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

\+ CUSAA 166/2018, C.M. APPL.30708/2018 & 30721/2018

COMMISSIONER OF CUSTOMS ..... Appellant

Through : Sh. Pratap Singh and Sh. Navneet Tripathi, Advocates.

versus

ANISH IMPEX ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE P.S. TEJI

<u>O R D E R</u>

% 01.08.2018

The Revenue claims to be aggrieved by the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) which upheld the order of the appellate Commissioner. The appellate Commissioner had granted the respondent/importer's appeals, holding that it was entitled to refund of Special Additional Duty of Customs/SAD paid for Bills of Entry dated 06.06.2013 on which duty was paid the next day. The adjudicating authority had rejected the refund claim stating that it was time-barred in view of the Section 27 of the Customs Act.

The appellate authority followed the ruling of a Division Bench of this Court in *M/s/ Sony India Pvt. Ltd. v. Commissioner of Customs, New Delhi* 2014 (304) ELT 660, holding as follows:

> *"5. **<u>Discussion and Findings:-</u>***
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> *5.1 I have carefully gone through the contents of impugned order, grounds of appeal and oral as well as written submissions made by the appellant.*
>
> *5.2 I find that the appellant had filed a refund claim on 18.05.2015 for refund of Special Additional Duty of Customs*

(SAD) paid by them for B/E No.2348123 dated 06.06.2013 for which they had paid duty on 07.06.2013. The refund claim in respect of above mentioned Bill of Entry was rejected by the adjudicating authority vide impugned order on the ground that it was time barred. The appellant have contended that there was no time limit for submitting the claim of SAD refund as the provisions of Section 27 were not applicable in respect of refund of SAD, it not being "Customs duty", and in support the appellant relied upon the Delhi High Court decision dated 16.04.2014 in the case of M/s. Sony India Pvt. Ltd. v. Commissioner of Customs, New Delhi [2014 (304) ELT 660 (Del)].

5.3 I find that in the case of M/s. Sony India Pvt. Ltd v. Commissioner of Customs, New Delhi, the Hon'ble High Court of Delhi held that to uphold limitation period starting from date of payment of duty, as prescribed in amending Notification No.93/2008-Cus, would amount to allowing commencement of limitation period for refund claim before right of refund has even accrued. Hence, neither refund provisions nor notification issued under Customs Act, 1962 were applicable to duties levied under Section 3(5) of Customs Tariff Act, 1975 to impose a limitation period on right to claim refund. Such limitation period must be introduced by legislation, given its ex-propriatory consequences, therefore, the imposition of a period of limitation, i.e. one year from the date of payment of additional duty of Customs introduced vide Notification No.93/2008 dated 01.08.2008 for the first time, without statutory amendment, could not prevail. In view of said observations, the Hon'ble Court allowed the appeal of the party.

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6. In view of above, I set aside the impugned O-I-O with the direction to the original adjudicating authority for a relook into the case in view of the case law referred above and decide the case afresh and give specific reasons in speaking if claim is rejected."

The CESTAT rejected the Revenue's appeal.

Learned counsel submitted that the facts in *Sony (supra)* and in this case are different inasmuch as in that decision, the importer was caught between the transition period when one notification was substituted by another and that this detail distinguishes the facts of the present case.

In the opinion of this Court, this detail is insignificant. *Sony (supra)* went by the formulation of settled principles of constitutional law that a delegated legislation cannot firstly travel beyond the confines of parent statute and that the purpose of limitations like the provisions of penalties, offence etc. are the subject matter of primary legislation by the competent legislative body, i.e. the State legislature. That rationale applies equally to the facts of this case. No question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

P.S. TEJI, J

AUGUST 01, 2018/AJK