CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Appeal No.
C/31116/2016	Edelweiss Commodities Services Limited	CC, Hyderabad – Customs	HYD-CUS-000-APP-085-16-17 dated 04.04.2015 passed by CCCE (Appeals), Hyderabad

Appearance
Shri Suresh Sastri, Chartered Accountant for the Appellant.
Shri V.R. Pavan Kumar, Superintendent/AR for the Respondent.

Coram:
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 05.11.2018
Date of Decision: 05.11.2018

FINAL ORDER No. A/31407/2018
[Order per: P.V. Subba Rao.]

1. This appeal is directed against Order-in-Appeal No. HYD-CUS-000-APP-085-16-17 dated 04.04.2015.

2. The facts of the case are that the appellants imported goods under 8 bills of entry and paid Customs Duty including SAD (Special Additional Duty). The appellants have submitted a claim for refund of SAD on 29.12.2014 as per the Notification No. 102/2007-CUS dated 14.09.2007. The goods in question were imported on 18.12.2013 and sold on 24.12.2013 and the VAT on the goods sold was paid on 16.01.2014. The refund claim was filed on 29.12.2014 which was rejected on the ground that the application was time barred. Aggrieved, the appellant preferred an appeal before the first appellate authority who rejected the appeal. Hence, this appeal.

3. Learned Chartered Accountant for the appellant seeks to rely on the judgment of the Hon'ble High Court of Delhi in the case of Sony India Pvt Ltd [2014-TIOL-532-HC-DEL-CUS] and argue that the limitation of one year from the date of payment of additional duty of Customs under Notification No. 102/2007-CUS has been set aside by the Hon'ble High Court and therefore, the

ratio therein applies squarely to the present case. He, therefore, prayed that their appeal may be allowed.

4. Learned departmental representative draws the attention of the Bench to the question of law framed in the case of Sony India Pvt Ltd which was "can the period of limitation for preferring refund claims specified in the amending Notification No. 93/2008-CUS be made applicable with retrospective effect, in the absence of limitation period in the original Notification No. 102/2009-CUS in respect of the goods imported prior to the amending notification?" The learned departmental representative submits that the question of law framed was answered in favour of the assessee and against the revenue in that case. He submits that this ratio does not apply to the present case as the claim of refund was for the period subsequent to the notification. He also relies on the judgment of the Hon'ble High Court of Bombay in the case of CMS Info Systems Ltd [2017 (349) ELT 236 (Bom.)] in which on the question of limitation laid down in Notification No. 102/2007-CUS as amended the Hon'ble High Court held that there is no vested, much less absolute right in the petitioners to seek refund. Even a refund must be within the framework of the statute and admissible in the terms thereof. Therefore, the Hon'ble High Court of Bombay has upheld the limitation of time provided in Notification No. 102/2007-CUS for claiming refund of SAD. He also emphasised the fact that the exemption notification in this case is an exception to the general rule and it should be strictly construed and in case of any doubt should be decided in favour of the revenue as has been settled by the Hon'ble Five Member Constitutional Bench of the Supreme Court in the case of CC, Mumbai Vs M/s Dilip Kumar & Co and others [Civil Appeal No.3327/2007]. He further draws the attention to the case of Alcoa India Pvt Ltd [2018 (359) ELT 244 (Tri-Kolkata)] in which the Tribunal upheld the limitation of time laid down in Notification No. 102/2007-CUS. He further draws the attention of the Bench to the cases of Sree Krishna Enterprises [2017 (6)

TMI 883 (CESTAT-HYD)] and Surya Telecom Pvt Ltd [3.29 (7) TMI 192 (CESTAT-HYD)] in which the question was answered in favour of the revenue by this very Bench. I find it so.

5. I have considered the arguments on both sides and perused the records. The short point to be answered is whether the limitation of one year for refund of SAD under Notification No. 102/2007-CUS applies or not. I find that the question framed in the case of Sony India Pvt Ltd by the Hon'ble High Court of Delhi is whether the limitation introduced vide Notification No. 93/2008 have a retrospective effect or otherwise, although the final order of the judgment was to the effect that the Notification No. 93/2008 must be read down to the extent it imposes the limitation of time of one year. Hon'ble High Court of Bombay in the case of CMS Info Systems Ltd (supra) took a different view and upheld the Notification No. 102/2007-CUS in its entirety including the limitation of time holding that the applicant has no vested interest in getting refund and is bound by the statutory provisions laid down in the notifications. On identical issues in the case of Sree Krishna Enterprises (supra) and Surya Telecom Pvt Ltd (supra), this Bench had held that the time limitation specified in Notification No. 102/2007-CUS as amended applies for refund of SAD. I find no reason to deviate from the position already taken. I also find that the question of interpretation of a notification has now been settled by the Constitutional Bench of Apex Court in the case of M/s Dilip Kumar & Co. and others (supra) and it has to be strictly interpreted. I, therefore, find that the applications for refund were correctly rejected to the extent they were time barred and the impugned order needs to be upheld and I do so.

6. The impugned order is upheld and the appeal is rejected.

(Operative Part of this Order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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