IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 50656 of 2015

[Arising out of Order-In-Appeal No. CC(A) 305 /2012 dated 21.12.2012 passed by Commissioner of Customs (Appeals), New Delhi]

M/s. Snap On Tools Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri A S Hasija, Consultant for the Appellants
Shri K Poddar, Advocate for the Respondent

CORAM:

Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 28.03.2017

FINAL ORDER NO . 52719 /2017

Per Archana Wadhwa:

A very short issue is involved in the present appeal which relates to refund of SAD in terms of notification No. 102/2007. The said refund application has been rejected by the lower authorities on the ground of limitation observing that same have been filed beyond the period of limitation from the date of import invoice or from the date of payment of SAD.

2. On the other hand, the appellants contention is that assessment were provisional and assessment was finalised on different dates and refund claim has been filed within the limitation period from the date of finalisation of provisional assessment. For the above proposition, learned advocate relies upon decision of the Hon'ble Delhi High Court in the case of ***Pioneer India Electronics (P) Ltd. vs. Union of India [2014 (301) ELT 59 (Del)]*** wherein it has been laid down that date of finalisation of provisional assessment would be relevant for the purpose of limitation. Learned advocate has also relied upon another decision of the Hon'ble Delhi High Court in the case of ***Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi [2014 (304) ELT 660 (Del)]*** as also ***Fenwal India Pvt. Ld. Vs. CC (Import & General), New Delhi [2015 (321) ELT 333 (Tri-Del)].***

3. Learned DR appearing for the Revenue does not dispute the legal position laid down by the Hon'ble Delhi High Court in the case of ***Pioneer India Electronics (P) Ltd.*** that the date of finalisation of assessment is relevant date for the purpose of considering the limitation. However, he submits that the said fact requires verification at the level of adjudicating authority for which purpose matter may be remanded back for examining as to whether during the relevant period

limitation for filing refund claim was six months or one year and as to whether the same has been filed within the period provided under the law.

4. In view of the above, we set aside the impugned order and remand the matter back to original adjudicating authority for fresh consideration in the light of law declared by the Hon'ble Delhi High Court in the case of ***Pioneer India Electronics (P) Ltd. (supra)*** as also ***Sony India Pvt. Ltd. (supra)*** decisions. The appellants are at liberty to raise all the issue before the original adjudicating authority.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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