CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. IV

CUSTOM APPEAL No. 52320 of 2019

(Arising out of Order–in-Appeal No. CC-A-CUS-DII-ICD-TKD-EXP-534-2019-20 dated 17.06.2019 passed by COMMISSIONER OF CENTRAL EXCISE-Jaipur)

Commissioner of Customs, Central Excise, New Delhi **....Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi

Versus

M/s. K C Impex **...Appellant**
82/83, Guru Ram Dass Nagar,
Laxmi Nagar,
Delhi - 110092

APPEARANCE:
Mr. Yashvir Singh, Authorised Representative for the Appellant
None for the Respondent

CORAM : HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **7.11.2019**

FINAL ORDER No.: 51496/2019

RACHNA GUPTA

1. None is present for the respondent. Present is an appeal filed by the Department in furtherance of Review order bearing no. C. No. VIII/ICD/TKD/Rev/Imp/OIA/251/2019 dated September 2019.

2. Learned DR appearing for the Department, appellant has submitted that the impugned issue is no more *res integra* as stands decided already in favour of the Revenue. In view of the said submission and the fact that the notice upon the respondent stands served but he has opted to not to appear to contest the

impugned appeal I hereby proceed to dispose the appeal on merits as follows-

The relevant facts for the impugned appeal are that the appellant had filed refund claim of Rs. 1,55,286/- on 4.9.2015 under special refund mechanism as is provided under Exemption Notification no. 102/2007 dated 14.9.2007. The said claim was with respect to Special Additional Duty of Customs (SAD) leviable under sub section 5 of section 3 of Customs Tariff Act 1975, as was paid with respect to bills of entry no. 5337695 dated 29.4.2014 and 5259961 dated 22.4.2014. The said refund claim was rejected by the original adjudicating authority vide order bearing no. 1218/2015 dated 13.11.2015. However, Commissioner (A) vide order in appeal no. 534/2019 dated 18.9.2019 had allowed the said refund. Department being aggrieved that the aforementioned review order was passed consequent whereto the impugned appeal before this Tribunal.

4. I have heard learned DR for the Department. It is submitted that the refund on SAD in lieu of exemption provided by virtue of notification no. 102/2007 has provided a time limit of one year by a subsequent amendment in the notification vide notification no. 93/2008-CUS. It is submitted that apparently the refund claim in the present case is beyond one year from the date of payment of SAD. Hence was rightly rejected by the original adjudicating authority. Learned Counsel has placed reliance on the decision of Bombay High Court in the case of **CC Vs. Purab Textile Pvt. Ltd. reported as 2019 (365) ELT 285**

(Bom.) and in the case of CC New Delhi vs. J G Impex Pvt. Ltd. vide Final order no. 53157/2018.

5. In view of the said submissions and perusing of entire record as well as the decision cited it is held as follows: The SAD is leviable under section 3 (5) of Customs Tariff Act 1975. However, the Department in the year 2007 vide notification no. 102/2007 extended an exemption to said SAD. Vide this notification the goods falling within first schedule to Customs Tariff Act 1975 stands exempted from whole of the additional duty of the customs leviable thereon when imported in India for subsequent sale. Two conditions are prescribed in the notification itself for availing the said exemption. Though this notification no. 102/2007 is silent about any time limit for seeking the refund but in the subsequent amendment thereto vide notification no. 93/2008 dated 1.8.2008 the time period for filling the application for refund of said SAD is specified as one year from the date of payment of SAD. This amendment makes it abundantly clear that the imports, post this amendment, have to comply with the condition as that of limitation, as well, while seeking the refund of the duty (SAD) as was paid at the time of import.

6. I observe that Commissioner (A) while rejecting the decision of original adjudicating authority for the refund being time barred has relied upon the decision of Hon'ble High Court of Delhi in the case of **M/s. Sony India Pvt. Ltd. Vs. Commissioner reported as 2014 (304) ELT 660 (Del),** but I am of the opinion that in the said case the import into India was

prior the notification no. 93/2008 dated 1.8.2008. Subsequent to the said notification this issue has been discussed by the Hon'ble High Court of Mumbai in the case of **Purab Textiles (supra)** wherein it was held that decision of Delhi High Court in **Sony India (Supra)** case is not applicable for the reason that the import of goods in that case was prior the amendment of notification no. 102/2007 by notification no. 93/2008 which was not fact of the case before the High Court of Bombay, nor the same is the fact for the case before this Tribunal. The decision of Bombay High Court has further laid emphasis on its prior decision in the case **CMS Info System ltd. Vs. UOI reported as 2017 (349) ELT 236 (Bom)** and the decision in the case of **Commissioner Vs. DSM Sinochem Pharmaceuticals (I) Pvt. Ltd. 2018 (359) ELT 509 (Bom.)** by holding that subsequent to amendment to notification no. 102/2007 by notification no. 93/2008, a refund claim for special additional duty cannot be granted if not made within one year of the payment.

7. Similar opinion has already been taken by this Tribunal in the final order no. 53157/2018 as has been brought to the notice by the Department. In view of the entire above discussions it stands clear that the decision of **Sony India Pvt. Ltd.** (Supra) case is not applicable to the cases of import made after the impugned notification and that to such imports the period of limitation of one year from the date of payment of duty is applicable. Issue being no more *res integra* stands decided in favour of department.

8. Appeal stands allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Bhanu