CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

CUSTOMS APPEAL No. 30282 of 2019

(Arising out of **Order-in-Appeal** No. HYD-CUS-000-APP-066-18-19 dated 30.10.2018 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Khazana .. **APPELLANT**
Plot No. 887, Road No. 45,
Jubilee Hills, Hyderabad,
Telangana – 500 034.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

<u>Appearance</u>

Ms. Siri Reddy, Advocate for the appellant.
Shri A. Rangadham, Superintendent for the Respondent.

Coram: Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/31105/2019

Date of Hearing: 04.12.2019
Date of Decision: 04.12.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO]

1. This appeal is filed against Order-in-Appeal No. HYD-CUS-000-APP-066-18-19 dated 30.10.2018.

2. The facts of the case are that the appellants had imported furniture on which they paid the appropriate amount of customs duty including Special Additional Duty (SAD) at the rate of 4% advoleram under section 3 (5) of the Customs Tariff Act, 1975. Subsequently, they sold the goods within India and filed an application on 16.09.2016 seeking the refund of SAD

amounting to Rs. 1,08,859.50/- under Notification No. 102/2007-Cus dated 14.09.2007 as amended by Notification No. 93/2008-Cus dated 01.08.2008 after one year from the date of payment of SAD, i.e. beyond the limitation in the notification.

3. Special Additional Duty (SAD) of customs has been levied under Section 3(5) of the Customs Tariff Act with a view to provide a level playing field between the domestic manufacturers and importers. The goods of domestic manufacturers suffer the VAT levied by the State Government whereas no VAT is leviable on the goods which are imported. The VAT on the domestic goods may be levied at any applicable rate but the SAD is levied at a standard rate of 4%. If, the importer uses the goods himself, he suffers the burden of 4% of SAD. On the other hand, if he sells the imported goods he will have to pay appropriate amount of VAT to the State Government. Thereafter, he can claim refund under exemption notification no. 102/2007-CUS as amended by 93/2008-CUS. This exemption notification is not available at the time of import but is available by way of refund after sales. Several conditions have been imposed in this notification for claiming the refund including that the refund claims must be filed within one year from the date of payment of SAD. This condition that refund claim must be filed within one year was inserted by Notification No. 93/2008-CUS as an amendment to Notification No. 102/2007-CUS.

4. In the case of Sony India Private Ltd., [2014 (304) ELT 660 (Del)] the Hon'ble High Court of Delhi was seized of a matter where the goods were imported prior to the amendment Notification No. 93/2008-CUS was issued on 01.08.2008 but the claim was filed after the issue of amended notification. The refund application was filed after a period of one year and

the question which was before the Hon'ble High Court was whether this amendment notification can have retrospective application even in respect of consignments where the duty was paid prior to the amendment but the refund claim was filed thereafter. The Hon'ble High Court has held the amendment notification cannot have retrospective application. However, in the operative part of the judgment, the Hon'ble High Court has held that the amending notification must be read down to the extent that it imposes a restriction of one year for filing the refund claim.

5. Similar issue came up before the Hon'ble High Court of Bombay in the case of CMS Info Systems Ltd., [2017-TIOL-79-HC-MUM-CUS]. This case pertained to the period where the SAD was paid as well as the refund claim was filed post amendment by notification of 93/2008-CUS. The Hon'ble High Court of Mumbai, after considering the judgment of the Hon'ble High Court of Delhi in the case of Sony India Pvt Ltd., (supra) took a view that there is no right, let alone vested, for refund by the importer. The right of refund comes only from the exemption notification. In such cases, it is not open for the importer to pick and choose some conditions of the exemption notification and not follow the others. If they seek the exemption notification, all the conditions therein have to be fulfilled. Therefore, no refund can be sanctioned beyond the period one year prescribed in the notification. Thus, in a nutshell, the Hon'ble High Court of Delhi interpreted the notification liberally and gave the substantive benefit of execution even though the claim was filed beyond the period of one year stipulated in the notification. On the other hand, the Hon'ble High Court of Bombay has interpreted the execution notification strictly and held that but for the exemption notification, the assessee has no right to refund and to claim

refund all conditions of exception notification including the time limit must be fulfilled. There have been a large number of decisions by various judicial fora including the Hon'ble Apex Court making both liberal and strict interpretation of exemption notifications in different judgments. In view of the conflicting judgments, the matter was referred to a Five-Judge Constitutional Bench of the Supreme Court in the case of Commissioner of Customs (Import) Mumbai Vs Dilip Kumar & Company reported in [2018 (361) ELT 577 (SC) = 2018-TIOL-302-SC-CUS-CB]. Para 52 & 53 of this judgment were as follows:

> 52.To sum up, we answer the reference holding as under-
>
> (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
>
> (3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.
>
> 53. The instant civil appeal may now be placed before appropriate Bench for considering the case on merits after obtaining orders from the Hon'ble Chief Justice of India."

6. There is no judgment of the jurisdictional High Court of Telangana in this matter so far. This Bench has been consistently following the ratio of the judgment of the Hon'ble High Court of Bombay in the case of CMS Info Systems (supra). An order accordingly has already been passed in respect of the same appellant in the case of Commissioner of Customs, Hyderabad Vs Khazana in Appeal No. C/30749/2018 as reported in [2019-TIOL-867-

CESTAT-Hyd]. It has been held that, in view of the judgment of the Hon'ble High Court of Bombay in the case of CMS Info Systems, the appellant (the respondent in that case) was not entitled to refund of SAD where claims were filed after the period of one year stipulated in the notification. It has been held that any exemption notification must be construed strictly against the person who is claiming the benefit of the notification as has now been settled by Constitutional Bench of the Hon'ble Apex Court in the case of Dilip Kumar & Co. and others [2018-TIOL-302-SC-CUS-CB]. As a view has already been taken by this Bench in respect of same appellant for different period, I find no reason to deviate from such a decision. I also find, similar view was also taken by the Division Bench of CESTAT (Madras) in the case of Honda Siel Power Products [2019-TIOL-2878-CESTAT-MAD].

7. In view of the above, the appeal is rejected and the impugned order is upheld.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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