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

PRINCIPAL BENCH,
COURT NO. II

## CUSTOMS APPEAL NO. 53290 of 2018 (SM)

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/IMP/TKD/1990/2018 dated 13/08/2018 passed by The Commissioner of Customs (Appeals), New Delhi.]

**Commissioner of Customs (Import),** **Appellant**
Inland Container Depot, Tughlakabad,
New Delhi.

VERSUS

**M/s Om Traders** **Respondent**
Shop No. 1998-99, Shivaji Road, Azad Market,
Delhi – 110 006.

**<u>Appearance</u>**

Ms. Tamanna Alam, Authorized Representative for the Department.
None – for the respondent.

CORAM : **HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)**

## FINAL ORDER NO. 50573/2023

DATE OF HEARING/DECISION : 17/03/2023.

**<u>ANIL CHOUDHARY :-</u>**

The Revenue is in appeal against order-in-appeal by which part of the refund claim of SAD (Special Additional Duty) was allowed by the Commissioner (Appeals), which had been rejected by the court below on the ground of limitation.

2. The respondent is a regular importer importing goods for trade. Respondent applied for refund of SAD which they had deposited at the time of import, upon filing of bill of entry in lieu of sales tax by way of equivalization levy. The Government has provided for refund of the amount of SAD when the goods are resold in India, VAT/Sales Tax is paid by the importer, subject to conditions as prescribed in Notification No. 102/2007-CUS dated 14 September 2007. Pursuant to resale of the goods the appellant applied for refund on 16.09.2014 as follows :-

| Sl. No. | Bill of Entry No. & date | Amount involved (in Rs.) | Date of payment of duty |
|---|---|---|---|
| 1. | 3905347 dt. 25.11.2013 | 1,55,824/- | 02.12.2013 |
| 2. | 3185706 dt. 04.09.2013 | 1,60,805/- | 09.09.2013 |
| 3. | 4768062 dt. 28.02.2014 | 82,926/- | 03.03.2014 |
| 4. | 4594640 dt. 10.02.2014 | 80,640/- | 13.02.2014 |
| | Total | 4,80,195/- | |

The Adjudicating Authority verified the refund claim and allowed the refund claim in part, disallowing the refund claim with respect to bill of entry No. 3185706 dated 04.09.2013 for which SAD was deposited on 09.09.2013, observing that the refund claim has been filed beyond the period of 12 months and is thus time barred.

3. In the original Notification No. 102/2007-CUS, no time limit was prescribed for claiming refund of SAD. Subsequently limitation was introduced by amending Notification No. 102/2007 vide notification No. 93/2008-CUS dated 01.08.2008, which provided that the refund claim for SAD shall be made within a period of one year from the date of deposit of SAD.

4. Being aggrieved, the appellant appealed before the Commissioner (Appeals) against rejection of part of refund for Rs. 1,60,805/-, relying upon the ruling of Hon'ble Delhi High Court in the case of **Sony India Pvt. Ltd. versus Commissioner of Customs, New Delhi – 2014 (304) E.L.T. 660 (Delhi)**, wherein the Hon'ble Delhi High Court held that limitation cannot start to run prior to the date of crystallization of the refund claim. The importer becomes entitled to claim refund only upon resale of the imported goods and payment of VAT/ Sales Tax thereon. Delhi High Court also held that as no limitation was prescribed in Original Notification No. 102/2007-CUS, limitation for the first time cannot be introduced through subordinate legislation (Circular/Notification) and, hence, held that the importer can claim refund even after the period of one year from the date of deposit of duty. The learned Commissioner (Appeals) allowed the appeal following the ruling of Hon'ble Delhi High Court in the case of **Sony India Pvt. Ltd.** and also took notice that the SLP by Revenue in the matter of **Sony India Pvt. Ltd.** has been dismissed by Hon'ble Supreme Court, reported at **337 E.L.T. A102 (S.C.)**. Further the Hon'ble Delhi High Court and some other High Courts have also followed the ruling in **Sony India** (supra).

5. Being aggrieved Revenue is in appeal before this Tribunal on the ground that the impugned order-in-appeal is against the ruling of Hon'ble Bombay High Court in the case of **M/s CMS Info systems Ltd. versus Union of India – 2017 (349)**

**E.L.T. 236 (Bombay)**. In the ruling of Calcutta Bench of this Tribunal in **M.S. Metals versus Commissioner of Customs (Preventive)**, it was observed that though Supreme Court have dismissed Revenue's appeal in **Sony India** (supra), but have kept the question of law open. It is also held that under similar facts and circumstances against dismissal of appeal of Revenue by High Court in **Wilhem Textile India Pvt. Ltd.**, Revenue filed SLP before Hon'ble Supreme Court, which have been admitted.

6. Learned Authorized Representative for Revenue reiterates the grounds of appeal.

7. Nobody appears for the respondent. As the matter lies in narrow-campus, appeal is heard with the assistance of Authorized Representative for the Revenue.

8. Having considered the grounds of appeal and the facts and circumstances from the records, I observe that the observation of Hon'ble Bombay High Court in the case of **M/s CMS Info Systems Ltd.** (supra) have been differed and differentiated by this Tribunal in **SR Traders (SMB) 2020 – 12 – TMI - 503** which ruling have been upheld by Hon'ble Delhi High Court **– 2022 – 4 – TMI - 1167**. The Hon'ble Bombay High Court in the case of **M/s CMS Info Systems Ltd.** did not consider the issue whether limitation can start to run prior to right to claim crystallizes. I further find that the ruling of Delhi High court in **Sony India** (supra) have been followed by this Tribunal and also by the Delhi High Court in several similar matters, and repeatedly

held that limitation cannot be introduced for the first time by way of subordinate legislation. Further, it is matter of common sense that limitation cannot start to run prior to right to claim arises. Accordingly, I find no error in the impugned order-in-appeal. Thus Revenue's appeal is dismissed.

(Order dictated and pronounced in open court.)

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

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