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

% *Date of Decision: 19.4.2022*

\+ **CUSAA 36/2021 & CM No.33545/2021**

COMMISSIONER OF CUSTOMS ......Appellant

Through: Mr Vaibhav Joshi with Mr Siddhant Yadav, Advs.

versus

S R TRADERS ......Respondent

Through: Mr S Sunil, Adv.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. We are informed by the counsel for the parties that the issue in hand in the present appeal concerns, as to whether or not any limitation is prescribed with regard to a refund claim involving Special Additional Customs Duty.

2. Mr S Sunil, who appears on behalf of the respondent, says that the issue is covered in favour of the respondent/assessee, by virtue of the judgment rendered by a co-ordinate bench of this Court in ***Sony India Private Limited vs. Commissioner of Customs, New Delhi*** 2014 (304) ELT 660 (Del)**,** as also the judgment dated 21.09.2016 rendered by another co-ordinate bench in CUSAA 25/2016, titled ***Commissioner of Customs (Import) vs. Wilhelm Textiles India Private Limited.***

3. We are told that, insofar as ***Sony India*** is concerned, a Special Leave Petition (SLP) had been filed, which was dismissed by the Supreme Court *vide* order dated 26.02.2016 on the ground of delay, keeping the questions of law open.

3.1. It is also the submission of the counsel for the parties that a SLP was preferred in ***Wilhelm Textiles India Pvt. Ltd. case*** as well. We are told that the said SLP, which is, numbered as SLP(C) No.1507/2017 has been admitted by the Supreme Court, *via* order dated 15.04.2019.

3.2. Furthermore, we are informed by the counsel for the parties that no stay has been granted by the Supreme Court in the aforesaid SLP.

4. Mr Sunil, however, informs us that a division bench of the Bombay High Court in the judgement rendered in ***CMS Info systems Ltd. Vs. Union of India, Ministry of Finance and Ors.*** 2017 (349) ELT 236 has taken a contra view, qua the issue in hand.

5. We may note, what is stated hereinabove by us-is also captured in sub-paragraphs (v) and (vi) of paragraph 2 in the present appeal.

6. Insofar as this bench is concerned, it is bound by the judgment of its own co-ordinate bench, and, therefore, this matter will have to be disposed of accordingly.

7. Given this position, the appeal is dismissed, and the impugned order dated 08.12.2020 passed by the Customs, Excise and Service Tax Appellate Tribunal [CESTAT] is sustained.

7.1. Pending application i.e., CM No.33545/2021 is, accordingly, closed.

8. Needless to add, if the appellant/revenue were to prefer an appeal, the final view in the matter will abide by the decision rendered by the Supreme Court.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 19, 2022/pmc

Click here to check corrigendum, if any