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

C/40164/2017- CU[SM]

[Arising out of Order-in-Appeal C.Cus II No.914/2016, dated 14.10.2016 passed by the Commissioner of Customs (Appeals-II), Chennai]

COMMISSIONER OF CUSTOMS, CHENNAI-IV APPELLANT

Versus

M/s. CMS INFOR SYSTEMS LTD. RESPONDENT

Appearance:

For the Appellant Shri B.Balamurugan, AC (AR)
For the Respondent Shri S. Muthuvenkataraman, Adv.

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **25-07-2017**

FINAL ORDER NO. 41410 / 2017

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. After hearing Shri B. Balamurugan, AC (AR) on behalf of Revenue and Shri S. Muthuvenkataraman, Advocate on behalf of Respondents, I find that the issue relates to the refund SAD paid by the respondents at the time of imports, in terms of Notification No.102/2007-Cus., which allows such refund on subsequent sale of goods on payment of VAT/Sales Tax. It is seen that the refund was originally disallowed by the original adjudicating authority on the ground of limitation by observing that the same stands filed by the assessee after a period of one year from the date of actual payment of SAD. However, Commissioner (Appeals) observed that the relevant

Excise & Service Tax Appellate Tribunal

date for counting the period of one year limitation would start from the date of subsequent sale of goods and not from the date on which SAD has been paid. Accordingly by following the Hon'ble Delhi High Court's decision in the case of *Sony India Pvt. Ltd. Vs Commissioner of Customs, New Delhi* reported as *2014 (304) E.L.T.660 (Del.)* he held in favour of the respondents.

2.1 Further, the Commissioner (Appeals) observed that inasmuch as SAD was not refunded within the period of three months from the date of filing, the respondents are entitled to interest. For the said proposition, he relied upon the Hon'ble Delhi High Court's decision in the case of *Principal Commissioner of Customs Vs M/s. Riso India Ltd.* reported as *2016 (333) E.L.T.33 (Del.)*. He also observed that Hon'ble Supreme Court's decision in the case of *Ranbaxy Laboratories Ltd. Vs Union of India* reported as *2011 (273) E.L.T. 3 (S.C.)* would also apply, inasmuch as, the provisions of section 27A of the Customs Act, 1962 are *pari materia* to section 11BB of the Central Excise Act, 1944. He accordingly directed lower authority to grant interest for the belated sanction of refund beyond the period of three months.

3. Revenue in their memo of appeal challenged the order of Commissioner (Appeals) on the following grounds:

> "Commissioner (Appeals) relied on the decision of Hon'ble High Court of Delhi in the case of *Principal Commissioner of Customs Vs M/s. Riso India Ltd.* reported as *2016 (333) E.L.T.33 (Del.)* wherein it has been held that interest under section 27A of the Customs Act, 1962 shall be payable on the delayed refund of 4% AD. It is also stated that the Hon'ble High Court of Delhi in the said order has relied upon the decision of the Hon'ble High Court of Madras in the case of *M/s.KSJ Metal Impex Pvt. Ltd.* Vs Under Secretary (Customs) reported in 2013 (294) E.L.T.211 (Mad.). The department has filed a Writ Appeal against the said order of the Single Judge before the Hon'ble High Court of Madras and Hon'ble Court was pleased to order stay against Single Judge order. As the Customs house is bound to follow

> the decision of the jurisdictional High Court i.e., Madras High Court, the order of the Commissioner (Appeals) is not implementable to the extent of interest on the delayed refund."

and has made the following prayer:

> "In view of the above submissions, it is prayed:-
>
> (i) to set aside the Order-in-Appeal;
>
> or
>
> (ii) pass orders as the Hon'ble Tribunal may deem fit under the law and render justice."

4. As is seen from the above, the only grievance of the Revenue relates to grant of interest on the belated refunds and there is no specific ground raised by the Revenue in respect of the limitation of the SAD refund. The contention of the learned authorized representative is that as the prayer made by the Revenue is to set aside the Order-in-Appeal, it should be presumed that the ground of limitation also stands raised by the Revenue and should be dealt with.

5. I find no merits in the above contention of learned departmental representative. The prayer of setting aside of Order-in-Appeal is relatable to the grounds on which the said prayer is made by Revenue. Inasmuch as, the ground raised is only about interest, it has to be held that Revenue is aggrieved only with direction to pay interest.

6. As regards payment of interest, the appellate authority has relied upon the Hon'ble Delhi High Court decision in the case of *M/s. Riso India Ltd.* (supra). Revenue's only ground is that the Hon'ble Delhi High Court, while holding in favour of the assessee has relied upon the Single Member Bench decision of the Madras High Ciourt in the case of *M/s. KSJ Metal Impex (P) Ltd. Vs Under Secretary (Customs)* reported as *2013 (294) E.L.T. 211 (Mad.)* which order was

Excise & Service Tax Appellate Tribunal

appealed against by the Revenue and stands stayed by the Divisional Bench. However, Revenue has not produced any stay order passed by Divisional Bench and has simplicitor made an averment to that effect. From the Hon'ble Delhi High Court's order in the case of *M/s. Riso India Ltd.*, it is noted that while relying upon the Single Member decision of Madras High Court in the case of *M/s. KSJ Metal Impex (P) Ltd.*, the Hon'ble High Court has taken note of the fact that the said order stand challenged by the Revenue in appeal before the Divisional Bench, which appeal is pending. However, the High Court observed that they have proceeded to examine the issue independently with reference to the provisions of the Customs Act, 1962 and the Notification No.102/2007-Cus., and CBEC Circular No.6/2008. As such, after examining the issue independently, the Hon'ble High Court (DB) came to the finding that the department was not justified in not granting interest on the belated refund of SAD. Inasmuch as, the issue stands covered by the said decision in the case of *M/s. Riso India Ltd.* (supra) and there being no contrary decision of any other High Court, I find that Revenue's appeal lacks merit. Accordingly, the impugned is upheld and the appeal filed by Revenue is rejected.

(Dictated and pronounced in open court)

26/7/17.

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
26-07-2017

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
23/8
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai