi vs. Bhimeshwari Overseas [2023 (385) E.L. 807(S.C.)). The order is reproduced below:*

*"2. This Court is of the opinion that the impugned order does not call for interference. The spec leave petition is accordingly dismissed.*

*3.Pending application(s), if any, also stand disposed of."*

*25. The Delhi High Cound to examined this issue in Commissioner of Customs, New Deals, Input 7 Nanak Electronics Pvt. Ltd. [2023 (1)TMI 1315- Delhi High Court) and an order similar to the order passed by the Delhi High Court in Bhimeshwari Overseas was passed and the appeler war to the order passed High Court. The Special Leave Petition filed by the department before the Supreme Court was damissed. This decision is reported in Commissioner of Customs, New Delhi, Import vs. Narak Electronics Pvt. Ltd. [2023 (7) TMI 1319- SC Order). The relevant portion is reproduced below:*

*"Delay condoned.*

*In view of the order dated 04.07.2023 passed by this Court in SLP (C) Dy. No. 23340/2023 which has not been interfered with the order impugned therein. The special leave petition, accordingly. stands dismissed. Pending application(s),If any, shall stand disposed of."*

*26. The Delhi High Court again examined this issue in Premier Timber and Trading Pvt. Ltd. vs. Pr Commissioner Customs Import [2022 (7)TMI 885- Delhi High Court) and the relevant portion of the decision is reproduced below:*

*"1. The only issue, which arises in the present appeal, according to the leamed counsel for the parties, concems application of limitation vis-à-vis refund sought qua Special Additional Duty of Customs (SAD).*

*2. Mr. Vaibhav Joshi, who appears on behalf of the respondent/revenue, has fairly informed us that the issue stands covered by a judgement dated 16.04.2014 passed by a coordinate bench of this Court in Sony India Pvt. Ltd v. Commissioner of Customs, New Delhi, 2014 (304) ELT 660 (Del), as also by another judgment dated 21.09.2016, rendered by another coordinate bench of this Court in CUSAA No. 25/2016, titled Commissioner of Customs (Import) v. Wilhelm Textiles India Pvt. Ltd.*

*3. We are informed, that these decisions were followed by another coordinate bench [comprising one of us i.e. Rajiv Shakdher J..] in the matter of Commissioner of Customs v. S.R. Traders. This judgment was passed in CUSAA No. 36/2021 and is dated 19.04.2022.*

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*5. We may also add that the authorities below have sought to distinguish the judgment rendered by this Court in Sony India Pvt. Ltd. by furnishing the following reasons, in the Order-in-Appeal dated 11.05.2020:*

*"5.4 Regarding the case laws cited by the Appellant, I find that Pee Gee International case [2016 (343) ELT 72(Del.)] and Siya Paper Mart Pvt. Ltd. cases refer to the Sony India decision. I find that the period involved in the Sony India case was from 01.12.2007 to 05.12.2007. In the instant case, the period involved is of 2016. It is to be noted that the Notification No. 102/2007Cus dated 14.09.2007 was amended by Notification No. 93/2008-Cus dated 01.08.2008 by which the condition of filing refund claim within one year was inserted in the principal Notification 102/2007. This has been amplified in para 5.3.1 above. Thus the judgment of Sony India and subsequent judgment based on it are not applicable to present case.*

*5.4.1 In fact, this aspect has been specifically dealt in the decision of the Hon'ble Bombay High Court in the case of CMS Info Systems Ltd. [2017 (349) ELT 236 (Bom)] and the decision of Hon'ble Tribunal in case of Honda Siel Power Products Ltd. [2019 (369) ELT 1773 (Tri. Chennai)]. Appellants contention that the order of jurisdictional High Court is binding on the Department and the order of another High Court cannot be relied upon is not relevant as the facts and circumstances under which the order of Sony India or Pee Gee International were delivered were entirely different. The case of Sony India is for the period prior to amendment of notification 102/2007-Cus. Thus this judgment cannot be applied to present case."*

*6. In our view, the reasoning fumished by the Commissioner of Customs (Appeals) via order dated 11.05.2020 is flawed, as limitation cannot be prescribed by a notification.*

*6.1 This aspect of the matter was dealt by this Court in Sony India Pvt. Ltd. case*

*7. We respectfully agree with the view taken in Sony India Pvt. Ltd. and therefore, allow the instant appeal.*

*(emphasis supplied)*

*27. In Commissioner of Customs (Import) vs. Gulati Sales Corporation (2018 (360) ELT., 277 (Del.), the Delhi High Court reiterated the view expressed earlier in Sony India and the relevant portion of the Judgment is reproduced below:*

*"3. In our opinion, the issue is covered by the decision of the Delhi High Court in the case of Sony India Private Limited v. Commissioner of Customs, 2014(304)E.L.T. 660 (Delhi) (hereafter 'sony India').*

*4. The said judgment was followed in Pee Gee Intemational v. Commissioner of Customs (ICD). Tughlakabad, New Delhi, 2016 (343) E.LT. 72 (Delhi).*

*5. Learned counsel for the appellant, however, has drawn our attention to the decision in Principal Commissioner of Customs v. Riso India Private Limited, 2016 (333) E.LT. 33 (Del.) (hereafter 'Riso India'), which according to him, takes a different view from the view expressed in Sony India (supra). It is accordingly submitted that limitation period specified under Section 27 of the Act would apply to claims for refund made under the notification of 2007, which had not prescribed a specified period of limitation.*

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*8. We, therefore, do not find any conflict between the view expressed in Fliso India (supra) and Sony India (supra). In fact, the Division Bench in Riso India (supra) could not have taken a different view without referring the matter to a Larger Bench in case they felt that the view expressed in the former decision required reconsideration. The Division Bench in Riso India (supra) observed that in Sony India (supra) "the Court was clear that the imposition of a period of limitation for the first time through a notification 'without statutory amendment was legally impermissible." The words "without statutory amendment" were highlighted to qualify and not to be misunderstood, as if limitation period under Section 27 applies. These words would not indicate and show that limitation period specified in Section 27 of the Act applies to SAD refunds. Thereafter, the appeal of the Revenue in Riso India (supra) was dismissed.*

*9. In terms of Notification No. 102/2007, dated 14th September, 2007, an importer is entitled to refund of SAD, which is levied at the time of importation after he files documents to show that appropriate sales tax or value added tax has been paid. It may be noted that the purpose of imposing SAD is to protect and ensure collection of appropriate sales tax or value added tax, payable on the imported goods. This is paid upfront at the time of import. SAD is not credited and set off from the sales tax and value added tax, which are State taxes. SAD is, therefore, refundable to the importer after evidence with regard to payment of appropriate sales tax or value added tax is produced. The documents and papers have to be produced before the customs authorities, checked and verified, before refund is issued. It goes without saying that the intent is that no double duty/tax-first, the form of SAD and secondly, in form of sales tax or value added tax, is to be paid.*

*10. Circular dated 28th April, 2008 quoted above specifically states the view and 78 understanding of the Revenue that Section 27 of the Act is not made applicable to the Notification No. 102/2007 and the time limit prescribed under the said Section would not be applicable. The Revenue notwithstanding the said understanding and their Circular, now seeks to contend and urge to the contrary.*

*11. In view of the aforesaid, we find that the impugned order being in consonance with the ratio in the case of Sony India (supra), no case for interference is made out. No substantial question of law. therefore arises. The appeal is dismissed, without any order as to costs.*

*(emphasis supplied)*

28. It is however pointed out that Special Leave to Appeal (Civil) No. 4820 of 2018 filed by the department is pending before the Supreme Court.

29. This issue was also examined by Delhi High Court in Commissioner of Customs, ICD TKD V Thermoking [2023 (384) E.LT. 315 (Del.)/(2023) 2 Centax 42 (Del.)) and the relevant portion of the judgment is reproduced below:

*"4.1 The issue which arises in the instant appeal, as in the Premier Timber case, concerns the application of limitation vis-à-vis refund sought qua Special Additional Duty of Customs, levied under Section 3(5) of the Customs Tariff Act, 1975.*

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*4.3 After examining the said judgments, we had agreed with the reasoning and conclusions arrived at in Sony India Pvt. Ltd. case.*

*4.4 This aspect was also noticed by another Coordinate Bench in a judgment dated 19-4-2022. passed in CUSAA No. 36/2021, titled Commissioner of Customs v. S.R. Traders, which included one of us i.e., Rajiv Shakdher J. In S.R. Traders, it had been noted that Bombay High Court in CMS Info Systems Ltd. v. Union of India - 2017 (349) E.LT. 236 =[2017] 78 taxmann.com 294 = [2017] 61 GST 33 had taken a different view."*

*(emphasis supplied)*

*30. Learned authorized representative of the department has, however, placed much emphasis on the Judgment of the Bombay High Court in CMS Infosys System. This judgment was rendered in a writ petition filed under article 226 of the Constitution for quashing the condition Imposed by the notification dated 01.08.2008 fixing a time limit of one year for filing a refund claim from the date of payment of additional duty. The writ petitioner had placed reliance upon the judgment of Delhi High Court in Sony India as would be seen from the paragraphs that are reproduced:-*

*33. It is submitted that the Hon'ble High Court of Delhi has clearly opined and held that the provisions of the Customs Act on the rules and mechanism for refund are incorporated by reference in Section 3(5) of the CTA only" so far as may be applicable. Since SADC is levied under Section 3(5) and that is refundable only on subsequent sale, then, no limitation period can possibly be imposed for advancing a refund claim. We have carefully perused the above observations and in the light of the analysis of the statutory provisions and the scheme of refund by us, with greatest respect, we are unable to agree with the High Court of Delhi on this point. *****

*34. Mr. Patil would submit that the importer shall pay on sale of the said goods appropriate sales tax or value added tax, as the case may be, is equally a condition and further requirement is providing of copies of documents along with refund claim. Else, no refund is admissible. We are of the opinion that it is not possible to guess as to whether the refund application would be held to be non-maintainable purely on the grounds or for the reasons suggested. If it is made within a period of one year from the date of payment of the additional duty of customs, then, because there is no subsequent sale and the documents evidencing that, as also proof of payment of the sales tax or local taxes are required to be produced, that their production is also mandated in a particular period and within a particular time limit is not something which we are required to call upon and decide. We have before us a case of rejection of a refund application simply because it was not filed within one year from the date of payment of the additional duty of customs."*

*(emphasis supplied)*

*31. It would be seen from the aforesaid paragraphs of the judgment of the Bombay High Court that the contention that an importer has to pay appropriate sales tax or value added tax on the sale and also provide copies of documents with the refund claim, otherwise the refund would not be admissible was not examined by the Bombay High Court for the reason that it was not possible to guess whether the refund application would be held non-maintainable on these grounds. The High Court also observed that this issue was not required to be examined or decided by the High Court because* *the High Court was only dealing with a case where the refund application had been rejected because it was not filled within one year from the date of payment of additional duty.*

*32. The Delhi High Court had, on the other hand, in Sony India examined the provisions of the notification dated 14.09.2007 as also the notification dated 01.08.2008 that amended paragraph 2(c) of the notification dated 14.09.2007 and introduced a time limit of one year. It is on a perusal of the said notification dated 14.09.2007 that the Delhi High Court observed that the importer is required to produce invoices of sale and documents evidencing payment of sales tax/VAT, which would clearly mean that the benefit of the notification can be availed only when the sale of the imported goods is complete, that the intention of the exemption notification is to allow refund of the additional duty of customs because the Importer has suffered incidence of additional duty meant to counter-balance sales tax/VAT and also paid sales tax / VAT on sale of these imported goods; that for this reason no limitation period can possibly be imposed for advancing a refund claim because the right to claim the refund can accrue only when the sale is completed; that to uphold the limitation period under the notification dated 01.08.2008 from the date of payment of additional duty would amount to allowing the commencement of the limitation period even before the right to claim refund accrues, and that section 27 of the Customs Act would not apply to claim of refund of this additional duty. The Delhi High Court, therefore, categorically held that the amending notification dated 01.08.2008 has to be read down to the extent it imposes a limitation period.*

*33. Under the notification dated 14.09.2007, it is imperative for the importer to satisfy the conditions enumerated therein. It would, therefore, be necessary to examine in each case whether the said conditions have been fulfilled. Thus, the limitation of one year period from the date of payment of additional duty contemplated in the amending notification dated 01.08.2008 cannot be examined dehors the conditions stipulated in the notification dated 14.09.2007.*

*34. The Bombay High Court in CMS Info System did not consider it necessary to examine the conditions set out in the notification dated 14.09.2007 for the reason that the application for refund had been rejected only on the ground that it had been filed beyond the period of one year and not for non satisfaction of the conditions set out in the said notification dated 14.09.2007.*

*35. In view of the above aforesaid discussion, it would be appropriate to follow the view taken by the Delhi High Court in Sony India.*

*36. In any view of the matter, the issue as to which judgment of the High courls should be followed if conflicting view have been takne was decided by a Larger Bench (a five Member Bench) of the Tribunal in Colloector of Central*

*Excise, Chanddigarh Vs. Kashmir Conductors (1997 (96) ELT 257 (Tro/ ) one issue that was addressed by the Larger Bench was what should be done when the Tribunal is faced with conflicting decisions of High Courts. The Larger Bench of the Tribunal held that it the jurisdiccional Court has taken a particular view on an interpretation or proposition of low, that view h but if the jurisdictional High Court has not expressed any view in regard to the subject matter and there are conflicting views of other High Courts, then the Tribunal will be free to formulate s own view*

*37. A Division Elench of the Tribunal in C.C.- New Delhi (ICO TKD) (import) ve. JG Impex Pvt. L. 2018 (10) TMI 1483-CESTAT NEW DELHI), however, attempted to distinguish the judgment of the Court in Sony India. After referring to section 27 of the Customs Act, the Division Bench observed*

> *"8. The words used in the provision makes it clear that statute has not distinguished the nature of duty or interest, the refund where of is claimed. Hence, even if we do not look into the amended Notification No. 93/2008, the period of limitation as applicabin for filing the refund claim under Notification 102/2008 will otherwise be a period of one year in accordance of the aforesald Secdion 27 of the Customs Act."*

*38. The Division Bench of the Tribunal in JG Impex rolled upon section 27 of the Customs Act, which was held to be not applicable in case of refund of additional duty by the Delhi High Court in Sorny India. The decision of the Delhi High Court In Sony India was binding on the Tribunal.*

*39. It would be pertinent to note that two Division Benches of the Tribunal in Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi vs. Mis Slya Paper Mart Pvt Ltd. (2023 (3) TMI 1083- CESTAT NEW DELHI) and Mis indochem & Polychems vs. Commissioner, Customs (Import), New Delhi (ICD TKD) (2023(5) TMI 399-CESTAT NEW DELHI) have followed the judgment of the Delhi High Court in Sony India and held that the limitation of one year would not be applicable*

*40. However, contrary views have been expressed by the Tribunal in the following decisions:*

> (i) CC, Hyderabad-Customs vs. Khazana [2019 (4) TMI 492-CESTAT HYDERABAD decided on 13.02.2019 );
>
> (ii) Hariyana International Pvt. Ltd vs. Commissioner of Customs (Import) Mumbai (2019 (4) TMI 142- CESTAT MUMBAI decided on 19.12.2018];

(iii) C.C.-New Delhi (ICD TKD) (Import) vs. Nav Bharat Trading Corporation [2018 (12) TMI 1487 CESTAT NEW DELHI decided on 25.10.2018); and

(iv) C.C. Hyderabad- Customs vs. Surya Telecom Pvt. Ltd [2018 (7) TMI 192-CESTAT HYDERABAD].

*41. In Khazana, a leamed member of the Tribunal did not follow the decision of the Delhi High Court in Sony India only for the reason that it dealt with a situation that existed prior to the issue of the notification dated 01.08.2008 that introduced the limit of one year. In Hariyana International, the Division Bench of the Tribunal did not consider the judgment of the Delhi High Court in Sony India. In Nav Bharat Trading Corporation, the Division Bench of the Tribunal relied upon section 27 of the Customs Act, which section was held to be inapplicable by the jurisdictional Delhi High Court in Sony India. In Surya Telecom, the decision of the Bombay High Court in CMS Infosys System was relied upon.*

*42. These four decisions of the Tribunal have distinguished the judgment of the Delhi High Court in Sony India for reasons which are not tenable. The decision of the Delhi High Court in Sony India had also taken into consideration the amended notification dated 01.08.2008*

*43. The decisions of the Tribunal in JG Impex, Khazana, Hariyana International, Nav Bharat Trading Corporation and Surya Telecom, for the reasons stated above, do not lay down the correct law.*

*44. The inevitable conclusion, therefore, that follows from the aforesaid discussion is that it would not be necessary for an importer to file a claim for refund of the additional dutyu of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment 81 of the said additional duty of customs in view of the judgment of the Delhi High Court in Sony India. The limitation of one year for filing a claim for refund of additional duty of customs paid on import of goods from the date of payment of additional duty would, therefore, not be applicable*

*45. The reference is, accordingly, answered in the following terms:*

*"The time limit imposed upon an importer for filing a refund claim of additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of said additional duty of customs in terms of the notification dated 01.08.2008 would not be applicable in view of the judgment of the Delhi High Court in Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi reported in 2014 (304) E.LT. 660 (Del.)"*

*46. The papers may now be placed before the Division Bench of the Tribunal for deciding the appeal."*

5. Following the above decision, I hold that the impugned Orders-In-Appeals are legally not sustainable and set aside the same

6. Accordingly, appeals are allowed.

(Pronounced in the open court on 23.10.2024)

**(C.L. MAHAR)**
**MEMBER (TECHNICAL)**

PRACHI