CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Customs Appeal No. 51003 / 2020

[Arising out of Order-in-Appeal No. 01/2020-21 dated 11.05.2020 passed by the Commissioner of Customs (Appeals), New Delhi]

PREMIER TIMBER AND TRADING PVT LTD. **APPELLANT**

Vs.

PRINCIPAL COMMISSIONER, CUSTOMS (IMPORT) NEW DELHI (ICD TKD) **RESPONDENT**

APPEARANCE:

Shri Devender Singh Nagi, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: July 23, 2021
DATE OF DECISION: 18.08.2021

FINAL ORDER No. 51769 /2021

PER RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 01/2020-21 dated 11.05.2020. The facts relevant for the adjudication, in brief are as follows:

That the appellant is engaged in the import and trading of goods of wooden flooring. He imported the product wooden flooring vide Bill of Entry No. 7291586 dated 01.11.2016 and also paid applicable Special Additional Duty of Customs (referred to as SAD hereinafter). On 14.3.2018, the appellant filed the application claiming refund for Rs. 3,17,173/- which was paid as SAD, under Notification No. 102/2007-Cus dated 14.9.2007. During the scrutiny of said refund application, it was found to be filed beyond the period of one year from the relevant date. Accordingly, the claim was rejected vide Order-in-original No. 21/18-19 dated 11.02.2019. The appeal thereof has been rejected vide Order under challenge before this Tribunal.

2. I have heard Shri Devender Singh Nagi, learned Counsel for the Appellant and Shri Ravi Kapoor, learned Authorised Representative for the Department.

3. Learned Counsel for the appellant has submitted that the issue is no more res integra as has already been settled by Hon'ble High Court of Delhi in the case of **Sony India Ltd. vs. Commissioner of Customs, New Delhi** reported in **[2014 (304) ELT 660 (Del)**]. It is further submitted that the Notification No. 102/2007 had no mention of time limitation. It was only after the Notification was amended vide another notification No. 93/2008 dated 01.08.2008 that one year period got insisted upon for the refund application. It is submitted that imposition of period of limitation for the first time without statutory amendment through a notification may not prevail. Reliance has also been placed on the decision in the case of **Pee Gee International vs. Commissioner of Customs ICD, TKD, New Delhi**, reported in **[2016 (343) ELT 72]** passed by the Hon'ble High Court of Delhi. Hon'ble High Court has relied upon the earlier decision of **Sony India Ltd.** case and had reiterated that limitation of period of one year is not applicable in the case of refund of SAD. With these submissions learned Counsel has prayed that order under challenge be set aside and appeal to be allowed.

4. While rebutting these arguments, it is mentioned by the learned Departmental Representative that the decision of **Sony India Ltd.** (supra) and **Pee Gee International** (Supra) are not

applicable to the facts and circumstances of the present case as imported goods were sold substantially in the year 2016 itself. Impressing upon no illegality in the order appeal is prayed to be dismissed.

5. After hearing both the sides and perusing the record, I am of the opinion as follows:

In terms of Notification No. 102/2017, no doubt utmost requirement is that the refund of SAD will be available only after the imported goods are being sold by the importer with the necessary proofs of the said sale along with certificate of the statutory auditor. It is with this mandate that the Hon'ble High Court of Delhi in **Sony India Ltd.** and **Pee Gee International** (supra) had held as follows:

> "Right to claim refund only accrues to importer once sale, entirely market driven event, is complete –Given vagaries of market, importer has limited control over when sale is complete – To uphold limitation period starting from date of payment of duty, as prescribed in amending Notification No. 93/2008-Cus., would amount to allowing commencement of limitation period for refund claims before right of refund has even accrued."

6. Thus it stands clear that relevant time for seeking refund of SAD is the date when the imported goods have been sold. It is an admitted fact that substantial quantity of imported goods was sold by the appellant in the year 2016 itself under the invoice No. R1/240 dated 22.12.2016. Output VAT on such sale was also charged and was paid vide State Government treasury. The Notification No. 102/07 of 14.9.2007 (amended) was very much in existence. Ignorance, thereof is not right to be pleaded by the appellant. In the entire appeal I do not find any explanation as to why the refund claim was not filed within the reasonable time post December, 2016. There is no sufficient reason quoted for waiting

till March, 2018. In the absence of such explanation I hold that limitation mentioned in the amended Notification 102/2007 is rightly invokable for the impugned refund claim. Present case is absolutely different from **Sony India Ltd.** (supra) and **Pee Gee International** (supra) for the sole reason that in those cases the imported goods were not sold. As such, the right to claim refund of SAD had not arisen to the assessee in those cases. However, in the present case since the sale was concluded in December, 2016 itself, the right to claim the refund of SAD got accrue in 2016 itself. Non filing of application within the period prescribed under the Notification has rightly been invoked by the adjudicating authority.

7. In view of the entire discussion, I do not find any infirmity or illegality in the order under challenge. Same is hereby upheld . Appeal stands dismissed.

(Pronounced in the open Court on 18.08.2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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