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

Appeal No. : C/42423/2016

(Arising out of Order-in-Appeal No.C.Cus II No.772 to 781/2016 dated 17.8.2016 passed by Commissioner of Customs (Appeals-II), Chennai.)

Goyal Impex & Industries Ltd. : Appellant

Vs.

Commissioner of Customs (Chennai-IV) : Respondent

Appearance:-

Shri.R.Mansoor Ilahi, Advocate
for the Appellant

Shri.S.Govindarajan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**27.08.2018**

Date of Pronouncement: 31.8.2018

Final Order No. ________________

This is an assessee's appeal wherein it has challenged the rejection of refund of an amount of Rs.60,587/-. The appellant had imported "Yarn Nylon Mixed with Sparkling Nylon, Aluminium Foil Paper, 100% Polyester Sewing Threas Raw White on Hanks, Synthetic Yarn 100% Polyester 1/4 to 1/7 NE undyed" vide Bill of Entry No.4884321 dated 20.10.2011 and since the above goods were sold as such to ultimate customers, the appellant filed refund claims in respect of 4 Bills of Entry for refund of 4% SAD in terms of

Notification No.102/2007-Customs dt.14.9.2007 as amended by Notification No.93/2008 dt.1.8.2008. The adjudicating authority in the adjudicating order sanctioned refund claims except one Bill of Entry dt.20/10/2011 for an amount of Rs.60,587/- on the ground that the claim was beyond the time limit of one year from the date of payment of duty. The appellant having not succeeded in its appeal before the first appellate authority has filed this appeal before this forum.

2. Heard Shri.R.Mansoor Ilahi, Advocate for the appellant and the departmental representative, Shri.S.Govindarajan, AC (AR) for the Revenue. During the course of arguments, the Ld.Advocate submitted that there was only 10 days delay in filing the refund claim and in this connection, he relies on the decisions of Hon'ble High Court of Delhi in the case of ***Sony India Pvt. Ltd. Vs CC, New Delhi [2014 (304) ELT 660 (Del)]*** and ***Commissioner of Customs (Import) Versus Gulati Sales Corporation 2017 (11) TMI 1300 - Delhi High Court dt.7.11.2017.*** Apart from judgment / order in the case of ***Commissioner of Customs Vs M/s.River Tradex (I) Pvt. Ltd 2017 (9) TMI 1088 - CESTAT, New Delhi.***

3. Per contra, the Ld.DR supported the findings of lower appellate authorities. The Ld.DR also pointed out that there are contrary decisions on this issue and refers to a decision of CESTAT, Mumbai in the case of ***M/s.Dev International vs CC (Import), MUMBAI 2015-tiol-155-CESTAT-MUM*** and a decision of Hon'ble High Court

of Mumbai in the case of ***CMS Info Systems Ltd. vs Union of India 2017 (349) E.L.T.236 (Bom.).***

4. I have considered the rival contentions and have gone through various decisions relied on during the course of arguments. In terms of Notification No.102/2007, an importer is entitled for refund of SAD that was levied at the time of import after he files necessary documents to prove that proper Sales Tax or VAT as the case may be, has been paid. As settled by various higher judicial forums, the purpose of imposing SAD is to protect and ensure collection of appropriate sales tax or VAT that is payable on imported goods, which is paid upfront at the time of imports. SAD is not credited and set off from the sales tax or VAT, which is refundable to an importer after ascertaining the appellant to appropriate Sales Tax / VAT. I note that Hon'ble Delhi High Court in the case of ***Gulati Sales Corporation 2017*** (supra) has considered both Notifications Nos.102/2007 and 93/2008; and also considered the decision of ***Sony India Pvt. Ltd.*** (supra) and has ruled as under :-

8. We, therefore, do not find any conflict between the view expressed in Riso 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 mis- understood, 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 14 th 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 custom authorities, checked and verified, before refund is issued. It goes without saying that the intent is that no double duty/tax - first, in 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 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.

5. I also find that the New Delhi Bench of CESTAT in the case of ***M/s.River Tradex*** (supra) has dismissed Revenue's appeal after following the decision of ***Sony India Pvt. Ltd.*** (supra).

6. From the above discussions, I am of the considered view that the appellant is eligible for refund, despite the fact that its claim of refund was belated (by 10 days). Following the above ratio decidendi, I set aside the impugned order and allow appellant's claim for refund; & consequently allow the appeal with consequential benefits, if any.

(Pronounced in open court on **31.8.2018)**

(P Dinesha)
Member (Judicial)

vsr