CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 88424 of 2018
(Arising out of Order-in-Appeal No.MUM-CUSTM-SMP-31/2018-19 dated 20-5-2018 passed by the Commissioner of Customs (Appeals), Mumbai.

Samsung India Electronics P Ltd ....Appellant
20th to 24th Floor, Two orizon,
Centre Golf Cource Road, Sector-43,
DLF Phase-V Gurugram,
Haryana-122 002.

VERSUS

Commissioner of Customs (Appeals) ....Respondent
Mumbai-Import-II,
New Custom House,
Ballard Estate,
Mumbai-40001.

APPERANCE:
Shri Nikul Shrimali, Manager (Taxation).
Shri Manoj Kumar, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86121/2019

Date of Hearing: 8-5-2019
Date of Decision: 8-5-2019

ANIL CHOUDHARY:

The issue in this appeal relates to refund of SAD under notification No. 102/2007 Customs. In the impugned order passed by the Commissioner (Appeals), the appeal is dismissed on the ground of limitation.

2. The brief facts are that the appellant imported goods on payment of customs duty against 5 Bills of Entry during the period 8th July 2008 to 21st July

2008. Upon resale of the goods imported upon payment of VAT/sales tax, the appellant applied for refund of SAD, under notification No. 102/2007 – Cus., on or about October to December 2009. A memo dated 3rd January 2010 was issued requesting to submit original documents/all relevant documents. This is the 2nd round of litigation. From the 1st order-in-original dated 31st March 2012, the admitted facts are that the refund application was filed within the limitation. The appellant had filed the refund application along with original sales invoices and the ST/VAT challan's in support of their claim. Appellant also submitted photo copy of customs duty Challans No. TR-6 in respect of the Bills of Entry. Also submitted certificate evidencing appropriate sales tax/VAT has been charged and paid on the imported goods with the respective sales tax authority. Advocate also verified that they have perused the original invoices of sale along with supporting documents towards proof of payment of VAT from the original VAT/ST challan's, further certifying that refund claim is shown in the books of accounts/balance-sheet as amount due for refund of additional duty of customs (SAD) and the said amount has not been passed on to the buyers of the goods. However the refund was rejected by the adjudicated authority without assigning any particular reason for rejection.

3. Being aggrieved the appellant approached the Commissioner (Appeals) who vide order in appeal dated 20th of May 2014 conquered with the view of the adjudicating authority, however he was pleased to allow the appeal by way of remand directing the adjudicating authority to re-verify the original TR 6 Challans to get satisfied about the genuineness of the refund claim with direction to the appellant to submit the original TR 6 Challan for verification. In the 2nd round pursuant to remand appellant by their letter dated 23rd June 2014, submitted that original TR 6 challan is not traceable, and further

contended that original VAT/CST challan's have been already submitted, duly certified by the Chartered Accountant. In the 2nd round also, vide order in original, the refund claim was rejected observing that the appellant have neither produced all the TR 6 challan, copies of VAT/CST Challan duly certified by CA. Thereafter the appellant had filed the 2nd round appeal before the Commissioner (Appeals), which was found to be barred by few days in view of the admitted fact that the impugned order was received some time in the month of June 2015. Before the Commissioner (Appeals) the appellant also submitted bank certificate in support of the payment of SAD/ customs duty at the time of import. However the appeal was rejected on the ground of limitation.

4. The Learned AR for Revenue have relied on the impugned order and further states that as the appeal is dismissed on the ground of limitation, Tribunal should not interfere in the matter.

5. Having considered rival contentions, I find that the rejection of refund in the 1st round is without any proper basis and at best only on the flimsy grounds that original TR 6 Challan was not produced. In view of the fact that the appellant submitted all other documents, only for want of TR 6 Challan in original, the refund should not be rejected. The said fact could have been easily verified by the revenue from their own records, and at best could have advised the appellant to obtain a bank certificate at the relevant time. But it appears that the Revenue was somehow happy to reject the refund claim on some ground or the other. In this view of the matter, in order to render substantial justice in the matter, this appeal is allowed by way of remand to the adjudicating authority, with direction to verify the evidence now available and

not to insist on any original evidence, which the appellant have admittedly filed in the earlier point of time. Upon verification of the facts, refund shall be granted forthwith, if found admissible.

6. This appeal is allowed by way of remand. Impugned order is set aside. Appellant is also directed to appear before the adjudicating authority with all relevant documents they can produce within the period of 45 days from the date of receipt of a copy of the order.

(Dictated and order pronounced in the court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

John