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

C/40448/2013

(Arising out of Order-in-Appeal No. 75/2012 dated 31.10.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy).

M/s. M M & Sons — Appellant

CCE, Trichy — Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the appellant

Shri R. Subramaniyan, AC (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing/Decision: 08.05.2017

FINAL ORDER No. 40676/2017

The short issue involved in the present appeal is as to whether the appellant, who is entitled to the refund of SAD paid at the time of import, in terms of Notification No. 102/2007-Cus. dated 14.09.2007, when the imported goods were subsequently

Customs, Excise & Service Tax Appellate Tribunal sold on payment of VAT, would be hit by limitation or not. The lower authorities have rejected the refund claim on the ground that the same stands filed after a period of one year from the date of payment of duty.

2. On the other hand, it is the contention that limitation i~~s~~, if any, is required to be considered from the date of actual sale of the goods ie., point at which the assessee becomes entitled to the refund of SAD. If that be so, all the refund claims filed by the appellant would be within the limitation period.

3. I find that the issue is no longer res integra and stands settled by the Hon'ble High Court in the case of *Sony India Pvt. Ltd. Vs. CC, New Delhi* reported as 2014 (304) ELT 660 (Delhi). Revenue's appeal filed against the said Delhi High Court judgment stands dismissed by the Hon'ble Supreme Court reported as Commissioner Vs. Sony India Pvt. Ltd. - 2016 (337) ELT A102 (S.C). Ld. Advocate has also shown me subsequent orders passed by the original adjudicating authority in the other importers case, where the refund stands sanctioned by following the decision in the case of Sony India Pvt. Ltd. (supra). In as much as legal issues stands decided, it is only the facts which are required to be verified and hence the impugned order is set aside and the matter is remanded to the original authority for examination of the actual position and deciding the claim in the light of law declared by the Hon'ble Delhi High Court. As the

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matter is old, I direct the adjudicating authority to complete the denovo proceedings as soon as possible and preferably within three months from the date of this order. Appeal is disposed of in the above manner.

(Order is dictated and pronounced in the open Court)

9/5/17.
(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai