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. II

DATE OF HEARING : 12/03/2019.
DATE OF DECISION : 12/03/2019.

Customs Appeal No. 53290 of 2018 with Stay Application No. 51116 of 2018 (SM)

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/IMP/TKD/1990/2018 dated 13/08/2018 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

CC, New Delhi (ICD TKD) Appellant

Versus

M/s Om Traders Respondent

Appearance

Shri P. Juneja, Authorized Representative (DR) – for the appellant.

Shri Prem Ranjan Kumar, Advocate – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No. 50615/2019 Dated : 12/03/2019

Per. Anil Choudhary :-

Heard the parties. The issue in this appeal is whether the Commissioner (Appeals) have erred in following the Ruling of Hon'ble Delhi High Court of Delhi in **Sony India Pvt. Ltd. vs. CC, New Delhi – 2014 (304) E.L.T. 660 (Del.)**, allowing the appeal of the appellant, whereby the refund of SAD was denied on the ground of limitation, by the Assistant Commissioner.

2. The brief facts are that the appellant filed bill of entry on 4 September 2013 and paid custom duty including SAD on 9 September 2013, thereafter the out of charge was allowed. The appellant had imported goods for the purpose of trade. Upon subsequent sale of goods and on payment of VAT/Sales Tax, as required under exemption Notification No. 102/2007-CUS, the appellant applied for refund on 16/09/2014. The said refund claim was rejected by the Deputy Commissioner on the ground of being time bar, in terms of the refund notification readwith amending Notification No. 93/2008-CUS, readwith Circular No. 16/2008. Being aggrieved, the appellant preferred appeal before Commissioner (Appeals) who vide the impugned order, have held that limitation cannot start to run before the appellant have re-sold the goods and deposited sales tax/tax, which is the prime condition for claiming refund. For this proposition, he has relied upon the ruling of Hon'ble Delhi High Court in the case of **Sony India Pvt. Ltd.** (supra).

3. Being aggrieved, Revenue is in appeal on the ground that although the appeal of Revenue against order of Hon'ble Delhi High Court before the Supreme Court have been dismissed on the ground of limitation, however, the Apex court have observed – needless to say, the question of law is kept open. It is further stated that under somewhat similar facts and circumstances, the

Apex court have admitted the appeal in the case of **Wilhelm Textiles**. It is further urged by Revenue that as the amending notification No. 93/2008-CUS has imposed a limitation period of one year (from date of payment of SAD) to claim refund of SAD, the same is rightly applicable.

4. The learned DR also relies upon the decision of Division Bench of this Tribunal in **CC, New Delhi (ICD TKD) (Import) vs. J.G. Impex Pvt. Ltd.** vide final order No. 53157/2018 dated 25 October 2018.

5. So far reliance placed on the Division Bench of this Tribunal in **J.G. Impex Pvt. Ltd.** is concerned, I find that the question framed by the Division Bench is erroneous, which is as follows :-

> "6. In view of the above discussion, we are of the opinion that the moot question to be adjudicated in the present case is as to whether there is any time limit prescribed by law for filing the refund claim of additional duty of Customs, as stands exempted vide the Notification No. 102/2007.
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> No doubt, the said Notification is silent about any time period for filing the said claim. But the Notification exempts the goods in first schedule of Customs Tariff Act from being leviable to the additional duty of Customs. However, the Notification itself mandates the deposit of the said additional duty at the time of importation of the goods and thereafter to get the refund. From this perusal, one thing becomes abundantly clear that the importer has the knowledge of his entitlement to file the refund of additional duty of Customs at the time of the payment of said duty itself i.e. at the time, the product being in first schedule (under the exempted category) is imported. Resultantly, we are of the opinion that for claiming the refund of additional duty nothing else has to happen or to be done by the assessee after the payment of said additional duty of Customs. To our opinion,

this particular fact distinguishes the present case from the case of M/s Sony India Pvt. Ltd. (supra)".

6. Having considered the rival contentions, I find that it is matter of legal jurisprudential limitation cannot start forum before a right to claim refund arises or crystallizes. Hon'ble Delhi High Court in **Sony India Pvt. Ltd.** (supra) have also laid down that prior to the date of sale and payment of VAT, limitation cannot start to run, even if provided wrongly by Notification No. 93/2008-CUS. Accordingly, I find no merit in Revenue's appeal. The same is accordingly dismissed.

7. In view of the law explained by the Hon'ble Delhi High Court, the question framed by Division Bench in **J.G. Impex** (supra) is erroneous and the conclusion is also found to be erroneous, in defiance of law. Thus, in view of the judgment of **Sony India Pvt. Ltd.** (supra), the stay application as well as the appeal stand dismissed.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

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