IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

1-2) C/54459/2014-CU[DB], C/54503/2014-CU[DB]

(Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/73/14 dated 27.03.2014 passed by Commissioner(Appeals), Customs & Central Excise, Noida.)

1) Commissioner of Customs, Central Excise & Service Tax, Noida
2) M/s.L.G. Electronics India Pvt.Ltd.

…APPELLANT(S)

VERSUS

1) M/s.L.G. Electronics India Pvt.Ltd.
2) Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue
Shri Bimal Jain (Advocate) for the Respondent/Assessee

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 22.02.2019

FINAL ORDER NO.70345-70346/2019

Per Mrs.Archana Wadhwa :

Both the appeals – one filed by the assessee and the other by the Revenue are being disposed of by a common order as they are directed towards the same impugned order passed by Commissioner(Appeals).

2. After hearing both the sides duly represented by Shri Mohd. Altaf, learned Asstt.Commr.(A.R.) for the Revenue and Shri Bimal Jain, learned Advocate for the Respondent, we find that the appellant

imported certain items and cleared the same on payment of duties of Customs including SAD. They were entitled to the refund of the SAD paid, in terms of Notification No.102/20007-CUS dated 14.09.2007, subject to fulfillment of certain conditions. Accordingly they filed four refund claims on 17.04.2008, 26.12.2008, 30.08.2008 and 23.03.2009.

3. As the refund applications were not being processed by the Revenue, the appellant approached them by way of various reminders. Subsequently Revenue addressed a communication to the appellant to the effect that their refund applications are not traceable and requested them to file another copy. Accordingly copies of refund applications were subsequently filed by the assessee.

4. The said refund claims were taken up by the Revenue for disposal and stand rejected by the original adjudicating authority on the sole ground that the appellant had not attached the original Bill of Entry along with their refund claims. The appellant took a categorical stand that they had annexed the original Bill of Entry with their refund claim filed initially, which stand mis-placed by the Revenue itself. As such the question of filing original Bill of Entry with the subsequent copies of the refund claims cannot arise. They also submitted that for filing the claims in terms of the said Notification, there is no such condition of filing original Bill of Entry. However, the original adjudicating authority did not find favour with the above contention of the appellant and rejected their refund claims.

5. On appeal Commissioner(Appeals) held in favour of the assessee by observing that there is no condition of production of original Bill of

Entry either in the Notification or in any other enactments. She has observed that when the appellant had filed the original refund claims along with the original Bill of Entry, which stand lost by the Revenue, they cannot be held guilty of non-production of original Bill of Entry. Accordingly she set aside the impugned order and allowed the refund claims.

6. The said order of Commissioner(Appeals) is impugned by both the sides before us.

7. As regards the Revenue's appeal, the same is on the sole ground that the Commissioner(Appeals) has wrongly held that non-production of original Bill of Entry was not required. However, we do not find any merits in the above contention in the absence of any provision shown by the Revenue that such original copy of Bill of Entry was required. Further the facts are also undisputed that such copy was produced by the assessee while filing the refund claims, which stands mis-placed by the Revenue. In such a scenario the assessee cannot be expected to produce the original Bill of Entry. Accordingly we find no merits in the Revenue's appeal and reject the same.

8. As regards the assessee's appeal, though Commissioner(Appeals) has granted refunds to them, but the appellant is aggrieved with only with the last line of order of Commissioner(Appeals) which is to the effect that "*As regards the interest, the department cannot be made liable for circumstances beyond its control, hence the interest claim is not payable*."

9. The contention of the learned Advocate appearing on behalf of the appellant is that inasmuch as the refund claims were delayed on account of the lapse on the part of the Revenue, they are admittedly entitled to interest. He has drawn our attention to the Hon'ble Delhi High Court's decision in the case of Micromax Informatics Ltd. v. Union of India [2018 (361) E.L.T. 968 (Del.)] laying down that delayed refund of SAD invite payment of interest to the assessee. To the same effect is another Delhi High Court's decision in the case of Principal Commissioner of Customs v. Riso India Pvt.ltd. [2016 (333) E.L.T. 33(Del.)]. The Tribunal in the case of Commissioner of Customs, Chennai-IV v. CNS Infor Systems Ltd. [2017 (10) TMI 859-CESTAT-CHENNAI has held that the department was not justified in denying interest to the assessee on delayed refund of SAD.

9. As such submits the learned Advocate that the issues are settled by the above referred decisions and as such the said part of the impugned order vide which interest stands rejected should be set aside and their appeal should be allowed to that extent.

10. After appreciating the submissions made by both the sides we find that the issue before the original adjudicating authority was claim of refund of SAD which stands denied by him. As such there was no occasion for the original adjudicating authority to deal with interest aspect. Further Commissioner(Appeals) though had allowed the refund claims, but rejected the interest amount by one line observations reproduced above. There was no discussion or observations by Commissioner(Appeals) as regards interest claimed by the assessee. As

such we are of the view that the matter should be remanded to original adjudicating authority for deciding the appellant's claim of interest, in the light of the declaration of law by the Hon'ble Delhi High Court and followed by the Tribunal in the above referred cases. Accordingly he would decide the interest liability of the Revenue by referring to the above decisions as also by referring to the facts of the case. We would like to observe here that the appellant's entitlement to interest would be considered by treating the original date of filing of refund as the relevant date in terms of the provisions of section 27A of the Customs Act.

Both the appeals are disposed of in above manner.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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