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

**Date of decision: 13.08.2018**

+ **W.P.(C) 3801/2018**

M/S DISH TV INDIA LIMITED

..... Petitioner

Through : Mr A.R.Madav Rao, Ms Pragya  
Awasthi and Mr Anurag Soan,  
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr Ravi Prakash, Mr Farman Ali and  
Mr Nitish Gupta, Advocates.

Mr Sushil Kumar Pandey with Mr  
Manish Sahay, Advocates for UOI

Mr Samar Jain, Standing counsel with  
Mr Surigya Awasthy and Mr Zora  
Kumar Gupta, Advocates.

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)**

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1. Service of notice is complete for all the parties. Mr Ravi Prakash, Mr Sushil Kumar Pandey, Mr Samar Jain and Mr Surigya Awasthy, Advocates appear for the respondents.

2. The petitioner had imported Set Top Boxes (STB) from its foreign supplier; the items attracted Special Additional Duty (SAD), which was paid for goods covered under it. The petitioner claimed exemption from payment of SAD, in terms of Notification No.102/2007-Cus dated 14.09.2007. The refund claim made in terms of the Notification was rejected by the Deputy Commissioner of Customs (Refund) on 30.11.2010. The petitioner appealed before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which allowed its claim. In these circumstances, when the petitioner approached the second respondent-the Assistant Commissioner of Customs (Refund) seeking refund in the light of the order of the CESTAT, it also sought interest on the principal amount to the extent of delay of almost seven years. On 30.11.2017, refund was ordered to the tune of ₹3,23,77,654/-. The petitioner then sought interest stating that its claim had not been granted on that score and that the claim for refund with interest was granted only after the CESTAT order in April, 2017.

3. The petitioner relies upon the judgment of this Court in *Principal Commissioner of Customs versus RISO India Private Limited*, 2016(333) ELT 33(Del.), CUSAA 20/2015 dated 07.10.2015. The Court, upon its interpretation on Section 3(8) of the Customs Tariff Act 1975(CTA) on the one hand and Section 27 of the Customs Act, 1962 on the other hand, concluded that the period of limitation prescribed in the Notification could not be made applicable in cases where SAD was levied.

4. The petitioner then also relies upon *Micromax Informatics Limited versus Union of India & Others*, W.P.(C) 9178/2017 decided on 16.01.2018. The reasoning in *RISO* (supra) was reiterated and the Court declared that para 4.3 of the Circular 6/2008-Cus dated 24.04.2008, could not be given effect to. In that circular, the Central Board of Excise & Customs (CBEC) had clarified that there was no specific provision for payment of interest in Notification 102-2017-Cus dated 14.09.2007 under which the importer applied and was granted refund of SAD.

5. The respondents submit that the position adopted by the Revenue is correct inasmuch as the petitioner's request for interest – as well as the initial refund amount was made freshly in April, 2017. It was submitted that however, since interest was claimed for the first time, the period of limitation applicable to refund sought under Notification No. 102/2007-Cus dated 14.09.2007 applied.

6. This Court in *Micromax Informatics Limited* (supra), after noticing the previous ruling in *RISO* held that there was no period for refund of SAD, so could not be circumscribed by any period of limitation prescribed by mere executive instructions such as in the case of Circular.

7. The reasoning of this Court in *Micromax Informatics Limited* is found in paras 17 to 22 of the judgment. The operative portion of the *Micromax Informatics Limited* is as follows:-

“xxxx                      xxxx                      xxxx                      xxxx

20. We respectfully agree with the reasoning given in *KSJ Metal Impex (P) Ltd.* (supra), which is in consonance with the reasoning given by this Court in *Riso India Pvt. Ltd.*(supra).

21. The result would be that paragraph 4.3 of the Circular No.06/2008-Cus. Dated 28<sup>th</sup> April, 2008 has to be struck down. The said circular does not correctly interpret provisions of Section 27A of the Customs Act to deny claim for payment of interest. Accordingly, it is held that interest would be payable in terms of Section 27A of the Customs Act on refund of SAD payable in terms of Notification No.102/2007.

22. We may also deal with the objection raised by the respondents that the impugned order is appealable. Contention of the petitioner in this regard is two-fold. Firstly, the issue is covered by the decision in ***Riso India Pvt. Ltd.***(supra) and, therefore, filing of appeal is not required and is a formality. Secondly, it is submitted that the authorities in spite of the decision of Delhi High Court in ***Riso India Pvt. Ltd.*** And of Madras High Court in ***KSJ Metal Impex (P) Ltd.*** have followed the circular. In these circumstances, the petitioner has challenged the validity of this circular itself as being contrary to the legislative intent and Section 27A of the Customs Act. This challenge cannot be made before the Customs' Authorities. We find merit in the contentions raised by the petitioner to meet the challenge predicated on the plea of alternative remedy, in view of the factual matrix of the present case and challenge to the circular.

23. Resultantly, the writ petition is allowed and the impugned order dated 29<sup>th</sup> September, 2017 is quashed and set aside. The respondents would pay

*interest in terms of Section 27A of the Customs Act within a period of 8 weeks from the date copy of this order is received. There would be no order as to costs.”*

8. In the light of the above, this Court is of the opinion that the reasoning in *Micromax Informatics Limited* as well as in *RISO* squarely applied to this case.

9. The period of limitation sought to be imposed upon refunds claimed and a restriction on the claim for interest, especially brought in by way of so called clarification by the CBEC Circular (para 4.3), could not have override the law. The substantive law nowhere limits the claim for refund, which would otherwise ensure to the benefit of Assessee.

10. Following *RISO* and *Micromax Informatics Limited*, it is held that this petition has to succeed. The same is accordingly allowed and the process for the amount claimed by the petitioner towards interest for the concerned period, i.e. three months from the date of the refund claimed till actual date of payment of such refund order shall be completed within four weeks.

11. The Writ Petition is allowed in the above terms.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 13, 2018**

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