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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11580 of 2017-SM

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-00-17-18 dated 01.06.2017 passed by Commissioner of CUSTOMS-MUNDRA]

Gravita India Limited .... **Appellant**
Plot No 322 Mithirohar Industrial
Estate Mithirohar Taluka Gandhidham
KUTCH, GUJARAT

VERSUS

Commissioner of Customs, Mundra .... **Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat - 370421

APPEARANCE :

Shri Dhaval K. Shah, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Revenue.

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING : 28.02.2025
DATE OF DECISION : 14.05.2025

FINAL ORDER NO. 10335/2025

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned order in appeal dated 01.06.2017 through which learned Commissioner of Customs (Appeals) rejected the appeal of the appellant and upheld the order of the adjudicating authority who rejected the refund claim of the appellant on the ground of limitation.

2. The facts of the case in brief are that the appellant filed refund claim of Rs. 8,63,701 on 29.07.2016 in respect of 4% Special Additional duty (SAD) paid by them on imports. On scrutiny of the claim, it was observed

that the time limit in respect of some bills of entry had already expired at the time of claim submission. As such the claim to the extent of Rs. 2,80,713 was rejected being barred by limitation. Feeling aggrieved by the order-in-original passed by adjudicating authority, the appellant preferred appeal before Commissioner of Customs (Appeals).

2.1 The Commissioner of Customs (Appeals), after hearing the learned Counsel for the appellant and the department observed in the impugned order that the appellant has relied upon Hon'ble Delhi High Court judgment in the case of M/s. Sony India Pvt. Limited vs. Commissioner of Customs, New Delhi -2014 (304) ELT 660 (Del.) in which the Hon'ble Court held that in matter of SAD refund, imposition of period of limitation for the first time, without statutory amendment, through a notification could not prevail and read down the amending notification to the extent it imposes a limitation period. This judgment was challenged before the Hon'ble Supreme Court by means of Special Leave Petition filed by the department but the petition was dismissed by the Hon'ble Supreme Court on the grounds of limitation but kept the question of law open. Since the question of law was open, the learned Commissioner of Customs (Appeals) cited the judgment delivered by Hon'ble High Court of Bombay in the case of M/s CMS Info Systems Limited vs. Union of India [2017-TIOL-79-HC-MUM-CUS], in which the Hon'ble Bombay High Court after considering the Delhi High Court order in Sony India, have departed from the said order and held that the condition in the notification, which is in the nature of limitation, cannot be held to be onerous, excessive and therefore ultra virus Article 14 of the Constitution. Relying upon the judgment of Hon'ble High Court of Bombay in the case of M/s. CMS Info Systems Limited, learned Commissioner (Appeals) held that conditions in the Notification No. 102/2007-Cus as amended have to be fulfilled. In the instant case the appellant have not fulfilled the condition 2(c) i.e. filing of refund claim within one year from the date of payment of duty. The learned Commissioner (Appeals), in the light of above mentioned judgment, rejected the appeal.

3. Aggrieved with the impugned order-in-appeal passed by learned Commissioner (Appeals), the present appeal has been filed before this Tribunal.

4. The learned Counsel for the appellant argued that the adjudicating authority and Commissioner (Appeals) have passed the order in total disregard of the judicial pronouncements and it was binding on the learned Commissioner to have respected the judgment of Hon'ble Delhi High Court in the case of **M/s. Sony India Pvt. Limited** vs. **Commissioner of Customs, New Delhi** -2014 (304) ELT 660 (Del.) but the learned Commissioner failed to follow the law laid-down by Delhi High Court in this case. The Hon'ble Delhi High Court in the case **M/s. Sony India Pvt. Limited** has clearly held that in the matter of SAD refund, imposition of period of limitation for the first time without statutory amendment, through a notification could not prevail and read down the amending notification to the extent it imposes a limitation period. He prays that the impugned order passed by learned Commissioner of Customs (Appeals) dated 01.06.2017 be set-aside and the appeal may be allowed.

4.1 The learned Counsel for the appellant also cited some decisions of this Tribunal which are relevant for disposal of this appeal. He has cited decision in **Suzuki Motorcycle India Pvt. Limited** vs. **CC, ITD (Import) (Tughlakabad)** (2024) 18 Centax 343 (Tri. Del.) in which the Delhi Bench of this Tribunal held that the Notification dated 14.09.2007 requires fulfilment of certain conditions. The importer has to pay on the sale of the goods appropriate sales tax or value added tax and has to provide copies of documents with the refund claim evidencing payment of said Additional Duty, invoices of sale of the imported goods in respect of which refund of the said Additional Duty is claimed and documents evidencing payment of appropriate sales tax by the importer on the sale of such imported goods. These conditions were examined by Hon'ble Delhi High Court in Sony India while arriving at a conclusion that the limitation provided in the Notification dated 01.08.2018 that the refund has to be made within a period of one year from the date of payment of Additional Duty 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 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 01.08.2008 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. The Division Bench of the Tribunal in JG Impex relied 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 Sony India. The decision of the Delhi High Court in *Sony India* was binding on the Tribunal.

4.2 The learned Counsel has also cited the decision of this Tribunal in the case of **Krupa Chaton Manufacturing Company Pvt. Limited** vs. **C.C., Ahmedabad** - 2024 (10) TMI 1358 – CESTAT AHMEDABAD, in which the Tribunal held that the limitation of one year for filing the claim of refund of additional duty of Customs paid on import of goods from the date of payment of additional duty would therefore, not be applicable.

4.3 Learned Counsel has also relied upon the following case laws:-

(a) M/s. KK Enterprise vs. C.C. Mundra - 2019 (5) TMI 722 - CESTAT Ahmedabad

(b) M/s. Ambey Sales vs. CC, GRFL, Sahnewal, Ludhiana - 2024 (6) TMI 257 - CESTAT Chandigarh - LB

(c) CC (Import) ICD, Delhi vs. Siya Paper Mart Pvt. Limited - (2023) 12 Centax 41 (Tri. Del.)

(d) M/s. Fibre Bond Industries vs. Pr. Comm., Tughlakabad, Delhi - 2022 (3) TMI 1176 - CESTAT New Delhi

(e) CC, ICD-TKD vs. Thermoking - 2023 (384) ELT 315

(f) CC vs. S.R. Traders (Del) -(2023) 4 Centax 46

(g) CC (Import) vs. Gulati Sales Corporation (Del) -2018 (360) ELT 277

(h) Sony India Pvt. Limited vs. CC, New Delhi - 2014 (304) ELT 660 (Del.)

(i) Commissioner vs. Sony India Pvt. Limited - 2016 (337) ELT A102 (S.C.)

(j) CMS Info Systems Limited vs. UOI - 2017 (349) ELT 236 (Bom.)

(k) CMS Info Systems Limited vs. UOI - 2018 (360) ELT A190

5. Learned AR appearing for the department reiterates the order passed by the learned Commissioner (Appeals) and argued that the impugned order has been passed by following the ruling of Hon'ble Bombay High Court in the case of **M/s. CMS Info Systems Limited** vs. **Union of India**. He also

argued that in **M/s. CMS Info Systems Limited** case the Hon'ble Bombay High Court has discussed the decision delivered by Hon'ble Delhi High Court in the case of **M/s. Sony India Pvt. Limited** vs. **Commissioner of Customs**, **New Delhi** to differ from the conclusion arrived at by Hon'ble Delhi High Court. He prayed that the appeal may be dismissed.

6. I have heard the learned Counsel for the appellant and learned AR of the department and perused the record. After hearing both the parties, I am of the view that there are conflicting views of Hon'ble Bombay High Court and Hon'ble Delhi High Court regarding the question under consideration before this Tribunal whether the limitation period of one year from the date of depositing the additional duty for claiming refund of additional duty will be applicable or it has to be read down as the same would commence limitation before the accrual of right to refund itself. In the case of **Collector of Central Excise, Chandigarh** vs. **Kashmir Conductors** – 1997 (96) ELT 257 (Tri.) it was held that if the jurisdictional High Court has taken a particular view regarding interpretation or proposition of law, that view has to be followed in cases within such jurisdiction. But if the jurisdictional High Court has not expressed any view in regard to the subject matter and there is conflict of views among other High Courts, then the Tribunal will be free to formulate its own view. As there is no direct view of Hon'ble Gujarat High Court regarding the question under consideration before this Tribunal, this Tribunal is free to formulate is own view.

6.1 I am of the view that when the limitation provided in the notification dated 01.08.2018 that the refund has to be made within a period of one year from the date of payment of additional duty 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 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.

6.2 Therefore, in the light of the decision of Hon'ble Delhi High Court in the case of **M/s. Sony India Pvt. Limited** vs. **Commissioner of Customs, New Delhi** and the decision of this Tribunal in the case of **Suzuki Motorcycle India Pvt. Limited** vs. **CC, ITD (Import) (Tughlakabad),** I am of the view that the order passed by Commissioner of Customs (Appeals) is not sustainable and the appeal deserves to be allowed.

7. Consequently, the appeal is dismissed. The impugned order passed by Commissioner (Appeals) dated 01.06.2017 is set-aside. The adjudicating authority is directed to decide the refund application of the appellant in the light of the law laid down by Hon'ble Delhi High Court in the case of **M/s. Sony India Pvt. Limited** without taking into consideration the limitation period.

(Order pronounced in the open court on 14.05.2025*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Technical)

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