

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

CUSTOMS APPEAL No. 51776 of 2022

[Arising out of Order in Appeal No.CC(A)/Customs/D-II/IMP/ICD/TKD/1954/2021-22 dated 04.03.2022 passed by Commissioner of Customs (Appeals), New Customs House, New Delhi]

M/s. Artex Textile Privat Limited
Kh. No.282, Gali No.04, Industrial Area,
Shalimar Village, New Delhi-110088.

...Appellant

Versus

**Commissioner of Customs,
ICD Tughlakabad (Import),**
New Delhi-110020.

....Respondent

APPEARANCE:

Mr. Prem Ranjan Kumar, Advocate for the appellant
Ms. Tamanna Alam, Authorized Representative for the Respondent

CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **07/03/2023**

FINAL ORDER No. 50407/2023

DR.RACHNA GUPTA

The present appeal has been filed to assail the order in appeal No.1954/2021-22 dated 04.03.2022 vide which the refund claim of SAD in terms of Notification No.02/2007-Cus dated 14.09.2007 has been rejected while confirming the order of rejection passed by the Original Adjudicating Authority. The facts in brief relevant for the purpose are that the appellant had imported 9 consignments of fabrics during the period from 23.06.2016 to 24.11.2016 and had paid the customs duty as per the assessment, including SAD. It is on 12.10.2018 that the amount of Rs.7,85,947/-, as was paid as SAD was prayed to be refunded. On examination, the claim was observed to be barred by

time. The original adjudicating authority while relying upon the amendment in the aforesaid Notification No.102/2007 vide subsequent Notification No.93/2008 dated 01.08.2008 has rejected the claim vide Order in Original [No.2080 dated 28.02.2019](#) holding the claim to have been filed beyond a period of one year as prescribed under Notification No.93/2008. Since the said order has been upheld by the Commissioner (Appeals) the appellant is preferred appeal before this Tribunal.

2. I have heard Mr. Prem Ranjan Kumar, Id. Counsel for the appellant and Ms. Tamanna Alam, Id Authorised Representative for the respondent.

3. Ld. Counsel for the appellant has relied heavily upon the decision of Hon'ble High Court of Delhi in the case of **Sony India Pvt. Ltd. vs. Commissioner of Customs, New Delhi reported as 2014 (304) ELT 660 (Del.)** wherein it was held that the time limit prescribed under the Notification No.102 of 2007/93 of 2008 will not apply. Ld. Counsel has also relied upon the decision of this Tribunal in the case titled as **Thermoking vs. Commissioner of Customs, ICD, TKD in Customs Appeal No.5077/2021** decided on 24.11.2021. It is submitted that recently also Hon'ble High Court of Delhi while hearing the appeal of Revenue against the said order of this Tribunal in the case of **Thermoking** (supra) has held vide order dated [18.08.2022](#) that the decision of **Sony India Pvt. Ltd. (supra)** is still applicable for the reason that limitation cannot be prescribed by a Notification

4. Ld. Counsel, in view of the above relied upon case law as prayed for order of Commissioner (Appeals) to be set aside and present appeal to be allowed.

5. While rebutting these submissions, Id. DR has mentioned that this Tribunal in several cases have taken the view that decision of **Sony India Pvt. Ltd. (supra)** is no more applicable for the reason that the period involved in **Sony India** was prior the Notification in question was got amended. For the subsequent period since Notification No.93 is in existence prescribing a time limit of one year for filing the refund claim of SAD that the limitation has to be followed. Ld. DR has relied upon the following decisions of Tribunal:-

1. C.C. - New Delhi (ICD TKD) (Import) vs. Indu Exporters- Final Order No. 53156/2018 dated 25.10.2018 in Customs Appeal No.C /52435/2018 [DB].
2. C.C.-New Delhi (ICD TKD) (Import) vs. J.G. Impex Pvt. Ltd. - Final Order No.53157/2018 dated 25.10.2018 in Customs Appeal No. C/52393/2018 [DB]
3. C.C.-New Delhi (ICD TKD) (Import) vs. Nav Bharat Trading Corporation - Final Order No.53154/2018 dated 25.10.2018 in Customs Appeal No. C/52436/2018 [DB]

6. It is mentioned that in the light of these decisions there is no infirmity in the order under challenge. Appeal is accordingly prayed to be dismissed.

7. While rebutting these submissions of Id. D.R., Id Counsel has mentioned that the decision of Hon'ble Delhi High Court in the case of **Thermoking (Supra)** is a subsequent decision to all the decisions relied upon by the Department. Hon'ble High Court of Delhi is the jurisdictional High Court for this Bench. It is therefore, prayed that the said decision may be followed for the disposal of the present appeal.

8. Having heard the rival contentions, I observe and hold as follows:-

Hon'ble High Court of Delhi in **Sony India (supra)** had held as follows:-

"Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra, (1975) 35 STC 571 and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail."

No doubt the period involved in the said decision is of the year 2007 when Notification No.102/2007 had no time limit prescribed for filing the refund claim of SAD. However, in August, 2008 the said Notification got amended vide Notification No.93/2008 wherein one year time period was prescribed for filing the refund claim. Section 27 of Customs Act, 1962 talks about the refund and a time limit has also been prescribed therein. The same has been taken note of by Hon'ble Delhi High Court even in Soni

India Pvt. Ltd. Keeping in view the amendment to be subsequent to the **Sony's** decision that this Tribunal vide the decisions as relied upon by Id. D.R. had upheld the rejection of SAD refund claim on the basis of time limit.

9. I also observe that in the recent decision of **Commissioner of Customs vs. Thermoking as decided on 18.08.2022**, Hon'ble High court of Delhi has also discussed Section 27 of Customs Act. However, still the earlier decision of **Sony India** has been impressed upon holding that the limitation cannot be prescribed by a Notification, thus, holding the Notification No.93/2008 as a flawed one. In view of those findings subsequent to the earlier findings of this Tribunal and also in view of the **Code** of judicial protocol, it is the recent decision of Hon'ble High Court of Delhi in **Termoking** (supra) which has to be followed. The Hon'ble High Court has held that refund of SAD cannot be rejected on the grounds of limitation. For the said reason, the order under challenge is hereby set aside. Consequent thereto the appeal stands allowed.

[Order dictated & pronounced in the open Court]

**(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)**

Anita