

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No.52191 of 2022 (SM)

(Arising out of Order-in-Appeal No.CC(A)/CUSTOMS/D-II/IMP/ICD/TKD/2033/2021-2022 dated 17.03.2022 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

Keshar Deo Ramesh Kumar,

1078, Ist Floor, Gandhi Gali,
Fatehpuri, Delhi-110 006.

Appellant

VERSUS

Commissioner of Customs (Import),

ICD, Tughlakabad,
New Delhi-110 020.

Respondent

APPEARANCE:

Shri Jitin Singhal, Advocate for the appellant.

Shri Vishwajeet Saharan, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50284/2023

DATE OF HEARING:20.01.2023

DATE OF DECISION:06.03.2023

ANIL CHOUDHARY:

The issue involved in this appeal relates to refund of Special Additional Duty (SAD) under Notification No.102 of 2007-Customs dated 14.09.2007, as amended by Notification No.93/2000-Customs.

2. The brief facts are that the appellant imported goods for trade and had claimed refund of Special Additional Duty (SAD), as allowable under Notification No.102/2007-Customs on 19.02.2019. The said refund claims were filed on 23.01.2019 and the same were adjudicated vide order-in-original dated 28.02.2019 as follows:-

Table

Bill of Entry No.	Dated	TR-6 Dated	SAD Paid	Amount of Refund claimed	Remarks
9997851	31.04.13	02.05.13	127139	127248	Time barred
2801530	24.07.13	27.07.13	132256	132396	Time barred
2586154	02.07.13	04.07.13	131258	131328	Time barred
2012793	01.05.13	06.05.13	122236	122349	Time barred
			512889	513321	

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal dated 17.03.2022 was pleased to reject the appeal upholding the rejection of refund claims on the ground of limitation, following the ruling of Bombay High Court in the case of **M/s. CMS Info Systems Ltd. Vs. Union of India – 2017 (349) ELT 236 (Bombay)** holding that the refund claim had to be filed within a period of one year from the date of payment of SAD, in view of the amendment vide Notification no.93/2008-Customs. Being aggrieved, the appellant is before this Tribunal.

4. Ld. Counsel for the appellant, Shri Jitin Singhal, *inter alia*, urges that the issue is no longer res integra. The Hon'ble Delhi High (jurisdictional High Court) have held in the case of **Sony India Pvt. Ltd. Vs. Commissioner of Customs, New Delhi – 2014 (304) ELT 660 (Delhi)** under similar facts and circumstances, refund claim of SAD is not time barred as no such limitation is prescribed under the original notification no.102/2007-Customs. It was also held that period of limitation for the first time cannot be introduced through subordinate legislation or notification. It was also held that limitation cannot start to run prior to crystallisation of the right to claim

refund. The said ruling has been repeatedly followed in a catena of judgements including the case of **CC (Import) Vs. M/s. Gulati Sales Corporation – 2018 (360) ELT 277 (Delhi)** and also in the recent decision of Delhi High Court in **Premier Timber and Trading Pvt. Ltd. Vs. Principal Commissioner of Customs (Imports) - 2022 7 TMI 885 (Delhi)**, wherein also, it was specifically held following the ruling of **Sony India Pvt. Ltd. (supra)** that in absence of the specific provision of Section 27, being made applicable in the said notification, time limit prescribed in Section 27 would not automatically be applicable to refund under the notification. Accordingly, he prays for allowing their appeal with consequential benefits.

5. Ld. Authorised Representative for the respondent relies on the impugned order.

6. Having considered the rival contentions, I find that the issue herein is squarely covered by the rulings of the Hon'ble Delhi High Courts cited above, in favour of appellant. Further, the ruling of the Hon'ble Bombay High Court in **M/s. CMS Info Systems Ltd. (supra)** has been distinguished by this Tribunal in **S.R. Traders - 2020-12-TMI-503**, which judgement has been upheld by the Hon'ble Delhi High Court reported at **2022-4-TMI-1167**.

7. In this view of the matter, I allow this appeal and set aside the impugned order. The Adjudicating Authority is directed to grant refund along with interest @ 12% p.a., starting from the end of 3 months from the date of filing of refund application. The appeal is allowed with consequential benefits. Such refund should be granted within a period of 60 days from the date of receipt of copy of this order.

[Order pronounced on 06.03.2023]

(Anil Choudhary)
Member (Judicial)