IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. C/156 to 182/2012

(Arising out of Order-in-Appeal C. Cus. Nos. 358 to 384/2012 dated 3.5.2012passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs, Seaport, Chennai Appellant

Vs.

M/s. Redington (India) Ltd. Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR) for the Appellant
Shri Ajay Kumar Gupta, Advocate for the Respondent

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Hon'ble Ms. SulekhaBeevi C.S., Member (Judicial)
Hon'bleShriMadhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **19.04.2018**

Final Order Nos. **41334-41360 / 2018**

Per Bench

1. The issue involved in all these appeals being the same, they are heard together and are disposed by this common order.

2. The facts of the case are that M/s. Redington India Ltd., the respondents herein, had filed Bills of Entry for clearances of "Benq and Viewsonic Projectors" and got classified the same under CTH 85286100 claiming benefit of Notification No.24/2005-Cus. Sl. No. 17. Department took the view that the

goods would merit classification only under CTH 85286900 and consequently would also not be eligible for the notification benefit, on the basic premise that the CTH 85286100 emphasizes the principal use and not only the sole use of data projectors in conjunction with Automatic Data Processing (ADP) system of CTH 8471. In appeal, the Commissioner (Appeals), vide common order No. 358 to 384/2012 dated 3.5.2012, relying upon his earlier decision on the very same issue, a decision of Commissioner (Appeals), New Delhi allowing the notification benefit sought, as also the judgment of the Hon'ble Supreme Court in the case of ACER India Ltd., held that the projectors are necessarily classifiable under CTH 85286100 and that they are eligible for duty benefits under Notification No.24/2005-Cus. Out of these 27 orders of the lower appellate authority, department has preferred appeals only in respect of three Orders-in-Appeal No.382 to 384/2012 relating to Bills of Entry No. 3784487 dated 14.6.2011; 3859101 dated 21.6.2011 and 3943489 dated 30.6.2011, all filed by Commissioner of Customs, Sea Port, Chennai.

3. Today, when the matter came up for hearing, on behalf of the Department ld. AR Shri K. Veerabhadra Reddy, reiterated the grounds of appeal.

4. On the other hand, ld. counsel Shri Ajay Kumar Gupta appearing for the respondents points out that the Commissioner (Appeals) order was in respect of 24 consignments imported

through Air Cargo Complex and 3 imported through Sea Port, Chennai; that however, the department has come in appeal only against the latter; that in respect of remaining consignments imported at Air Cargo Complex, department has accepted the order of the Commissioner (Appeals) and that the respondents have also been sanctioned refund amount of Rs.1,26,22,151/- vide Order-in-Original No.251/2015-Refunds–AIR dated 30.3.2015 by the competent authority. This being the case, the department cannot now come in appeal against the very same issue that has been accepted by the department.

5. Heard both sides.

6. We find merit in the contentions of the ld. counsel. Department having accepted the decision of the Commissioner (Appeals) in respect of 24 consignments, they cannot now turn around and express a grievance only against a portion of the impugned order relating to remaining three consignments which have been imported through Seaport, Chennai. The Hon'ble Apex Court in the case of Marsons Fan Industries – 2008 (225) ELT 334 (SC) has categorically held that when the Department has accepted a decision pertaining to same assessee itself on similar goods, that decision has attained finality.

7. Viewed in this light, no merit is found in the appeals filed by Department for which reason the same are rejected.

8. The three appeals C/180-182/2012 relating to OIA C.Cus.No.382-384/2012 filed by Commissioner of Customs, Sea Port, Chennai are dismissed.

9. In respect of Appeals C/156-179/2012 since the Department has accepted the related OIA C.Cus.No.358-381/2012 and no appeals have been filed against those orders, these 24 appeals are disposed as closed for statistical purpose.

All the appeals are disposed of as above.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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