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: 24.11.2017

Customs Stay Application No. 50585 of 2017
Appeal No. C/51209/2017-SM

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD/TKD/Import/219/2017 dated 28.4.2017 passed by the Commissioner of Customs, New Delhi)

CC (Import), New Delhi — Appellant

Vs.

M/s Mudra Metals — Respondent

Appearance

Shri V. Sengraj, D.R - for the appellant

None - for the respondent

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

Final Order No. 58066/2017

Per S.K. Mohanty:

Revenue is in appeal against the impugned order dated 28.4.2017, wherein the ld. Commissioner of Customs (Appeals), New Delhi has set aside the adjudication order, holding that no time limit has been prescribed 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, 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 in 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. The stay application is disposed of.

(Pronounced in Court on……24.11.2017……)

(S.K. Mohanty)
Member (Judicial)

RM