CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 25.01.2017

Application No. C/51810/2016-CU(DB)
Appeal No. C/50518-50552, 50554-51144, 52009-52011/2016-CU[DB]

[Arising out of the Order-in-Appeal No. OIA-DLI-CUSTM-000-APP-1297-1925-15-16, dated 30/09/2015 passed by the Commissioner of Central Excise, New Delhi (Import & General)]

Appeal No. C/51371-51416, 51420-51589/2016-CU[DB]

[Arising out of the Order-in-Appeal No. OIA-DLI-CUSTM-000-APP-2200-2415-15-16, dated 20/11/2015 passed by the Commissioner of Central Excise, New Delhi (Import & General)]

M/s. Lava International Ltd. … Appellant

Vs.

C.C.E. New Delhi (Import & General) ... Respondent

Appearance:

Present Shri S. Vasudevan, Advocate for the appellant
Present Shri Amresh Jain, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER NO. 50941-51785/2017

Per Justice (Dr.) Satish Chandra:

All the appeals have been filed against the impugned order in appeal no. 1297-1925/2015-16 dated 30.09.2015; and 2200-2415/2015-16 dated 20.11.2015.

2. The brief facts of the case are that the appellant has imported mobile phones and mobile parts and classified under Tariff Item no. 85171290 of the Customs Tariff Act, 1975. For goods falling under 8571, customs duty is payable at the rate of 12.5% as provided under Schedule – I of the Central Excise Tariff Act, 1985. The appellant

claimed the benefit of Notification no. 12/12-CE which provided a concessional rate of Excise Duty at the rate of 1% on mobile phones classified under CTI 8517 subject to the condition No. 16 of Notification which laid down that the manufacturer should not have taken credit under the Cenvat Credit Rules 2004, in respect of the inputs and capital goods. The Department is of the view that appellant was not entitled to the benefit of the benefit of the above notification and hence CVD @ 12.5% was payable by them. Being aggrieved the appellants have filed the present appeal.

3. With this background, we have heard Shri S. Vasudevan, Ld. Counsel for the appellant and Shri Shri Amresh Jain, Ld. DR for the respondent.

4. Shri S. Vasudevan, Ld. Counsel for the appellant relied on the decisions laid down by the Hon'ble High Court of Delhi in their own case vide ***Writ petition no. (C)10513/2016 dated 30.11.2016*** where the claim of the appellant was allowed and refund was also ordered but fact remains that said order was passed for the writ petition and not in appeal.

5. On the other hand, Shri Shri Amresh Jain, Ld. DR supported the impugned order.

6. After hearing both the parties, it may be mentioned that as per notification no. 36/2015-CE dated 17.07.2015, the Notification No.12/2012-CE has been amended suitably to extend the benefit to the imported goods. From the records, it appears that an identical issue has come up before this Tribunal in the case of ***M/s. Oppo Mobiles India Pvt. Ltd. Vs. CC Delhi-I vide Customs Appeal No. 52548&52557/2016 dated 05.01.2017***, where the matter was remanded to the Adjudicating Authority by observing that:

"5. After hearing both the parties and on perusal of the records, it appears that when the order in appeal was passed by the Commissioner (Appeals), the above mentioned judgments/ orders were not available. In other words, the orders passed by Hon'ble Supreme Court as well as passed by Tribunal are subsequent to the impugned order. When it is so then we deem it fit to remand the matter to the original adjudicating authority to examine the claim of the assessee in the light of judgments (supra), for denovo assessment, but within a period of four months. The adjudicating authority is also directed to provide a reasonable opportunity of hearing to the appellant and appellants are at liberty to place additional evidence, if need be, as per law.

6. By following our earlier decision (supra) in the same terms, we remand the present appeals to the adjudicating authority to examine the claim of the assessee denovo within a period of four months but by providing an opportunity of hearing to the appellant. Additional evidence may be admitted.

7. In the result appeals are allowed by way of remand."

7. In the result, appeals are allowed by way of remand and Miscellaneous Application also disposed of.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu