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Interpretation of the term 'Sale' in claiming refund of Special Additional duty of Customs ('SAD')

In brief

The CESTAT New Delhi, in the case of Reliance Communications Infrastructure Limited ('the company') has held that sale for the purpose of SAD refund would include deemed sale.

Facts

- The company has imported set top boxes on payment of customs duty including SAD and provided the same to its customers on a "right to use" basis on which they charge and pay VAT.
- Accordingly, the company has filed for refund of SAD paid on import of such set top boxes, which was denied by the department on the ground that "right to use" is not sale.

Issue before the Tribunal

Whether the company would be eligible for refund of SAD paid on importation and supply of set top boxes on right to use basis?

Contention of the department

- The department contended that mere transfer of set top boxes on "right to use" basis cannot be considered as sale even if VAT has been paid, as the ownership of the goods has remained with the Company.

Contention of the company

- The Notification 102/2007 governing the procedure for refund of SAD does not define the word 'sale'; therefore, the reference has to be taken from respective state VAT/CST Act.

- Additionally, the dominant test as per the notification is the payment of VAT/Sales tax, irrespective of whether the transaction is a sale or deemed sale.

Conclusion

The CESTAT has held that the main intention of the notification is that the same goods should not suffer VAT/sales tax as well as SAD and since the term 'sale' is not defined in the notification the reference has to be taken from respective VAT/CST act.

Accordingly, the Company would be eligible for refund of SAD as long as they are paying VAT/Sales tax, irrespective of whether the transaction is a sale or a deemed sale.

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