CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH COURT No. 3

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CUSTOMS APPEAL NO. 52191 OF 2018

[Arising out of the Order-in-Appeal No. CC(A) CUS/ D-II-/ ICD/TKD/ IMP/ 808/18, dated 20/04/2018, passed by COMMISSIONER OF CGST & CENTRAL EXCISE - DELHI - I]

COMMISSIONER OF CUSTOMS-(IMPORT) **Appellant**
Inland Container Depot,
Tughlakabad, New Delhi

Vs.

DAYA ENTERPRISES **Respondent**
214/3 Padam Nagar
Krishan Ganj,
New Delhi-110007

Appearance:
Shri Rakesh Kumar, Authorised Representative for the appellant
Shri Rithaj And Shri Prashant Dixit, Advocates for the respondent

CORAM:
HON'BLE MR P. VENKATA SUBBA RAO,MEMBER(TECHNICAL)
HON'BLE MR AJAY SHARMA,MEMBER(JUDICIAL)

Date of Hearing/Decision:25/04/2022

FINAL ORDER No. 50379 /2022

P. VENKATA SUBBA RAO:

1. This appeal is filed by the Revenue assailing the order-in-original dated 20.04.2018 passed by the Commissioner of Customs (Appeals) New Customs House, New Delhi, whereby he allowed the appeal of the assessee (Respondent herein) and set aside the order-in-original passed by the Assistant Commissioner.

2. We have heard learned Departmental Representative for appellant and learned counsel for the respondent.

3. The facts of the case in brief are that the respondent filed a refund claim of Rs. 47,451/- seeking refund of the special additional duty paid by it under Notification No. 102/2007 CBIC dated 14.09.2007. The Assistant Commissioner rejected the refund on the ground that the application for refund was time barred as it was filed after one year which was the time limit specified in the Notification No. 102/2007-Cus dated 14.09.2007 as amended by Notification No. 93/2008 dated 01.08.2008. On appeal, Commissioner (Appeals) observed that the limitation prescribed by amending notification No. 93/2008-CUS for filing the refund claim was struck down by the Jurisdictional Delhi High Court in the case of **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi[1].** He further observed that the special leave petition filed by the Department against the order was dismissed by the Supreme Court on the ground of delay[2]. The Commissioner (Appeals), therefore, set aside the order-in-original passed by the Assistant Commissioner and allowed refund of special addition duty paid by the appellant.

4. Revenue has filed this appeal on the following grounds:

(i) The Commissioner (Appeals) relied on the judgment of Delhi High Court in the case of

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1 2014 (304) ELT 660 (Del.)
2 2016 (337) ELT A 102 (SC)

Sony India Pvt Ltd and that case pertains to the question whether the limitation of time applies to refund claims filed after Notification No. 93/2008-CUS dated 01.08.2008 was issued but where the imports were made prior to that date. The present case is different inasmuch as the imports were made after the issue of Notification No. 93/2008-CUS and, therefore, the ratio of **Sony India** does not apply.

(ii) In the case of **CMS Info Systems Limited vs. Union of India**[3]**.** Hon'ble Bombay High Court observed that the only one condition of the Notification cannot be declared ultra vires because the party desires to brush it aside and if the exemption Notification had not been issued no exemption could have been claimed at all. Therefore, the limitation under Notification No. 93/2008-CUS applies.

5. Learned counsel for the respondent supports the impugned order and asserts that there is no infirmity in it.

6. We have considered the submissions on both sides and we find that the impugned order was passed relying on the judgment of the jurisdictional Delhi High Court. Revenue's submission is that the case of **Sony India** pertained to

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3 2017 (349) ELT 236 (Bom)

situations where goods were imported prior to issue of Notification No. 93/2008-CUS but were sold thereafter. According to the Revenue, in that particular context, Delhi High Court has held that the limitation of time for filing refund claim imposed by the Notification No 93/2008-CUS does not apply. We reproduce below paragraphs 1 and 18 of the judgment of **Sony India.**

> 1. This is an appeal under Section 130 of the Customs Act, 1962, against the order dated 19.06.2013 [2013 (297) ELT 297 (Tribunal)] of the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") dismissing the appellant company's appeal challenging the denial of the refund claim under Notification No. 102/2007-CUS, read with Section 27 of the Customs Act. The question of law that arises for determination in this appeal is
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> > **Can period of limitation for preferring refund claims, specifically in the amending Notification No. 93/2008-CUS., be made applicable with retrospective effect, in absence of a limitation period in the original Notification No. 102/2007-CUS., in respect of goods imported prior to the issue of the amending notification.**
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> **18. For those reasons, this court holds that the amending notification must be read down to the extent that it imposes a limitation period. The question of law framed is, therefore, answered in favour of the assessee and against the Revenue. The appeal, accordingly, succeeds and is allowed without any order as to costs.**
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> **(emphasis supplied)**

7. A plain reading of the above shows that although the question framed by the Delhi High Court in **Sony India** was in the context of imports made prior to the issue of Notification, No. 93/2008-CUS and sold after the issue of this Notification, the operative part of the judgment categorically holds that the

amending Notification No. 93/2008-Cus must be read down to the extent that it is imposes a limitation period. Therefore, the limitation in the Notification does not apply. Commissioner (Appeals) has correctly followed the judgment of Jurisdictional High Court. It is true that the Bombay High Court has, in the case of **CMS Info Systems,** held a contrary view but as the appellant and respondent as well as the Commissioner(Appeals) and this Bench are located in the jurisdiction of Delhi High Court, the ratio of the **Sony India** clearly applies to the case. Therefore, the Commissioner (Appeals) has committed no error in relying on **Sony India** and allowing refund.

8. In view of above, Revenue's appeal is dismissed.

(Order dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER(TECHNICAL)

(AJAY SHARMA)
MEMBER(JUDICIAL)

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