सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD

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DIN-20250871MN000000CF9C

क	फ़ाइल संख्या FILE NO.	S/49-286/CUS/AHD/2023-24 (CAPPL/COM/CUSP/1670/2023-Appeal)
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-178-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order-In-Original No. 175/AC/ACC/ADJ/2015-16 dated 30.01.2016 passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad; which was earlier decided by: Order-In-Appeal No. AHD-CUSTM-000-APP-085-16-17 dated 30.01.2017 passed by Commissioner of Customs (Appeals), Ahmedabad. but remanded to Commissioner (Appeals) vide Final Order No. A/11506/2023 dated 11.07.2023 passed by the CESTAT, Ahmedabad in Customs Appeal No. 10814 of 2017
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Sony India Pvt. Ltd., A-18, Mohan Co-Op Industrial Estate, Mathura Road, New Delhi – 110044.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.

2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.**
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	**बैगेज़ के रूप में आयातित कोई माल.**
(a)	any goods imported on baggage.
(ख)	**भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.**
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	**सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.**
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	**पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :**
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	**कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.**
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	**सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो**
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	**पुनरीक्षण के लिए आवेदन की 4 प्रतियां**
(c)	4 copies of the Application for Revision.
(घ)	**पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.
4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**

	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

The present Order is being passed in remand proceedings in terms of directions given by Hon'ble CESTAT, Ahmedabad, vide Final Order No. A/11506/2023 dated 11.07.2023 passed in Customs Appeal No. 10814 of 2017 filed by M/s. Sony India Pvt. Ltd., New Delhi (hereinafter referred to as 'the appellant' or 'the importer').

2. Facts of the case, in brief, are that the appellant was engaged in import of 'mobile phones' by classifying them under Customs Tariff Item 85171290, for which they have filed following 40 Bills of Entry (hereinafter referred to as 'the impugned Bills of Entry') during the period from 29.04.2015 to 08.07.2015:

Table-1

Sr. No.	Bill of Entry No.	Date		Sr. No.	Bill of Entry No.	Date
1	9082047	29-04-2015		21	9479758	06-06-2015
2	9118780	05-05-2015		22	9566944	15-06-2015
3	9118784	05-05-2015		23	9645360	22-06-2015
4	9118792	05-05-2015		24	9621476	18-06-2015
5	9118790	05-05-2015		25	9645275	22-06-2015
6	9321720	22-05-2015		26	9645364	22-06-2015
7	9361933	26-05-2015		27	9409430	01-06-2015
8	9118777	05-05-2015		28	9645366	22-06-2015
9	9118781	05-05-2015		29	9645363	22-06-2015
10	9119204	05-05-2015		30	9567041	15-06-2015
11	9119207	05-05-2015		31	9656469	22-06-2015
12	9161143	07-05-2015		32	9566830	15-06-2015
13	9160787	07-05-2015		33	9567034	15-06-2015
14	9160791	07-05-2015		34	9567032	15-06-2015
15	9160792	07-05-2015		35	9567031	15-06-2015
16	9567061	15-06-2015		36	9567035	15-06-2015
17	9561233	15-06-2015		37	9840282	08-07-2015
18	9555337	12-06-2015		38	9799262	05-07-2015
19	9561227	15-06-2015		39	9799261	05-07-2015
20	9504763	08-06-2015		40	9799260	05-07-2015

3. The appellant filed these 40 bills of entry in the Indian Customs Electronic Data System (EDI) by carrying out self-assessment. The consignments were, thereafter given 'Out of Charge' by Customs officers. The appellant had paid Customs duty/CVD under protest and subsequently challenged the assessments of all these forty cases by filing appeals before the Commissioner of Customs (Appeals), Ahmedabad, vide Appeal Nos. S/49-168/CUS/AHD/2015-16, S/49-178 to 191/CUS/AHD/2015-16, S/49-223 to

243/CUS/AHD/2015-16 and S/49-256 to 259/CUS/AHD/2015-16. These appeals had been decided vide following Orders-In-Appeal:

(1) (a) AHD-CUSTM-000-APP-272-15-16 dated 31-12-2015 with
(b) AHD-CUSTM-000-APP-273 to 286-15-16 dated 31-12-2015 (common order).

(2) (a) AHD-CUSTM-000-APP-288 to 308-15-16 dated 04-01-2016 with
(b) AHD-CUSTM-000-APP-309 to 312-15-16 dated 04-01-2016 (common order).

Vide the above Orders-In-Appeal, the Commissioner of Customs (Appeals), Ahmedabad, had **set aside the assessments of impugned 40 Bills of Entry** and remitted the cases back to the assessing authority for de novo decision after considering all the relevant fact, document and provisions of law and to pass suitable order in adherence of principles of natural justice

4. After de novo proceedings, the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as 'the adjudicating authority') has passed an Order-In-Original No. 175/AC/ACC/ADJ/2015-16 dated 30.01.2016 (hereinafter referred to as 'the impugned order'). In the said impugned order, he inter alia observed that the full facts of case do not warrant any modification in the assessment order; hence, any benefit claimed post completion of each assessment was outside the mandate of assessment, which being an adjudication order, the adjudicating authority became *functus officio* and hence, the remedy lies elsewhere. The adjudicating authority did not offer any Personal Hearing to the importer. He held that his office was not 'proper officer' to revisit any of the assessments which are final assessment orders for all legal purpose and therefore, the adjudicating authority refrained from interfering with these orders (i.e. assessments).

5. Being aggrieved with the above mentioned O.I.O. dated 30.01.2016, the appellant had filed an appeal number S/49-354/CUS/AHD/2015-16 with this office. The said appeal was rejected by the then Commissioner (Appeals) vide Order-In-Appeal No. AHD-CUSTM-000-APP-085-16-17 dated 30.01.2017. In the said O.I.A. dated 30.01.2017, it has been observed that the self-assessed Bill of Entry cannot be considered as an order / decision of the officer and there cannot be any question of the importer being aggrieved against the officer. Hence, it was observed that the order passed by the lower authority was legal and proper. Thus, the impugned order dated 30.01.2016 was upheld and the appeal filed by M/s. Sony India Ltd. was rejected vide the O.I.A. dated 30.01.2017.

6. Being aggrieved, the importer had filed Customs Appeal No. 10814 of 2017 with the CESTAT, Ahmedabad. The said appeal has been decided by Hon'ble CESTAT vide Final Order No. A/11506/2023 dated 11.07.2023. Extracts from the said Order are given below (emphasis supplied):

"2.1 In nutshell, despite direction to do de-novo adjudication, he emphasized his lack or power being not a proper officer to revisit any of the aforementioned assessment which are final assessments for all legal purposes and therefore refrained, from interfering with the assessment orders, which in any case were set aside. This despite there being a judicial duty cast upon him to pass de novo order in all the matters where assessment are under challenge. We further find that in appeal in second round to the appellate authority an order was passed dated 30.01.2017 and Commissioner (Appeals) not realizing that the first appellate authority had already set aside assessment orders and had directed passing of a de novo order after following natural justice, endorsed the view of original authority and rather gave his reasoning as to why self assessment cannot be reopened vide para 7 to 8 of his order reproduced below:

... ...

... ...

2.1 In short, the Commissioner (Appeals) in second round not realizing that his predecessor has already set aside self assessment order which finding has remained uncontested till date by the department, gave life to such self assessment orders and again stated that the appellant cannot be a person aggrieved by the self assessment order which in any case were NON EST after the first appellate order was passed. The learned advocate for the appellants seeks to rely on the following two decisions to indicate that self assessment is also an assessment and appellable like any other assessment order for the purposes of indicating that in any case it was even the self assessment order could be challenged.

- *ITC Ltd. 2019 (17) SCC 46*
- *MK Woods India (P) Ltd. Customs Appeal No. 11277 of 2016 (decision dated 11.05.2023)*

3. Learned Authorized Representative confronted with the situation reiterates the order of the lower authorities.

4. Considered.

5. We find that in the first round of litigation, an assessment was made by the party and the assessment order were duly approved by the departmental officers and duty was paid under protest. The so-termed self assessment order were set aside by the learned Commissioner(Appeals) to require original authority to issue a fresh order as there was lack of cooperation by the department in providing all the relevant documents. The original authority also had the same predicament of not having the relevant records but overlooked that the self assessment orders were in any case set aside, continued to proceed and concluded that he is not competent, not being a proper officer to reopen the same. This is in complete defiance of order of 1st appellate authority. On appeal to the Commissioner (Appeals), in the second stage he also expressed opinion in his findings that a person has to be aggrieved by self assessment to litigate the matter further. We find that even this proposition is no more valid in view of the judgment cited by the learned Advocate indicating the self assessment is an assessment like any other and any person (including person doing self assessment) aggrieved can come up for appeal against the same. At this belated stage where the documents are not available with the department and this ***thing has been repeatedly coming on record and that the duty was paid under protest, we are inclined to give relief to the party and remand the matter to Commissioner (Appeals) to allow the benefit of the Notification sought by the party after due examination of the same, as per law specially provisions of Section 149.***"

7. The above-mentioned Final Order dated 11.07.2023 has been accepted by Customs Department. In other words, no appeal has been filed against the said Final Order. The present order in remand proceedings is being passed in terms of the directions given by Hon'ble CESTAT vide above-mentioned Final Order dated 11.07.2023.

Personal Hearing

8. Personal Hearings in this matter was fixed on 30.04.2025, 17.06.2025 and 26.06.2025, but no one appeared on behalf of the appellant. In order to fulfil the principles of natural justice, another personal hearing was fixed on 08.08.2025, but again no one appeared.

Findings

9. Before starting discussion, I note that the duty, which is under dispute in this case, is the Additional Duty of Customs leviable under Section 3(1) of the Customs Tariff Act, 1975, which is equal to duty of Central Excise leviable for the time being on a like article if produced or manufactured in India. The said Additional Duty of Customs, equal of Central Excise duty, was popularly known as Countervailing Duty ('CVD').

10. I have carefully gone through the Final Order No. A/11506/2023 dated 11.07.2023 passed by the CESTAT, Ahmedabad. I find that relief has already been given to the appellant vide Para 5 of the said Final Order dated 11.07.2023 and the only issue, which is to be examined by me is that whether Mobile handsets imported by the appellant are eligible for benefit of 1% CVD as per Sr. No. 263A of the Notification No. 12/2012-CE dated 17.03.2012, as amended by Notification No. 12/2015-CE dated 01.03.2015. As per condition number 16 of the said Notification, which was applicable for Sr. No. 263A, the said rate of 1% CVD was applicable if no credit under rule 3 or rule 13 of the Cenvat Credit Rules, 2004 has been taken in respect of inputs or capital goods used in manufacture of those goods. I have to further examine applicability of Section 149 of the Customs Act, 1962, in this case.

11. I find that during the time of imports in this case, Customs Department was not extending the benefit of 1% CVD on imported mobile handsets on the ground that the aforesaid condition 16 regarding non-availment of Cenvat credit by manufacturers was not satisfied in case of imported goods. At that time, the EDI System of Customs Department was not allowing the benefit of Sr. No. 263A of the Notification No. 12/2012-CE dated 17.03.2012 in case of payment of CVD on imported goods on the misconceived premise that the said benefit of 1% Central Excise duty was available to domestic manufacturers only who did not avail Cenvat Credit, but it was not available to importers. However, Hon'ble Supreme Court, in the case of **SRF Ltd. Vs. Commissioner of Customs, Chennai [2015 (318) ELT 607 (SC)]** has held that the importers were entitled to the exemption from payment of CVD in terms of similar Notification No. 6/2002-CE dated 01.03.2002.

12. Thereafter, the CBEC (now known as CBIC) has issued a **Circular No. 1005/12/2015-CX dated 21.07.2015**. First three Para of the said Circular are as under:

"It may recalled that the Hon'ble Supreme Court, in the case of M/s. SRF Ltd. versus Commissioner of Customs, Chennai and M/s. ITC Ltd. v/s. Commissioner of Customs (I&G), New Delhi [2015 (318) E.L.T. 607 (S.C.)] relating to CVD exemption, has held that

the benefit of excise duty exemption [available to final products manufactured by the domestic manufacturer, subject to the condition of non-availment of CENVAT credit of duty on inputs or capital goods used by such manufacturer for manufacture of such final products] will also be available to the importers of such final products for the purposes of CVD on the ground that the importer was not availing the credit of duty on inputs or capital goods.

2. The implication of the Hon'ble Supreme Court judgment was that all such final products when imported by manufacturer importer would have attracted concessional excise duty as CVD, while the domestic manufacturer of such final products had to forgo input tax credit to be eligible for such concessional rate. This would put the domestic manufacturers at a disadvantage vis-a-vis imports and would adversely impact the Make in India Policy of the Government.

3. The judgment of the Hon'ble Supreme Court was examined in CBEC and it was found that there were certain errors apparent on record/interpretational issues and with the concurrence of the Ld. Attorney General, a Review Petition/Revision Application has been filed against the same.

... ..."

13. However, the **Review Petition** (C) No 2440 of 2015 in Civil Appeal No. 9440 of 2009 filed by the Commissioner of Customs, Chennai-I against the aforesaid Judgment and Order dated 26.03.2015 in the case of SRF Ltd. Vs. Commissioner of Customs, Chennai [2015 (318) ELT 607 (SC)] has been **dismissed** by Hon'ble Supreme Court vide Order dated 15.07.2016, which is reported as **Commissioner v. SRF Ltd. - 2016 (340) E.L.T. A202 (S.C.)**. Thus, the issue attained finality in favour of the appellant importer.

14. Further, I find that in another similar case of the appellant itself, Hon'ble High Court of Telangana has passed an Order dated 12.08.2021 in W.P. No. 4793 of 2021, which has been reported as **Sony India Pvt. Ltd. Vs. Union of India [2022 (379) ELT 588 (Telangana)]**. Highlights of the said Order are as follows:

Customs: Benefit of Exemption Notification which could not be claimed due to non-availability of Exemption Notification in EDI systems could not be denied by giving untenable reason that relevant Supreme Court judgment, which was applicable, was delivered after dates of clearance of goods

Bill of Entry - Amendment of Bill of Entry sought to claim benefit of Exemption Notification which could not be claimed due to non-availability of Exemption Notification in EDI systems - Department's plea that only reassessment under Section 128 of Customs Act, 1962 is remedy available to petitioner, not tenable - Department claimed that cited judgment of Supreme Court in M/s. SRF Ltd. was delivered on 26-3-2015 [2015 (318) E.L.T. 607 (S.C.)] and same was not available/in existence when goods pertaining to relevant BOEs were cleared - Department taken the decision of Supreme Court as "documentary evidence" which was not in existence at the time of clearance of goods - **HELD :** Law declared by Supreme Court, unless made prospective in operation in its judgment is always deemed to be the law of land - It cannot be construed as applicable only after the date of pronouncement of judgment of the Supreme Court - That apart, the term "documentary evidence" used in Section 149 ibid, in context of amendment to BOEs or like documents, cannot include decisions of Courts - Adjudicating authority admits principle laid down in M/s. SRF Ltd., but in impugned order he denied benefit of same by giving untenable reason that judgment was delivered after dates of clearance of goods - Moreover, Adjudicating authority cannot refuse to follow a decision of Supreme Court on the ground that Commissioner (Appeals) did not grant relief to petitioner for different period - Also adjudicating authority failed to consider the fact that Section 149 ibid does not prescribe any time limit for amending the Bill of Entry filed and assessed - Importer/petitioner cannot be penalized for what the authority ought to have done correctly by himself - Impugned order violative of Articles 14, 19(1)(g) and 265 of Constitution of India and Customs Act, 1962, hence set aside. [paras 36 to 51]

In the afore-mentioned case, Hon'ble High Court of Telangana has allowed the writ petition filed by M/s. Sony India Pvt. Ltd. in similar matter. Against the aforesaid Order of Telangana High Court, the Union of India has filed a Special Leave Petition (Civil) Diary No. 2319 of 2023 with Supreme Court of India. Vide Order dated 17.04.2023, Hon'ble Supreme Court observed that they are not inclined to interfere with the impugned judgment and order of the High Court and thus dismissed the SLP, which has been reported as **Union of India vs. Sony India Pvt. Ltd. - (2023) 5 Centax 234 (SC)**. Thus, the matter has attained finality in favour of the appellant.

15. In view of the above position of law, I am of the view that the appellant was entitled for payment of CVD @1% by availing benefit of Sr. No. 263A of Notification No. 12/2012-CE dated 17.03.2012, as amended, for the impugned 40 Bills of Entry, because the condition 16

regarding non availment of Cenvat credit of inputs and capital goods used in manufacture of imported goods has not been violated. The assessments (including self-assessments) of the said 40 Bills of Entry have already been set aside by my predecessor Commissioner (Appeals) vide Orders-In-Appeal dated 31.12.2015 and 04.01.2016 as mentioned hereinabove. Therefore, I hereby direct the adjudicating authority to allow the benefit of Sr. No. 263A of Notification No. 12/2012-CE dated 17.03.2012, as amended, to the import of mobile phones covered under 40 Bills of Entry as mentioned in the Table-1.

16. As regards applicability of Section 149 of the Customs Act, 1962, I find that no time-limit has been prescribed under Section 149 for amendment of Bill of Entry. Further, I find that as per the first Proviso to Section 149, which is applicable in the present case, the Bills of Entry can be amended after clearance of the goods, on the basis of documentary evidence which was in existence at the time when the goods were cleared. In the present case, the goods were cleared during the period of 29.04.2015 to 08.07.2015. During that period the Notification No. 12/2012-CE dated 17.03.2012, and the amending Notification No. 12/2015-CE dated 01.03.2015 were in existence, but benefit of the same was not allowed by Customs Department at that time. Now, in view of the settled position of law, the said benefit is available to the appellant. So, I am of the view that the impugned 40 Bills of Entry can be amended under Section 149, more particularly when the relief to the appellant has already been granted by Hon'ble CESTAT vide Final Order dated 11.07.2023.

17. In addition to above findings, I observe that the appellant has already challenged the assessments by filing appeals against the impugned Bills of Entry under the provisions of Section 128 of the Customs Act, 1962. It is also settled position that the importers can file appeal against self-assessment of Bill of Entry, as held by Hon'ble Supreme Court in the case of **ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]**. Similarly, in the case of **M K Wood India Pvt. Ltd. Vs. C.C., Mundra, vide Final Order No. A/11150/2023 dated 11.05.2023** in Customs Appeal No. 11277 of 2016, the jurisdictional CESTAT, Ahmedabad, observed that the Commissioner (Appeals) had rejected the appeal solely on the ground that no appeal can be filed against the self assessment order. However, after relying upon the decision of the Hon'ble Apex Court in the case of **ITC Ltd.** (supra), Hon'ble CESTAT had set aside the Order-In-Appeal and remanded the case back to Commissioner (Appeal) for re-consideration. In view of this position of law, I am of the view that importer can file appeal against self-assessment of the impugned 40 Bills of Entry and as the importer succeed in appeal, these Bills of Entry can also be modified by way of re-assessment under the provisions of Section 17(4) of the Customs Act, 1962.

18. I also rely upon the Judgment dated 18.01.2021 in W.P.(L) No. 249 of 2020 of Hon'ble High Court of Bombay in the case of **Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs [2021 (376) ELT 192 (Bom.)]** wherein it has been held to the effect that during self-assessment under Section 17, if assessee had claimed wrong classification i.e. Tariff Heading, the proper officer of Customs is empowered to make reassessment and reassess duty leviable on such goods after permitting amendment of such Bills of Entry by correcting Tariff Heading in terms of Section 149 or 154 of Customs Act, 1962. Against this Judgment, the Commissioner of Customs had filed Special Leave to Appeal (C) No. 15777 of 2021 with Supreme Court of India. Vide Order dated 08.11.2021, Hon'ble Supreme Court has dismissed the said Special Leave to Appeal, which has been reported as **Commissioner Vs. Dimension Data India Private Ltd. - 2022 (379) E.L.T. A39 (S.C.).** The ratio decided by the said case of Dimension Data India Pvt. Ltd. (supra), which is in favour of the appellant, is applicable to the present case also.

19. In view of the above discussion, I find that the benefit of payment of CVD @1% should be granted to the appellant either by way of re-assessment of impugned Bills of Entry under the provisions of Section 17(4) of the Customs Act, 1962, and/or by way of amendment of Bills of Entry under the provisions of Section 149 ibid. In case the said benefit cannot be granted due to limitation in software of EDI System, the said Bills of Entry should be re-assessed or amended manually by the adjudicating authority and communicated to the appellant. As the assessments are very old, i.e. pertaining to the year 2015, it is expected that the appellant shall also co-operate the Customs officers posted at Air Cargo Complex, Ahmedabad, by providing copies of relevant documents, if sought for by Customs Department, for the purpose of re-assessment or amendment of impugned Bills of Entry.

20. Needless to say that refund of differential duty/CVD will arise only after re-assessment or amendment of impugned Bills of Entry. The appellant has nowhere mentioned that whether they had taken or not, Cenvat credit of CVD paid by them at higher rate. If the appellant wants to claim refund, they will require to file refund claim with relevant documents, including documents regarding unjust enrichment, with the office of the Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, under the provisions of Section 27 of the Customs Act, 1962, after completion of re-assessment or amendment of impugned Bills of Entry.

21. In view of the above facts and discussion, I pass the following order.

Order

21.1 I order to either reassess or amend the impugned 40 Bills of Entry under the provisions of Section 17(4) or Section 149 of the Customs Act, 1962, respectively, by extending benefit of payment of CVD @1% to mobile handsets as per Sr. No. 263A of the Notification No. 12/2012-CE dated 17.03.2012, as amended. If re-assessment or amendment cannot be done electronically due to limitation of EDI System, it should be done manually and communicated to the appellant.

21.2 The appeal filed by M/s. Sony India Pvt. Ltd. is hereby allowed with consequential relief in accordance with law.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-286/CUS/AHD/2023-24
(CAPPL/COM/CUSP/1670/2023-Appeal)

Date: 08.08.2025

By Speed Post / E-mail (As per Section 153(1) (b)&(c) of the Customs Act, 1962)

To
M/s. Sony India Pvt. Ltd.,
A-18, Mohan Co-Op Industrial Estate,
Mathura Road,
New Delhi – 110044.
(Email: sonyindia.care@ap.sony.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
(email: aircargo-amd@gov.in accusacc@gmail.com)

4. Guard File.

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