IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/959/07

(Arising out of Order-in-Appeal No. 320/2007/MCH/AC/100% EOU/07 dated 25.7.2007 passed by Commissioner of Customs (Appeals), Mumbai-I)

Commissioner of Customs (EP), Mumbai **Appellant**

Vs.

Wockardt Ltd. **Respondent**

Appearance:

Shri Chatru Singh, Assistant Commissioner (AR), for appellant
None for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 20.2.2018
Date of Decision: 20.2.2018

ORDER No. A/85309/2018

The facts of the case are that the respondent imported goods and claimed the benefit of Notification No.52/2003-Cus. dated 31.3.2003. Revenue proposed to deny the exemption on the ground that the re-import had taken place after the stipulated time period of one year. The adjudicating authority denied the exemption in the original order dated 22.5.2007. Being aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who allowed the appeal relying on the judgment of this Tribunal in the case of *Kar Mobiles Ltd. – 2006 (206) ELT 198 (Tri.-Bang.)* which was subsequently upheld by the Hon'ble Supreme

Court, and the Commissioner (Appeals) also relied on the Board circular No.60/99 according to which the period of one year for re-import of the goods can be relaxed.

2. Shri Chatru Singh, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the grounds of appeal. He submits that Notification No.52/2003 is eligible only on the condition that the goods exported should be re-imported within one year from the date of export. For non-compliance of the condition, the benefit of Notification is not available.

3. None appeared on behalf of the respondent.

4. On careful consideration of the submissions made by learned AR and perusal of the record, I find that the learned Commissioner (Appeals) for allowing the appeal of the respondent has given the following finding:-

> "A careful study of the case of the case of Kar Mobiles Ltd. decided by the Hon'ble CESTAT reveals that the overriding emphasis in the order was that the delay in re-import is only a technical lapse; that in any case the Board's circular No.60/99 was specifically issued keeping in mind the difficulties of EOU and would have an overriding effect over the concerned notification. In this view of the matter the original authority's distinction of the case on the grounds that the appellants have no permission from the Development Commissioner on that their procurement certificate had subsequently being cancelled, appears to be a rather hair-splitting exercise and against the basic spirit of the Board's circular. It is also to be noted that the

> Supreme Court has clearly upheld the Kar Mobiles Ltd. judgment of the Tribunal and also clearly mentioned that in respect of delay in re-import the Board's circular No.60/99 would have an overriding effect of the notification No.53/97-Cus which was the subject notification in that case. The appellant have pleaded that the conditions of notification No.53/97 are similar to the conditions of the notification No.52/03 in this case and therefore the judgment would apply to their case too. This authority in appeal is inclined to agree with this contention and hereby endorses the same. The appellants have also made the point that they were in any case entitled to the benefit of notification No.52/03 through the window of Sr.14 Annexure-I to the notification. This point is found to be valid and true to logic and in fact strengthen their case."

4.1 From the above finding of the Commissioner (Appeals), it can be seen that he has relied upon the judgment of *Kar Mobiles Ltd.* (supra) which was passed considering Board's circular No.60/99 wherein the limitation of one year for re-import of the goods was relaxed. Accordingly, the Commissioner (Appeals)'s order is reasoned and passed on settled issue in the *Kar Mobiles Ltd.* which was upheld by the Hon'ble Supreme Court. Therefore, I do not find any infirmity in the impugned order. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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