CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2654 of 2010

(Arising out of Order-in-Appeal No.67/2010 dated 4.8.2010 passed by the Commissioner of Customs (Appeals), Cochin.)

Sony (India) Pvt Ltd
A-31, Mohan Cooperative Industrial Estate,
Mathura Road,
New Delhi – 110 044.

Appellant(s)

Versus

The Commissioner of Customs
Custom House
Cochin – 682 009.

Respondent(s)

Appearance:

Mr. Deepak Thakur, Advocate	For the Appellant
Mr. Neeraj Kumar, AR	For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21299 /2023

Date of Hearing: 09.10.2023
Date of Decision: 09.10.2023

Per : R. BHAGYA DEVI

The appellant M/s. Sony India Private Limited filed a refund application for refund of Rs.22,79,189/- paid against 4% said vide 8 Bills of Entry as per the Notification No.102/2007-Cus. dated 14.09.2007. The Commissioner in the impugned order, referring to the above Notification and the Circular

No.06/2008 dated 28.04.2008 observing that the appellant had not produced any evidence towards the remittance of Sales Tax and proof of evidence showing electronic payment, rejected the refund claim. The appellant is in appeal against this order of rejection of refund.

2. The learned counsel on behalf of the appellant referring to the Notification No.102/2007-Cus stated that as per clause (v) of the said Notification, the importer shall provide the following documents along with the refund claim:

a. Documents evidencing payment of the SAD,

b. Invoice of sale of the imported goods in respect of which refund is claimed

c. Documents evidencing payment of appropriate Sales Tax or VAT by the importer on the imported goods.

3. Referring to the Circular No. 6/2008, it is submitted that at para 5.1 of the Circular, the Board has clarified that along with the original tax payment documents, the importer must furnish a certificate from the statutory auditor/VAT auditor correlating the Bills of Entry for which refund has been given along with the sale invoices and the payment details. Thereafter, vide CBEC Circular No.16/2008-Cus, these conditions were relaxed and the Board directed the Customs Authorities to accept the copies of VAT/CST Challans along with the certificate from the Chartered Accountant while receiving the refund claim. The appellant further submits that they submitted copies of all the CST/VAT challans evidencing payment of CST/VAT on sale of goods

imported vide the Bills of Entry for which refund has been claimed. They have also filed documents correlating the payment details which were duly certified by the VAT auditor. It is claimed that the impugned order has been passed in violation of the binding Department's Circular No.16/2008 and therefore, it is liable to be set aside. To substantiate this claim, they have relied on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries: 2008 (231) ELT 22 (SC)***. It is further submitted that various similar refund claims were filed at various Ports, the Customs Authorities at various Ports have been allowing the refund claims based on similar documents filed before them.

4. The Authorised Representative for the Revenue reiterated the findings of the Commission (Appeals).

5. Heard both sides. The original authority rejected the refund claim on the ground that certificate from the STC to the effect that due Value Added Tax (VAT) has been paid on the sale of the imported items vide the Bills of Entry under claim was not submitted. The second reason for rejecting the claim was VAT paid details certified by Chartered Accountant could not be correlated with the Bills of Entry under claim. The impugned order admits that the appellant had filed:

- Chartered Accountant's certificate certifying that the amount claimed as refund shown in the Books of Accounts as 'SAD Recoverable' and the burden of 4% SAD has not been passed on to the buyers;

- Sale invoices in CD form along with sale certified summary;
- Sale summary with tax paid correlating the Bills of Entry under claim certified by the Chartered Accountant;
- C.A. certified statement of the VAT paid for the months of August 2008 to November 2008 without maintaining the Bills of Entry.

5.1 However, the Commissioner referring to the Circular No.6/2008 wherein it states that *"In order to ensure sanction of refund properly, it is clarified that the document evidencing payment of ST/VAT (in original) duly issued by or acknowledged by the concerned ST/VAT authorities shall be submitted by the importer"*, rejects the claim on the ground that the appellant had not strictly followed the procedures to be adopted for filing the refund claim as per the Board's instructions.

5.2 Now let's examine the Notification and the Circulars issued regarding refund of 4% SAD.

> **Special CVD — Exemption to all goods when imported for subsequent sale**
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> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).
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> 2. The exemption contained in this notification shall be given effect if the following conditions are fulfilled :
>
> (a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
>
> (b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods

covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;

(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;
(e) the importer shall, *inter alia*, provide copies of the following documents along with the refund claim :

(i) document evidencing payment of the said additional duty;
(ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
(iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

3. The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.

[Notification No. 102/2007-Cus., dated 14-9-2007]

Refund of 4% Spl. CVD — Procedure

Circular No. 6/2008-Cus., dated 28-4-2008
F.No. 401/104/2007-Cus.III

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Procedure to be adopted for refund of 4% Additional Duty of Customs in pursuance of Notification No. 102/2007-Customs dated 14-9-2007 - Regarding.

I am directed to state that various representations from importers, exporters, trade and industry associations and references from some of the Customs field formations have been received in the Board seeking clarification regarding refund of 4% Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 in pursuance of Notification No. 102/2007-Customs, dated 14-9-2007.

2. The Board has examined this matter in consultation with the Customs field formations. The following procedure may be adopted by the field formations in order to settle expeditiously the refund claims arising out of the exemption provided vide Notification No. 102/2007-Customs, dated 14-9-2007.

3. **Manner of refund and its receipt :**

Your attention is invited to the instructions communicated vide F.No. 354/129/2007-TRU, dated 14-9-2007 at the time of issue of the Notification No. 102/2007-Customs, dated 14-9-2007. It is reiterated that the scheme of refund of 4% Additional Duty of Customs has been notified through an exemption notification, and hence, the conditions as prescribed only in the said notification will apply. All refund applications under the aforesaid notification shall be received by the concerned field formations in their Centralized Refund Section, and the applicants would be given proper acknowledgement.

The status of these refund claims shall also be displayed in the online database of customs duty refunds maintained by the respective Commissionerates.

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5. Documents to be enclosed with refund claim :

5.1 Notification No. 102/2007-Customs, dated 14-9-2007 prescribes the documents that shall be enclosed along with the refund claim. In order to ensure sanction of refund properly, it is clarified that the document evidencing payment of ST/VAT (in original) duly issued by or acknowledged by the concerned ST/VAT authorities shall be submitted by the importer. A certificate from a Chartered Accountant or any other independent authority certifying payment of ST/VAT would not be acceptable in lieu of the original documents. However, a certificate from the statutory auditor/Chartered Accountant, who certifies the importer's annual financial accounts under the Companies Act or any statute, correlating the payment of ST/VAT on the imported goods (in respect of which refund is claimed) with the invoices of sale, would be required along with the original tax/duty payment documents as proof of payment of appropriate ST/VAT for the purpose of para 2(d) & (e) of the said notification.

5.2 For the purpose of refund under this notification, it is reiterated that appropriate Sales Tax or VAT means Sales Tax or VAT in case of Intra-State sales and Central Sales Tax (CST) in case of Inter-State sales.

5.3 The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD ("said additional duty of Customs") paid on imported goods and shall pay on sale of the said goods "appropriate Sales Tax or VAT as the case may be". Hence, it is clear that there is no stipulation in the notification that the exemption is available only if the rate of ST/VAT is equal to or higher than the rate of additional duty of Customs; nor is there a condition that if the rate of ST/VAT happens to be lower than 4%, the refund would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation and the entire 4% CVD, if otherwise found eligible, shall be refunded.

Refund of 4% Spl. CVD — Clarifications

Circular No. 16/2008-Cus., dated 13-10-2008

F.No. 401/104/2007-Cus.III

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Clarification on refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No. 102/2007-Customs dated 14-9-2007 – Regarding

Your kind attention is invited to the Board's Circular No. 6/2008-Customs, dated 28-4-2008 [2008 (225) E.L.T. T3] containing instructions on the procedure to be followed by the Customs field formations while making 4% CVD refund in terms of Notification No. 102/2007-Customs, dated 14-9-2007.

2. Subsequent to the issue of the above circular, the trade and industry associations have raised some more issues needing clarifications and in some cases relaxations of the procedural requirement for expeditious sanction of refund claims. Further, certain field formations have also made references on some of the issues raised by the trade. The various issues raised in the above references have been examined in the Board and the following clarifications are issued on each of points raised :

(iii) Sale invoices to be submitted in soft form for claiming refund :

It has also been represented that number of copies of sale invoices are required to be produced in view of the Condition No. 2 (e) (ii) of the Notification No. 102/2007-Customs, dated 14-9-2007. As these are voluminous, it is difficult for the importers as well as the Department to handle such invoices in hard copy. This issue was examined in specific reference to Section 4 of the Information Technology (I.T) Act, 2000 which provides that any information or any other matter, which is required under any Law to be made in writing or printed form, could be submitted in an electronic form provided it is accessible for use or subsequent reference. In view of the fact that this provision applies notwithstanding anything contained in any other law, the legal requirement of submission of copies of sale invoices would be fulfilled if the same is provided in electronic form. In the I.T. Act, 2000, 'electronic form' has been defined and it includes information stored in optical or magnetic media.

Therefore, it is clarified that the importers could submit the copy of invoices in electronic form (including the form of CD) as prescribed in Information Technology Act, 2000, for the purpose of fulfilment of the condition in para 2(e)(ii) of the Notification No. 102/2007-Customs, dated 14-9-2007. The electronic media containing the information about sale invoices should, however, be submitted along with a paper declaration by the applicant indicating the invoice numbers contained in the media and subscribing to their truthfulness.

(iv) Declaration for non-admission of Cenvat Credit :

In terms of condition 2(b) of the Notification No. 102/2007-Customs, the importer who wishes to avail the refund of 4% CVD, is also required to make a specific declaration in the sale invoice that no Cenvat credit would be admissible in respect of 4% CVD. This ensures that there is no double benefit on account of refund to the importer and Cenvat Credit to the purchaser. Hence, the request for dispensation of such declaration by certain importers who are not registered with Central Excise authorities and to allow 4% CVD refund to these importers on the basis of their status of registration with Central Excise, as non-registered dealer is not found to be acceptable.

(v) Payment of ST/VAT by cash or input tax credit :

It has been brought to the notice of the Board that the ST/VAT credit is available with the importer due to credit of ST/VAT paid on local purchase of other products. In such cases, although the imported goods are sold and ST/VAT is being paid on such sale, instead of cash payment, the input tax credit is used. Hence, it was represented that payment of ST/VAT by input tax credit adjustment should be acceptable in lieu of ST/VAT paid challan.

In terms of the requirement under para 2(d) of the said notification, it is stated that appropriate ST/VAT is to be paid by the importer on sale of goods. The importer can then claim the refund of 4% CVD paid at the time of import. It is noticed that most of the ST/VAT legislations provide for payment of ST/VAT by utilizing the input tax credit. If the Sales Tax Authorities accept payment of STA/AT through cash or adjustment of input tax credit, the same shall be treated as effective discharge of ST/VAT payment on imported goods. Further, Board had provided in its earlier Circular that a certificate from statutory auditor/Chartered Accountant correlating the payment of ST/VAT on the imported goods with the invoices of sale, along with supporting documents of proof of payment of appropriate ST/VAT is acceptable for the purpose of 4% CVD refund. Hence, it is clarified that discharge of ST/VAT liability by the importer, through cash or other authorised form of payment to the concerned ST/VAT authority or input tax credit adjustment, could be accepted by Customs field formations for the purpose of fulfilment of the condition in para 2(d) considering sanction of refund of 4% CVD.

(vi) Submission of original copy of ST/VAT Challan :

The difficulties expressed by the importers in submission of original Tax paid challans for evidencing payment of ST/VAT at more than one port was examined. Importers pay the appropriate ST/VAT to the concerned State Government where the sale of imported goods is effected. There is a genuine difficulty in case of importers selling the goods through various States or those importing goods at various ports and subsequently, selling in different States to obtain the original copy of ST/VAT challan evidencing payment of appropriate ST/VAT for the purpose of claiming 4% CVD refund with various Customs Commissionerates at different ports Further, payment of ST/VAT after adjusting input tax credit is made through different forms such as deposit of cash, cheque, demand draft or other authorised mode of payment through banking channel or payment directly to the ST/VAT Department. In some States, even e-payment is also accepted.

The aforesaid request of the trade has been considered and keeping in view the difficulties faced in submitting original challans, it has been decided that alternatively, the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfil the requirement in terms of para 2(e)(iii) of the Notification No. 102/2007-Customs, dated 14-9-2007. Hence, the Customs field formations shall accept the copies of ST/VAT challans/documents along with the certificate of the said Chartered Accountant, while receiving the 4% CVD refund claim. However, the importers may be required to submit the original ST/VAT payment challans or other similar documents, in doubtful cases for verification by Customs authorities, which shall be returned to the importer after verification.

(vii) Unjust enrichment and its Certification by Chartered Accountants :

It is represented by the trade that for the purpose of satisfying the condition that burden of 4% CVD has not been passed on by the importer to any other person, a certification from an independent Chartered Accountant may be accepted by the Customs authorities.

> In this regard, it is stated that the intention of the Government is not to allow the importer to recover 4% CVD from the buyer and to claim the refund from Customs as well. The only method to ensure this is to make it conditional to satisfy the principle of unjust enrichment. In this regard, in the earlier circular, it has been provided that the importer may produce a certificate from the statutory auditor/CA who certifies that Annual Accounts of the importer (under the Companies Act, 1956 or any statute) to the effect that the burden of 4% CVD has not been passed on by the importer to the buyer. The provisions contained in the various Sales Tax Laws prevailing in various States provide for Audit of the books and accounts for the purpose of ascertaining the correctness of ST/VAT payment/Input Tax Credit. Further, Section 44AB of the Income Tax Act, 1961 provides that certain persons carrying on business or profession exceeding the prescribed limit are required to get their accounts audited by "an Accountant" explained therein.
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> Considering these provisions, it is clarified by the Board that the 'statutory auditor/Chartered Accountant' mentioned in para 6 of the earlier Board's circular refers to "Chartered Accountant" within the meaning of section 2(1)(b) of the Chartered Accountants Act, 1949. However, it is clarified that the Customs field formations shall accept the certificate given only by such a Chartered Accountant who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, in order to fulfil the requirement of the condition that the incidence of duty burden has not been passed on by the importer to any other person for the purpose of refund of 4% CVD. A certificate by any other independent Chartered Accountant would not be acceptable for this purpose.

As seen from above Notification No. 102/2007, the only requirement is to file documents evidencing payment of the 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 or Value Added Tax on sale of such imported goods. Though, the Circular No.6/2008 insisted on certain original documents to be filed, these conditions were relaxed vide Circular No.16/2008. This Circular clearly stated that *"the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of* *the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfil the requirement in terms of para 2(e)(iii) of the Notification No. 102/2007-Customs, dated 14-9-2007'.* The payment of SAD is not in dispute and the only requirement was to produce sales invoices along with the CST/VAT payment details for the relevant Bills of Entry for which refund is being claimed. The appellant has produced sales invoices in CD form along with the sale certified summary and sale summary with VAT paid correlating the Bills of entry certified by the Chartered Accountant, as has been recorded by the Commissioner (Appeals) at Para 2 of the impugned order. From the records placed before us, the Chartered Accountant vide their letter dated 15.07.2009 reproduced below has certified the payments, thus satisfying the conditions of the Notification read along with the Circular No.16/2008 along with correlation of the payments with the sample Bills of entry.

S S KOTHARI MEHTA & CO

CHARTERED ACCOUNTANTS

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VAT AUDITOR'S CERTIFICATE FOR CUSTOM AUTHORITIES

1. We, M/S S.S.Kothari Mehta & Co., Chartered Accountants, have examined the accompanying 'Statement of Bills of Entry along with the listing of sales invoices' (Annexure A) and 'Statement of Payment of Sales Tax/Value Added Tax/ Central Sales Tax' (Annexure B) of Sony India Private Limited ("the Company") having registered office at A-31, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044, with the books of accounts & financial statements of the company.

2. In respect of the above, we have performed the following procedures based on the verification of the books and records of the Company:

   - with regard to the imports made against Bills of Entry, verified that special additional duty of Customs 'SAD' has been paid and a refund being claimed within the stipulated time limits of the Circulars;

   - subsequent sale of the imported goods in India, evidenced through the sales invoices, including quantities sold, were verified along with the payment of appropriate sales tax or value added tax or central sales tax evidenced by the original copies of sales tax or value added tax, challans/ returns for deposit of the tax;

   - that the burden of 4% 'SAD' has not been passed on by the Company to its buyers/ the requirement with regard to the principle of unjust enrichment has been fulfilled to the extent that the refunds being claimed herein are being shown in the books of account of the Company as a recoverable claim;

   - that the copies of the invoices verified by us indicate that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible to the buyer;

   - the Company has followed the assumption of Centralized first-in-first out basis to correlate the sale of goods made with their corresponding import;

3. Based on the procedure performed in paragraph 2 above and the information and explanations given to us, with regard to the claim for refund of 4% Special Additional Duty of customs ('SAD') being filed by the Company, for the month of August 2008 at port of entry Cochin- Sea, in accordance with the provisions of Circular No. 6/2008-Custom dated April 28, 2008('the Circular') read with Notification No 102/2007 dated September 14, 2007 and Circular No. 16/2008-Customs dated October 13, 2008 issued by Central Board of Excise and Customs, we certify :-

   - that 'SAD' aggregating to Rs. 2,279,189/- (Rs. Twenty two lakhs seventy nine thousand one hundred eighty nine only) has been paid to the custom authorities at the time of import of goods under Bills of Entry and a refund of the same is being claimed by the Company as listed in Annexure A.

   - that the imported goods have been subsequently sold in India after payment of appropriate sales tax or value added tax/ central sales tax with the appropriate VAT/CST authorities, as the case may be and all the VAT/CST, the details of which given in Annexure-A and summary/copies of the deposit challans evidencing the deposit of sales tax/value added tax/central sales tax, the detail of which given in Annexure-B.

- that the burden of 4% 'SAD' has not been passed on by the Company to its buyers, and that the requirement with regard to the principle of unjust enrichment has been fulfilled as the refund being claimed herein has been accounted for and disclosed under 'SAD Recoverable' in the books of account of the Company as a recoverable claim.

4. This certificate has been prepared on the request of the Company solely with reference to the Circular. Our certificate is not to be used for any other purpose and is solely for your information and/ or for use by the Customs Authorities.

For S.S. Kothari Mehta & Co.
Chartered Accountants

NEW DELHI

(YOGESH K. GUPTA)
Partner
Membership No. 93214

Place: New Delhi
Date: 15/07/2009

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Date of Bill of Entry	Bill of Entry Number	Date of Payment of Duty	Customs Port	REFERENCE_NO	Purchase Invoice Number	Material Code	Model	Quantity of Goods Imported	SAD Amount claimed on quantity imported	Quantity of goods for which refund claimed	Amount of SAD paid claimed as refund	Location from where goods sold	Location from where goods sold	Billing document	Date of Sale Invoice	Sale Invoice Number	Tax amount	Quantity of goods sold for which SAD refund is being claimed
31.Jul.08	228847	8/Aug/08	COK SEA	COK-159	HU870071	35967900	KVAW212M80/HE32	608	135,854	608	135,854	CRT TV	Cochin Warehouse (C&F)	47143660	19/Aug/08	47155181	11,246	12
												CRT TV	Cochin Warehouse (C&F)	47143661	19/Aug/08	47155182	14,657	15
												CRT TV	Cochin Warehouse (C&F)	47143662	19/Aug/08	47155183	18,743	20
												CRT TV	Cochin Warehouse (C&F)	47143665	19/Aug/08	47155186	7,497	8
												CRT TV	Cochin Warehouse (C&F)	47143666	19/Aug/08	47155187	4,698	5
												CRT TV	Cochin Warehouse (C&F)	47143677	19/Aug/08	47155198	1,877	2
												CRT TV	Coimbatore Warehouse (C&F)	64120930	19/Aug/08	64204154	1,858	2
												CRT TV	Coimbatore Warehouse (C&F)	64120937	19/Aug/08	64204161	1,858	2
												CRT TV	Coimbatore Warehouse (C&F)	64120938	19/Aug/08	64204162	929	1
												CRT TV	Coimbatore Warehouse (C&F)	64120942	19/Aug/08	64204166	1,858	2
												CRT TV	Bhiwandi Warehouse	22176746	20/Aug/08	21164889	929	1
												CRT TV	Bhiwandi Warehouse	22176777	20/Aug/08	21164920	1,858	2
												CRT TV	Ahmedabad Warehouse (C&F)	22548950	20/Aug/08	24319386	2,181	2
												CRT TV	Ahmedabad Warehouse (C&F)	22548961	20/Aug/08	24319397	1,091	1
												CRT TV	Ahmedabad Warehouse (C&F)	22548995	20/Aug/08	24319431	2,115	2
												CRT TV	Ahmedabad Warehouse (C&F)	22549000	20/Aug/08	24319436	3,173	3
												CRT TV	Ahmedabad Warehouse (C&F)	22549034	20/Aug/08	24319470	5,289	5
												CRT TV	Mumbai Warehouse	25847540	20/Aug/08	25158978	1,858	2
												CRT TV	Mumbai Warehouse	25847563	20/Aug/08	25159001	929	1
												CRT TV	Mumbai Warehouse	25847572	20/Aug/08	25159010	1,858	2
												CRT TV	Ranchi Warehouse (C&F)	35108396	20/Aug/08	61311237	1,802	2
												CRT TV	Chennai Warehouse	41934219	20/Aug/08	64806398	929	1
												CRT TV	Chennai Warehouse	41934226	20/Aug/08	64806405	929	1
												CRT TV	Chennai Warehouse	41934227	20/Aug/08	64806406	929	1
												CRT TV	Chennai Warehouse	41934242	20/Aug/08	64806421	929	1
												CRT TV	Hyderabad Warehouse (C&F)	42263932	20/Aug/08	42157051	2,661	3
												CRT TV	Hyderabad Warehouse (C&F)	42263963	20/Aug/08	42157083	1,858	2
												CRT TV	Hyderabad Warehouse (C&F)	42263975	20/Aug/08	42157110	9,010	10
												CRT TV	Vijaywada Warehouse (C&F)	43111989	20/Aug/08	42157090	1,858	2
												CRT TV	Vijaywada Warehouse (C&F)	43111990	20/Aug/08	42157091	3,716	4
												CRT TV	Bangalore Warehouse	46972032	20/Aug/08	46160563	1,811	2
												CRT TV	Coimbatore Warehouse (C&F)	64120982	20/Aug/08	64204206	1,858	2
												CRT TV	Coimbatore Warehouse (C&F)	64120986	20/Aug/08	64204210	1,858	2
												CRT TV	New Delhi Warehouse	11975775	21/Aug/08	11160974	929	1
												CRT TV	New Delhi Warehouse	11975838	21/Aug/08	11161037	1,858	2
												CRT TV	Lucknow Warehouse (C&F)	19127751	21/Aug/08	11104327	4,645	[illegible]
												CRT TV	Bhiwandi Warehouse	22176800	21/Aug/08	21164943	4,505	[illegible]
												CRT TV	Bhiwandi Warehouse	22176822	21/Aug/08	21164965	1,802	[illegible]
												CRT TV	Ahmedabad Warehouse (C&F)	22949100	21/Aug/08	24319536	4,362	[illegible]
												CRT TV	Pune Warehouse (C&F)	26156366	21/Aug/08	15218026	1,858	[illegible]
												CRT TV	Pune Warehouse (C&F)	26156368	21/Aug/08	15218028	4,505	[illegible]
												CRT TV	Pune Warehouse (C&F)	26156385	21/Aug/08	15218045	929	[illegible]
												CRT TV	Calcutta Warehouse	31960385	21/Aug/08	31157555	2,787	[illegible]
												CRT TV	Calcutta Warehouse	31960393	21/Aug/08	31157563	1,858	[illegible]
												CRT TV	Calcutta Warehouse	31960394	21/Aug/08	31157564	3,716	[illegible]
												CRT TV	Calcutta Warehouse	31960395	21/Aug/08	31157565	3,716	[illegible]
												CRT TV	Calcutta Warehouse	31960396	21/Aug/08	31157566	3,716	[illegible]
												CRT TV	Calcutta Warehouse	31960397	21/Aug/08	31157567	3,716	[illegible]
												CRT TV	Calcutta Warehouse	31960404	21/Aug/08	31157574	3,716	[illegible]
												CRT TV	Calcutta Warehouse	31960405	21/Aug/08	31157575	9,289	[illegible]
												CRT TV	Calcutta Warehouse	31960406	21/Aug/08	31157576	9,289	[illegible]
												CRT TV	Calcutta Warehouse	31960410	21/Aug/08	31157580	32,437	[illegible]
												CRT TV	Calcutta Warehouse	31960411	21/Aug/08	31157581	2,787	[illegible]
												CRT TV	Calcutta Warehouse	31960412	21/Aug/08	31157582	22,526	[illegible]
												CRT TV	Calcutta Warehouse	31960414	21/Aug/08	31157584	12,614	[illegible]
												CRT TV	Ranchi Warehouse (C&F)	35108405	21/Aug/08	61311246	929	
												CRT TV	Chennai Warehouse	41934304	21/Aug/08	64806483	9,010	
												CRT TV	Chennai Warehouse	41934307	21/Aug/08	64806486	2,787	
												CRT TV	Hyderabad Warehouse (C&F)	42263999	21/Aug/08	42157136	1,858	
												CRT TV	Hyderabad Warehouse (C&F)	42264008	21/Aug/08	42157145	4,645	
												CRT TV	Vijaywada Warehouse (C&F)	43112003	21/Aug/08	42157123	1,858	
												CRT TV	Bangalore Warehouse	46972040	21/Aug/08	46160576	1,858	
												CRT TV	Cochin Warehouse (C&F)	47143700	21/Aug/08	47155221	2,811	
												CRT TV	Cochin Warehouse (C&F)	47143703	21/Aug/08	47155224	4,686	
												CRT TV	Cochin Warehouse (C&F)	47143704	21/Aug/08	47155225	1,874	

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But, the Commissioner (Appeals) only harps on Para 5.1 of the earlier Circular No.6/2008 ignoring the fact that those conditions were relaxed by the Board vide Para (iii) and (vi) of the subsequent Circular No.16/2008. In view of the above, since all the conditions of the Notification read with the Circulars have been satisfied, we do not find any reason to accept the contention of the Commissioner (Appeals) to reject the refund claims. Accordingly, we allow the Appeal with consequential relief, as per law.

(Operative portion of the Order was pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv