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

Customs Appeal No. 50508 /2016

[Arising out of Order-in-Appeal No. No.1232/2015 dated 18.12.15 passed by the Commissioner of Customs, New Delhi.]

Commissioner of Customs. (Export), New Delhi — **Appellant**

Vs.

M/s. River Tradex (I) Pvt. Ltd. — **Respondent**

Appearance:

Shri Govind Dixit, AR for the Appellants
Ms Sonia Bharaj, Advocate for the Respondent

CORAM:

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

Date of Hearing/ Decision: 02.08.2017

FINAL ORDER NO. 55729 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against Order-in-Appeal No.1232/2015 dated 18.12.15.

2. None appeared on behalf of the respondent-assessee even in the revised list, nor is there any adjournment application available on record.

3. Heard Shri Govind Dixit, learned Counsel for the appellant and perused the material on record. From the record, it appears that in the instant case, issue involved pertains to refund which was denied by the adjudicating authority but the same was allowed by the appellate authority. Hence, the department is in appeal.

4. From the record, it appears that the respondent has filed the refund claim on 15.7.14 pertaining Special Additional duty of Customs (SAD) paid by them for Bill of Entry dated 12.6.2013 for which they had paid duty on 12.6.2013. Refund claim was rejected by the adjudicating authority as refund claim was said to be filed after the expiry of one year from the date of payment of duty by the respondent. It was the claim of the respondent that there is no time limit for submitting the claim of SAD refund as the provision of section 27 was applicable in respect of refund of SAD, it not being customs duty and in support, respondent relied upon the decision of Hon'ble High Court of Delhi dated 16.4.2014 in the case of ***Sony India Pvt. Ltd. vs. CC, New Delhi [2014 (304) ELT 660(Del)]*** wherein it was held as under:

> *16. Section 27(1) of the Customs Act prescribes a time limit of expiry of "one year, from the date of payment of such duty* or *interest...". Section 27(1B) lists out three contingencies when the*

one year limit applies with modified effect. That provision has the effect of shifting the date from which the refund claim is to be reckoned. All that can be inferred from the term "so far as may be" would be that specific provisions relating to the mechanism applicable for refund, in the Customs Act, applied; not the period of limitation. The Customs authorities had never understood Section 27(1) as to mean that a one year period of limitation was applicable. Audioplus (supra) and United Chemicals Industries (supra) are both testimony to this. It is the circulars/notifications of 2008 and No. 16/2009 which for the first time harped on the one year period of limitation. Circular No 6/2008, dated 28-4-2008 issued by the C.B.E. & C. stated that :

"4. Time-Limit:

"4.1 In the Notification No. 102/2007-Cus., dated 14-9-2007, no specific time-limit has been prescribed for filing a refund application. Under the circumstances, a doubt has been expressed that whether the normal time-limit of six months prescribed in Section 27 of the Customs Act, would apply. In the absence of specific provision of Section 27 being made applicable in the said notification, the time-limit prescribed in this section would not be automatically applicable to refunds under the notification. Further, it was also represented that the goods imported may have to be dispatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty.

> *Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time-limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds."*

Notification No. 93/2008, dated 1-8-2008 was issued prescribing the period of limitation as one year from the date of payment of additional duty of Customs.

17. Plainly, therefore. Section 27 was understood as not applying to SAD cases, even though it was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No. 93), the Customs authorities started insisting that such limitation period which was prescribed with effect from 1-8-2008 (by notification) became applicable. There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail.

18. For these reasons, this Court holds that the amending notification must be read down to the extent that it imposes a limitation period. The question of law framed is therefore, answered in favour of the assessee and against the Revenue. The appeal accordingly succeeds and is allowed without any order as to costs."

5. The Commissioner (Appeals) has followed the ratio laid down by jurisdictional High Court and decided the appeal. Therefore, we are not inclined to interfere with the same, the same is sustainable.

6. In the result, appeal filed by the Department is dismissed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan) **Member (Technical)**	**(Justice (Dr.) Satish Chandra)** **President**

ss