

**GIB/DL/PIONEER INDIA/13-09-2013/HC-120**

**High Court Category :** REFUND

**State :** Delhi

**Order No.:** GIB/DL/PIONEER INDIA/13-09-2013/HC-120

**Name of Entry :**

PIONEER INDIA ELECTRONICS (P) LTD. VERSUS UNION OF INDIA

**Date :** 13-09-2013

**Breif Issue :**

**Fact of the Case:**

The petitioner M/s Pioneer India Electronics Private Limited was incorporated in the year 2008 and is subsidiary of Pioneer Corporation, Japan. The petitioner is engaged in the import and marketing of Pioneer branded products in India.

The petitioner imported several electrical goods falling under the first schedule of the Customs Tariff Act, 1975 (hereinafter referred to as, the Act). The goods were cleared after payment of provisional duty.

The petition was filed on the grounds:

Refund of 4% SAD - Circular No. 23/2010 - whether ultra virus – Refund of Provisional Duty Paid – Notification No. 102/2007 - Period of Limitation - Whether the Central Government while imposing conditions for grant of exemption u/s 25(1) of the Act could lay down conditions in derogation to the specific statutory provisions and stipulations contained in Section 27 of the Act - The problem had arisen largely due to failure of the respondents to pass final adjudication orders which were belatedly made - There was no explanation for this delay and the cause

**Decision of Advance Ruling Authority :**

**Decision:**

It was held that:

It will be proper to harmoniously construe and interpret notification dated 1st August, 2008 and Section 27 read with Circular dated 29th July, 2010 by holding that an Assessee can make a claim for refund under notification No. 93 of 2008 dated 1st August, 2008 either by filing an application for refund within the limitation period specified under Section 27 of the Customs Act, 1962 or within the extended limitation period of one year from the actual date of payment even, if the said payment made was pursuant to provisional assessment - The longer of the two periods i.e. the period specified under Section 27 or the notification dated 1st August, 2008 read with Circular No. 23/2010–Custom dated

29th July, 2010 would be applicable - The petitioner had filed the claims within the period stipulated by section 27 of the Act, in view of the construction given by us, the same could not have been rejected on the ground of limitation.

Circular No. 23 of 2010 was issued on 29.07.2010 stipulating a limitation of one year from the date of payment of the duty at the time of clearance of the imported goods - If the period in the circular was to be followed then some of the refund claims of the petitioner would become time barred and in others hardly any time would be left for the petitioner to make a claim - Where the imported goods were released on payment of CVD on regular assessment, the application seeking refund can be made within one year of the payment of the CVD in terms of the notification dated 1st August, 2008 read with Circular No. 23/2010–Custom dated 29th July, 2010.

Where the goods were released on provisional assessment followed by the final assessment, the application seeking refund can be made within the period of one year or six months, as the case may be, of the final assessment as stipulated by Explanation II to section 27 of the Act or within the enlarged period of one year from the date of provisional release as stipulated by the notification dated 1st August, 2008 read with Circular No. 23/2010–Custom dated 29th July, 2010.

The Circular No. 23/2010-Custom in so far as it stipulates that the provisions of section 27 of the Act do not apply to the Notification cannot be sustained to the extent indicated.

The Circular No. 23/2010-Custom to the extent it holds that section 27 of the Act had no application was held ultra-vires the statute and quashed - The orders dated 21.3.2011 and 27.4.2011 passed by respondent No.2 relying on Circular No. 23/2010-Custom dated 29.07.2010 were hereby set aside and the matter was remanded to respondent No.2 to assess the claim of the petitioner for refund on imports and to process the same in accordance with the provisions of Section 27 of the Act.