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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7851/2016

VISHAL VIDEO & APPLIANCES PVT. LTD. ..... Petitioner

Through : Sh. Tarun Gulati, Sh. Shashi Mathews, Sh. Sparsh Bhargava, Sh. Ankit Sachdeva, Ms. Rachana Yadav, Sh. Kishore Kunal and Sh. Rony. O. John, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through : Sh. Sanjeev Narula, Sr. Standing Counsel with Sh. Ajay Kalra, Advocate, for Customs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 05.09.2016

Issue notice. Sh. Sanjeev Narula, Sr. Standing Counsel accepts notice.

The writ petitioner seeks a direction that its refund application be processed and the amounts claimed paid-over.

The issue involves payment and refund of Countervailing Duty (CVD). The petitioner/importer contends that all the documents necessary for processing the refund claim were made available to the respondents on time. However, the refund application was rejected without reference to these materials on the short ground that the department was contemplating an appeal by way of special leave in regard to an order in *Micromax Informatics Ltd. v. Union of India*

2016 (335) ELT 446 (Del). The other ground was that review of the law declared by the Supreme Court in *M/s. SRF Industries Ltd. v. CC, Chennai* 2015 (318) ELT 607 (SC) was sought. The Supreme Court in *SRF (supra)* had clarified that to quantify CVD in the importer's case, the presumption that such goods were manufactured in India and excise duty leviable on it would have to be drawn and then an ascertainment would be essential to determine the extent of CVD to which the importer would be entitled. It was on the basis of this principle that the refund claims were to be processed.

This Court notices from the record that the concerned adjudication officer, who rejected the petitioner's claim for refund has adopted the same approach that she did which became the subject matter of scrutiny in several previous orders commencing from *Micromax (supra)*. We notice that the *Micromax (supra)* was revisited in *Yu Televentures v. Union of India* [W.P.(C) 6750/2016, decided on 03.08.16]. In the present case as well, the order rejecting the refund was made during the same period and apparently by the same officer who rejected the refund claim in *Yu Televentures (supra)*.

It is contended lastly by the respondents that this Court should not grant relief in this case since there is no ascertainment as to whether the CVD was in fact passed on and collected from the end user. The petitioner, on the other hand, submits that all relevant documents, including the Chartered Accountant's certificate as required by the rules were furnished. The relevant part of the CA's certificate reads as follows:

> *"D. That for the purposes of examining the clause of*

> *unjust enrichment to the importer in respect of subject refund claim we have verified the importer's Books of Accounts and other relevant documents and record of the goods. Based on such verification we have satisfied ourselves."*

This was not a ground for rejection. We find no force in the submission. It is accordingly rejected.

Since the facts are identical, we are of the opinion that the operative portion of the order should be identical to the one in *Yu Televentures (supra)*. It is hereby directed consequently that the petitioner's refund claim is, therefore, allowed. The respondents are directed to pay to the petitioner, the claimed amount together with interest due thereof upto the date of refund – which shall be done within three weeks from today.

There shall be no order as to costs.

Dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 05, 2016
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