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

C/79/2009

(Arising out of Order-in-Original No. 8407/2009 dated 31.12.2008 passed by the Commissioner of Customs, Import, Chennai)

Commissioner of Customs, Chennai — Appellant

Vs.

M/s. IBM India Ltd. — Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR) for the Appellant
Ms. Poorni Viswanathan, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **17.08.2017**

Final Order No. 41734/2017

Per Bench

Brief facts of the case are that the respondents were regularly clearing computers parts namely, shell assembly / chassis assembly by claiming the benefit of Notification No.16/2000 (Sl. No. 230) dated 1.3.2000 and 21/2002 (Sl. No. 276) dated 1.3.2002. The respondents had cleared all such Bills of Entry under green channel facility. It was the case of the department that the respondents are not eligible for the

Customs, Excise & Service Tax Appellate Tribunal exemption since the items were PPCBs, CPC and power supply unit. After adjudication, the original authority dropped the proceedings initiated by the show cause notice both on ground of merits as well as on the ground of limitation. The department has filed the present appeal aggrieved by the setting aside of the demand.

3. On behalf of the department, learned AR Shri K. Veerabhadra Reddy reiterated the grounds of appeal. He submitted that the department is in appeal against the order passed by the adjudicating authority setting aside the demand on the ground of limitation. That on merits, the department concedes that the issue stands covered by judgment of the Hon'ble Supreme Court in the case of Acer India Ltd. reported in 2007 (218) E.L.T. 17 (S.C.).

4. We have heard submissions made by the department and perused the records. On behalf of the respondent Ms. Poorni Viswanathan, employee of the respondent company appeared and argued the matter. In para 26 as well as 27 of the impugned order, the Commissioner has discussed in detail for arriving at the conclusion that the show cause notice is barred by limitation. The respondents have argued that while submitting the Bill of Entry, complete details of the items imported with proper description was given in the Bill of Entry and that there was no suppression of any material fact and

therefore extended period of limitation cannot be invoked. Commissioner in para 27 has given a Table with regard to cases in which the department had raised query and also the appraising group had periodically examined the issue of extending benefit of the notification. Thus, it is clear that the department had taken note of the issue and the details furnished by respondent on several occasions and had also examined the same. The officers had opened and inspected the goods. The officers had seen the technical write-up and basing upon such details they had examined the eligibility of the notification benefit and extended the same. The Commissioner has thereupon arrived at the conclusion that no suppression of facts can be alleged upon the respondents. On going through the records, we find no ground to take a different view. The appeal filed by the department is devoid of merit and the same is dismissed.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै / Chennai