CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.41837 of 2016

[arising out of Order-in-Appeal C.Cus-I No.549 to 562/2015, dated 27.08.2015, passed by the Commissioner of Customs (Appeals-I), Chennai]

Commissioner of Customs (Air) **: Appellant**
New Customs House,
Chenna – VII Commissionerate,
Meenambakkam,
Chennai – 600 027.

VERSUS

M/s. Sony India Pvt. Ltd. **: Respondent**
A-31, Mohan Co-operative Industrial Estate,
Mathura Road,
New Delhi – 110 044.

AND

Customs Appeal No.41240 of 2016

[arising out of Order-in-Appeal C.Cus-I No.131/2016, dated 29.02.2016, passed by the Commissioner of Customs (Appeals-I), Chennai]

Commissioner of Customs (Air) **: Appellant**
New Customs House,
Chenna – VII Commissionerate,
Meenambakkam,
Chennai – 600 027.

VERSUS

M/s. Sony India Pvt. Ltd. **: Respondent**
A-31, Mohan Co-operative Industrial Estate,
Mathura Road,
New Delhi – 110 044.

APPEARANCE:

Shri Arul C. Durairaj, for the Appellant/Revenue

Shri Sparsh Bhargava, for the Respondent/Advocate

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
Hon'BLE SHRI P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 41595-41596 / 2021

DATE OF HEARING: 12.04.2021

DATE OF DECISION: 12.04.2021

Per Smt. Sulekha Beevi C.S:

The respondent had imported mobile phones and cleared them on self-assessment at merit rate of CVD at 12.5% on MRP basis. Though, the importer is eligible for concessional rate of 1% CVD, under Sl.No.263A of Notification No.12/2012-CE, subject to the condition that "no credit under Cenvat Credit Rules, 2004 has been taken in respect of the 'inputs' or 'capital goods' used in the manufacture of these goods", the respondents neither claimed the exemption at the time of filing of bills of entry nor paid the duty "under protest". Thereafter, they claimed for re-assessment of bills of entry giving the benefit of notification in respect of CVD. The same was rejected by the original authority observing that since they have voluntarily paid the CVD they cannot claim benefit of notification later and t request for re-assessment. Against such order, the respondents filed appeal before Commissioner (Appeals), who, vide order impugned herein directed the original authority to re-assess the bills of entry with concessional rate of duty. Aggrieved by such order, the department is now before the Tribunal.

2. The learned Authorised Representative Shri Arul C. Durairaj appeared for the department. He reiterated the grounds of appeal.

3. On behalf of the respondents, the learned counsel Shri Sparsh Bhargava appeared and argued the matter. He submitted that the very same issue has been decided by the Tribunal in the respondent's own case vide Final Order No.40280/2019, dated 17.01.2019. The Tribunal in the said judgment followed the decision of the Hon'ble Supreme Court in the case of *M/s. SRF Ltd., Vs Commissioner of Customs, Chennai* reported in *2015 (318) E.L.T.603.* The department appeals were thus dismissed by the Tribunal and the said final order has not been challenged by the department and has attained finality.

4. Heard both sides.

5. The issue is whether the appellants can request for re-assessment to claim benefit of notification which they have not claimed earlier. The remedy for an importer in such circumstances is to request for re-assessment and we agree with the order passed by Commissioner (Appeals). We also find that the issue under consideration in these appeals have been decided in the respondent's own case vide Final Order No.40280/2019, dated 17.01.2019. Following the said decision, we are of the opinion that the

appeals filed by the department are without merits. The appeals are dismissed.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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