IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.I

APPEAL No.C/557/11

(Arising out of Order-in-Appeal No.85/Mumbai-III/2011 dated 28/03/2011 passed by the Commissioner of Customs (Appeals) Mumbai)

Lipi Data Systems Ltd.,	:	**Appellant**
VS		
Commissioner of Customs (Import) Mumbai-III	:	**Respondent**

Appearance

Ms.Lakshmi Menon, Advocate for Appellant
Shri. C Singh, Asst. Comm (AR) for respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing : 16/07/2018
Date of pronouncement : 16/07/2018

ORDER NO.A/86974/2018

Per : **Anil Choudhary**

Heard the parties.

2. The issue in this appeal relates to rejection of refund under the provisions of Notification No.102/2007-Cus, being 4% SAD paid at the time of import of the goods. The appellant filed refund application on various dates between March 2008 and November 2009, seeking refund of 4% SAD paid on the imported goods, totaling 117 Bills of Entry. The Deputy Commissioner by his order-in-original, rejected the refund claim observing that while issuing the invoices of sale of imported goods, an

importer shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs (SAD) levied under sub-section (5) of Section 3 of the Customs Tariff Act, 1975, shall be admissible, but the importer has not given any such indication or declaration in the sale invoices submitted by him along with the refund applications, either in CD form or in paper form. Accordingly, he rejected the refund claims except two bills of entry No.636541 dated 19/12/2007 and No.147199 dated 03/07/2008, which were rejected for want of jurisdiction.

3. The appellant had filed appeal to the Commissioner (Appeals), who upheld the order-in-original confirming the findings therein.

4. Ld. Counsel for the appellant relied upon the Larger Bench decision in the case of Chowgule & Company Pvt.Ltd. – 2014 (306) ELT 326 (Tri-LB), wherein this Tribunal under similar facts and circumstances held that for taking the Cenvat Credit under sub-rule (2) of the said Rule 9 of Cenvat Credit Rules, following particulars are required to be indicated, namely, details of the duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable services, etc. Further for taking the credit, the quantum of duty paid should be shown in the invoices and the same should be shown separately for each type of duties. It was further held that in the absence of such particulars in the invoice, no credit can be passed to the buyer of the goods, with respect to any duty or tax paid by the seller. It is an admitted fact that in invoice of resale of the imported

goods, the appellant have not shown SAD paid, on such invoices, nor any details of bill of entry under which the goods were imported. In this view of the matter, following the decision of the Larger Bench of this Tribunal, we hold that there cannot be deemed passing of the duty, particularly SAD. Accordingly, we set aside the impugned order and allow this appeal with respect to the refund of SAD, except in respect of two Bills of Entry specified herein before, which were rejected for want of jurisdiction. We also direct the concerned authorities to grant refund forthwith within a period of 30 days, along with interest as per rules.

(C.J. Mathew)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

PJ