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

Appeal No. C/52774/2016-CU(DB)

[Arising out of Order-in-Appeal No. CCA/Cus/D-I/Import/490/2016 dated 03.06.2016, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Reliance Webstore Ltd. **....Applicants**

Vs.

C.C.E. New Delhi **....Respondent**

Appearance:
Shri Udit Jain, Advocate for the Appellant
Shri S. Nunthuk, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 07.04.2017
Date of Pronouncement: 09.05.2017

FINAL ORDER NO. 53182/2017-CU(DB)

Per V. Padmanabhan:

The appeal is against the Order-in-Appeal No. 490/2016 dated 03.06.2016 passed by Commissioner (A) New Delhi.

2. The appellant filed a Bill of Entry No. 874605 dated 27.03.2015 for clearance of the goods declared as "M-1 Haier Wireless Data Modem-Wi-Fi and battery colo" imported from Hong Kong, China and classified it under CTH 85176230. The appellant claimed the benefit of abatement in MRP value by 35% and filed the bill of entry for home consumption with CVD @ 6% under notification no. 02/2011-CE dated 01.03.2011 (Serial No. 61). The assessing authority assessed the customs duty on the impugned bill

of entry @ 0 % BCD + 12.5% CVD + 0% Cess on CVD + 0% Cess on Customs Duty +0 % SAD, without extending the benefit of exemption of concessional CVD available under Notification No. 02/2011-CE dated 01.03.2011 as amended, to the appellant, resulting in excess payment of customs duty / CVD of Rs.8,44,789/-. Since the goods were required to cater the urgent need of the market and to avoid heavy demurrage on the consignment, the appellant ex-bonded the consignment by paying assessed customs duty.

3. Subsequently they challenged the assessment of the Bill of Entry by filing appeal before Commissioner (A). The Ld. Commissioner (A) upheld the assessment. Aggrieved by the impugned order, the present appeal has been filed on the following grounds:

i) That assessing authority has arbitrarily assessed the consignment at a higher rate of customs duty (CVD) i.e. 12.5% without extending the benefit of concessional rate of 6% CVD under notification no. 02/2011-CE dated 01.03.2011, as amended, resulting in excess payment of CVD thereon.

ii) That the subsequent consignment of Wireless Data Modem imported by the appellant at Mumbai and was assessed by the Customs, Air Cargo, Mumbai by allowing the benefit of concessional rate of CVD @ 6% under notification no. 02/2011-CE dated 01.03.2011, as amended vide Bill of Entry for home consumption no. 8853127 dated 08.04.2015.

4. With the above background we have heard Shri Udit Jain, Advocate for the Appellant and Shri S. Nunthuk, DR for the Respondent and perused the records.

5. In the impugned order, the benefit of concessional CVD under notification no. 2/2011-CE dated 01.03.2011 (sl. No. 61) has been denied for the reason that the imported goods whose description has been given in the Bill of Entry, do not satisfy, the description of the goods as specified in the impugned notification. The main ground on which the benefit has been sought in the present appeal is that the subsequent consignment of wireless data modem imported by the appellant has been allowed the benefit of concessional rate of CVD by the Mumbai Customs.

6. Sl. No. 61 of the notification grants concessional rate of CVD for "Wireless data modem cards with PCMCIA or USB or PCI express ports".

7. On perusal of the records, we find that the goods imported are described as "M-1 Haier Wireless Data Modem-Wi-Fi and battery colo". During the course of arguments, the Ld. Counsel has also submitted a copy of leaflet said to cover the imported goods. The benefit is available only to wireless date modem cards which specifically have the additional facility of PCMCIA or USB or PCI express ports. From the leaflet submitted by the Ld. Counsel, we note that the imported goods are not having such facilities. It is also to be noticed that the concessional rate of duty is available only for modem cards, i.e. parts which can be used for making

modems. The imported goods are clearly in the form of complete duty modems which will not be eligible for the benefit of the notification.

8. In view of the above discussion we find no infirmity in the impugned order and hence the same is upheld and the appeal is rejected.

[Order Pronounced in the Open Court on 09.05.2017]

(V. Padmanabhan) **Member (Technical)**	**(Archana Wadhwa)** **Member (Judicial)**

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