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

COURT NO. IV

DATE OF HEARING : 22/02/2018.
DATE OF DECISION : 22/02/2018.

Customs Appeal No. 50195 of 2018 with Stay Application No. 50058 of 2018

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/Export/TKD/1040/2017 dated 12/10/2017 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

CC (Export), New Delhi (ICD, TKD) Appellant

Versus

M/s Daya Enterprises Respondent

Appearance

Shri A.K. Singh, Authorized Representative (DR) – for the appellant.

Shri Aashish Batra, Advocate – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50879/2018 Dated : 22/02/2018

Per. S.K. Mohanty :-

Revenue has filed this appeal alongwith stay application against the impugned order dated 12/10/2017 passed by the Commissioner of Customs (Appeals), New Delhi. The dispute involved in this case relates to applicability of the period of limitation for filing of SAD refund in respect of the imported goods under Notification No. 102/2007-CUS dated 14/09/2007. Since, the issue involved is a very *narrow compas*, with the consent of both sides, we take up the appeal for final hearing, upon disposing the stay application.

2. We find that the issue regarding limitation for filing the refund application has been squarely covered by the judgment of Hon'ble Delhi High Court in the case of **Sony India Pvt. Ltd. – 2014 (304) E.L.T. 660 (Del.)**. By relying on the said judgment, the Tribunal vide final order No. 58613 of 2017 dated 27/12/2017 has dismissed the appeal filed by the Revenue. The relevant paragraph in the order dated 27/12/2017 is reproduced herein below :-

> "4. The impugned order, relying on the decision of the Hon'ble Delhi High Court in **Sony India Pvt. Ltd. – 2014 (304) E.L.T. 660 (Delhi)** held that rejection of refund on limitation is not legally sustainable. In the present case, the only ground of the Revenue is that the SLP filed by the Revenue against the said High Court's order was dismissed by the Hon'ble Supreme Court only on limitation. The question of law is kept open. Accordingly, the Commissioner (Appeals) should not have followed the decision of Delhi High Court in **Sony India Pvt. Ltd.** (supra). We note that the Revenue preferred this appeal without appreciating the legal implication and making certain observations, which, apparently, are bordering on contempt of court. In the appeal, it is submitted, "the judgment of Hon'ble High Court is not legally tenable" and "the Hon'ble High Court has failed to appreciate ….". We note that the said High Court's decision has not been overruled by the Higher Court and neither there is any

> contrary order of another High Court. In such situation, the Revenue cannot make such observations, which shows the non-application of mind and causal approach in appreciating the legal position of binding precedents. We find there is no infirmity in the impugned order, which followed the decision of the jurisdictional High Court in Delhi. The appeal of the Revenue is dismissed. The stay application also stands disposed of”.

3. In view of the fact that the issue arising out of the present dispute is no more for open debate, we dismiss the appeal filed by the Revenue. The stay application is also disposed of.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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