IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 9.10.2017
Date of Pronouncement: 27.10.2017

Appeal No. C/51208/2017-SM

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD/TKD/Import/283/2017 dated 4.5.2017 passed by the Commissioner of Customs, New Delhi)

CC (Import), New Delhi   Appellant

Vs.

M/s Harindra Overseas   Respondent

Appearance

Shri K. Poddar, D.R.   -   for the appellant

None   -   for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 57404/2017

Per S.K. Mohanty:

Revenue is in appeal against the impugned order dated 4.5.2017 passed by the Commissioner of Customs (Appeals), New Delhi, wherein the adjudication order was set aside holding that the time limit prescribed under Section 27 of the Customs Act, 1962 is not applicable for grant of SAD refund. To arrive at such conclusion, the ld. Commissioner (Appeals) has relied on the judgement of Hon'ble Delhi High Court in the case of ***Sony India Pvt. Ltd. Vs. CC, New Delhi -*** 2014 (304) ELT 660 (Del.) and also dismissal of SLP by Hon'ble Supreme Court as reported in 2016 (337) ELT A102 (SC). Revenue has preferred the appeal mainly on the ground that though the SLP filed by Union of India was dismissed on the ground of limitation, but the Hon'ble Supreme Court has kept the question of law open for decision. Thus, Revenue's contention is that the judgement of Hon'ble Delhi High Court in the case of ***Sony India Pvt. Ltd.*** (supra) cannot be relied on in isolation, for deciding the limitation aspect for claim of SAD refund.

2. Heard the ld. DR for Revenue. None appeared for the respondent, despite notice.

3. On perusal of the judgment relied on by the ld. Commissioner (Appeals), I find that the SLP filed by the Revenue was dismissed by the Hon'ble Supreme Court on the ground of limitation. Since, the judgement of Hon'ble Delhi High Court in ***Sony India Pvt. Ltd.*** (supra) has not been stayed or overruled by the higher judicial forum, the Tribunal cannot take a contrary view as against the judgement delivered by the Hon'ble Delhi High Court.

4. Therefore, I do not find any infirmity in the impugned order passed by the ld. Commissioner (Appeals). Accordingly, the appeal filed by Revenue is dismissed.

(Pronounced in Court on 27.10.2017)

(S.K. Mohanty)
Member (Judicial)

RM