CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86599 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-GEN-APP-1151/2018-19 dated 26.02.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s Samsung India Electronics Pvt. Ltd. .... Appellant
2nd, 3rd & 4th Floor, Vipoul Tech Square, Golf Course Road,
Sector -43, DLF Phase –V, Gurgaon - 122002

Versus

Commissioner of Customs (ACC), Mumbai .. Respondent
Air Cargo Complex, Sahar,
Andheri (E), Mumbai - 400099

Appearance:

Shri Nikul Shrimali, Manager (Taxation) for the Appellant

Shri R.N. Deshpane, AC, Auth. Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85652 / 2020

Date of Hearing: 28.02.2020

Date of Decision: 28.02.2020

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. MUM-CUSTM-GEN-APP-1151/2018-19 dated 26.02.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the appellants are engaged in the trading of imported mobile phone, camera etc. during the relevant period. They have filed

a refund claim in pursuance of Notification No. 102/2007 dated 14.9.2007 claiming refund of Special Additional Duty (SAD) paid at the time of import amounting to Rs.2,42,85,683/- on 03.11.2010. Out of the said refund claim, the adjudicating authority has sanctioned refund of Rs.2,10,92,554/- but rejected the amount of Rs.30,39,413/- vide Order dated 27.11.2015. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, the Manager (Taxation) and authorized representative for the appellant has submitted that the refund claim of Rs.30,39,493/- was rejected on two counts. The amount of Rs.18,26,544/- was rejected on the ground that the appellants have failed to mention the declaration in the invoice of non-availing of CENVAT Credit as the condition of the said notification; the amount of Rs.12,12,949/- is barred by limitation. It is his contention that in all the invoices, it is printed that the buyers are not eligible to avail CENVAT Credit of the said amount paid. However, due to technical fault in the server, the particular declaration could not be printed in few of invoices at the time of its issuance. However, later the said mistake was rectified and the invoices printed with the said declaration were issued. Further, he has contended that the items that were sold to the retail customers are since camera and mobile phones, hence, availing of CENVAT Credit on amount of the said duty paid is ruled out. Further, he has submitted that in any case the issue is covered by the

judgment of Hon'ble Karnataka High Court in the case of *Commissioner of Customs & Service Tax Vs. Schneider Electric IT Business – 2018-VIL-265-KAR-CU*.

4. On the rejection of refund claim as barred by limitation, the learned Advocate has submitted that as per clause (c) of the Notification No. 93/2008 dated 1.8.2008, the period of limitation prescribed as one year from the date of payment of Special Additional Duty of Customs. He has submitted that the Special Additional Duty of Customs was paid on 03.11.2009 and the refund claim was filed on 03.11.2010. Therefore, excluding the date of filing of the refund claim, there is no delay and the refund claim has been filed within one year. In support, he refers to Section 9 of General Clause Act, 1897.

5. Per contra, the learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

6. Heard both sides and perused the records.

7. I find that the refund claim was rejected firstly on the ground that each of the relevant sales invoices does not contain the declaration as required under clause (b) of the Notification 102/2007 dated 14.09.2007. In their defence, the appellant has submitted that due to technical error in server few invoices remain unprinted with such declaration whereas on noticing the mistake, the invoices have been printed properly and issued thereafter. The appellant has enclosed the unprinted invoices as well as printed invoices in their paper-

book between pages 37 to 46 and 47 to 56 respectively. Besides, the items which sold by the appellant being mobile phones and camera and meant to be used by the ultimate consumer, therefore, possibility of availment of CENVAT Credit by the consumers cannot be assumed. In view of the principles laid down by the Hon'ble Karnataka High Court in the *Schneider Electric IT Business's* case, it is clear that non-mentioning of declaration cannot be considered as fatal to extend the benefit of said notification. The relevant portion of the said judgment is as under: -

> *"**5.** It is, indeed, trite to state that Rule 9 of the Cenvat Credit Rules prescribes the documents on the strength of which Cenvat credit can be taken. An invoice issued by an importer is also one of the prescribed documents. However, for taking the Cenvat credit, under sub-rule (2) of the said Rule 9, 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 premise of first or second stage dealers or provider of taxable service, etc. 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. In respect of a commercial invoice, which shows no details of the duty paid, the question of taking of any credit would not arise at all. Therefore, non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available. Therefore, non-declaration/non-specification of the duty element as to its nature and quantum in the invoice issued would itself be a satisfaction of the condition prescribed under clause (b) of para 2 of the Notification 102/2007."*

8. On the second issue whether the refund is barred by limitation, I find that undisputedly the appellant had filed refund claim on 3.11.2010 whereas the Special Additional Duty of Customs was paid on 3.11.2009. In view of the Section 9 of the General Clauses Act, 1897 while computing the time period, the date of filing of refund claim needs to be excluded. Therefore, following the provisions of law as laid

down under Section 9 of the General Clauses Act, 1897, in my opinion, the refund claim filed on 3.11.2010 is not barred by limitation.

9. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha