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

Appeal No.: C/41199/2018

(Arising out of Order-in-Appeal SEA C. Cus. II No. 27/2018 dated 09.02.2018 passed by the Commissioner of Customs (Appeals-II), Chennai)

M/s. Madras Metals, : Appellant
113, AngappaNaicken Street,
Chennai – 600 001

Versus

The Commissioner of Customs (Imports), : Respondent
Chennai IV Commissionerate,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

Appearance:-
Ms. S. Sridevi, Advocate
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **30.10.2018**

Final Order No. 42767 / 2018

Briefly stated that the appellant had filed refund claims of 4% Special Additional Duty (SAD) paid by them to the tune of Rs. 14,77,767/- against 9 Bills of Entry in terms of Notification No. 102/2007-Cus. dated 14.09.2007 as amended by Notification No.

93/2008-Cus. dated 01.08.2008 read with Board Circular Nos. 06/2008 dated 28.04.2008, 16/2008 dated 13.10.2008 and 18/2010 dated 08.07.2010. After due process of law, the lower adjudicating authority vide Order-in-Original 54654/2017 dated 04.04.2017 sanctioned the refund of Rs. 14,77,767/- as claimed by the appellants.

2. Thereafter, the Commissioner of Customs, Chennai-IV vide Review Order dated 25.09.2017 directed the lower adjudicating authority to file an appeal before the Commissioner of Customs (Appeals-II), Chennai with a prayer to modify the above Order-in-Original and order for recovery of the erroneously paid refund of Rs. 1,60,428/- sanctioned against Bill of Entry No. 3933967 dated 18.01.2016. On appeal, the Commissioner (Appeals) vide impugned Order-in-Appeal Sea C.Cus II No. 27/2018 dated 09.02.2018 allowed the appeal filed by the lower adjudicating authority and ordered for recovery of the erroneously sanctioned refund to the tune of Rs. 1,60,428/-. Aggrieved by the same, the appellant is in appeal before this forum.

3. Today when the matter came up for hearing, Ld. Advocate Ms. S. Sridevi appeared on behalf of the appellant and Ld. AC (AR) Shri. R. Subramaniyan appeared on behalf of the Revenue.

4. During the course of hearing, Ld. Advocate submitted that the issue involved in this case is no more *res integra* as the same has already been considered and laid to rest by this very Bench of the CESTAT in the case of ***M/s. Goyal Impex & Industries Ltd. Vs. Commissioner of Customs (Chennai-IV) – 2018 (9) T.M.I. 95 – CESTAT Chennai,*** wherein this Bench after considering the decisions/Orders of various fora has allowed the appeal filed by the appellants therein.

5. *Per contra,* Ld. AR supported the findings of the lower authorities.

6. I have heard the rival contentions, perused the documents placed on record and have also gone through the judgements referred to during the course of arguments.

7. On a careful consideration of the Order of this Bench in the case of *Goyal Impex & Industries Ltd. (supra),* I find that this Bench after considering the rival contentions, has ruled as under :

> *"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.*
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> *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.*
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> *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.*
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> *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."*

8. I find that the above ruling squarely applies to the facts of the case on hand. On the contrary, the Revenue was unable to produce any Orders/judgements contrary to or distinguishing the above Order of this Bench *(supra).* Going therefore by the ratio laid down in the above case, I am of the view that the impugned Order is unsustainable for which reason I set aside the same.

9. The appeal is therefore allowed with consequential benefits, if any, as per law.

(Operative part of the order was pronounced in open Court)

(P Dinesha)
Member (Judicial)

Sdd