CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 02

CUSTOMS Appeal No. 10615 of 2020-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-009-20-21 dated 12.06.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

C.C.-JAMNAGAR(PREV) **...Appellant**
Sharda House...Bedi Bandar Road,
Jamnagar, Gujarat.

VERSUS

RELIANCE INDUSTRIES LIMITED **...Respondent**
Village: Meghpar/Padana, Taluka;Lalipur,
Jamnagar,Gujarat

APPEARANCE:
Shri Sanjay Kumar, Superintendent (AR) for the Appellant
Shri J C Patel, Shri Rahul Gajera, Ms. Shilpa Balani, Advocates appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), C.L MAHAR

FINAL ORDER NO. A/ 11894 /2023

DATE OF HEARING:05.09.2023
DATE OF DECISION: 05.09.2023

SOMESH ARORA

In the instant case, the department is in appeal against the order of Commissioner (Appeals), which permits refund of interest on amounts, which were paid during litigation of earlier case which was decided by this Tribunal in October, 2013. The period for which refund of interest was sought by the appellants is 12th August, 2014 to 14th September, 2016. The refund claim was earlier filed with specified officer of the SEZ, who did not decide the claim due to lack of clarity as to whether the jurisdictional Customs Officers, or Specified Officer, will decide the matter of refund pertaining to SEZ units. The clarity was brought on the book of statute vide Notification Bearing No. 772/E dated 28.08.2016, which specified that it will be jurisdictional Officer, which will have to decide refund claim. Accordingly, the specified officer of SEZ before whom the claim was filed transferred the whole bunch of papers to jurisdictional officer, who finally sanctioned the claim on 29.03.2017. The respondents have been litigating about the permissible interest on the matter amounting to Rs. 5,82,26,261/- The claim being confined to the period from 12.08.2014 to 14.09.2016. The Learned Advocate for the respondents emphasized that the claim having remained unattended due to lack of clarity on the part of the department or for that matter between SEZ authorities and customs authorities cannot be the reason for non grant of interest. The learned Commissioner relying on the case law of M/s. New Kamal Vs. UOI as reported in 2020 (372) ELT 571(Guj), allowed the benefit. Learned Advocate for the respondent argued that the claim has been correctly allowed by Commissioner (Appeals) in accordance with the decision of jurisdictional High Court of Gujarat.

2. As against this, the Learned AR, in his argument has placed reliance on the decision of Calcutta High Court as reported in V.R Overseas Pvt Ltd-2023 (385) ELT 107 (Cal), to emphasize the point that when objection during processing of refund is raised it will be the date of resolving of objection that will be the date the purposes of deciding relevant date from which interest has to be allowed. It was also his submission that in the instant case some objection was raised by the sanctioning authority as the jurisdictional officer in and around November, 2016 and after resolution of which the refund matter was decided. Therefore he sought to distinguish the decision of M/s. New Kamal with the help of decision in the matter of M/s. V.R Overseas Pvt Ltd, to emphasize that the refund in the instant case for the period demanded by the respondents could not be granted and the Learned Commissioner (Appeals), was in error in allowing this claim.

3. Considered, the rival submissions. In the instant case, the refund pertains to the duty paid during investigation and pendency of litigation of the matter and the Learned Advocate for the respondents seeks to rely on the Board Circular No. 275/37/2K-CX.8A dated 2 January, 2002, which is extracted as follows:

> *"3. In order to attain uniformity and to regulate such refunds it is clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 not be insisted upon. A simple letter from the person who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in- appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank guarantees executed in lieu of cash deposits shall also be returned."*

3.1 The point of emphasis is that if refund of interest becomes due to any depositor consequent upon any court decision, the same needs to be granted on the basis of a simple letter from the person, who has made such deposit requesting the refund of such amount along with attested Xerox copy of order in appeal and attested Xerox copy of the challan. It was his submission that, both the documents Xerox copy of the order as well Xerox copy of the challan was produced by them when initial claim was filed.

4. We have considered the rival submissions, we are of the view that M/s. New Kamal decision (cited supra) of the Hon'ble Gujarat High Court, as well as the board circular as reproduced above, makes it clear that unless some objections of substance as per the board circular of order not having been produced or copy of TR6 challan not having been produced is raised, other

objections in view of copy of order of higher judicial authorities become in consequential.

5. In view of foregoing, we find nothing wrong in the grants of refund of interest for the period sought by the appellant. Accordingly we uphold the order of Commissioner (Appeals) and reject the refund.

(Dictated & Pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L MAHAR)
MEMBER (TECHNICAL)

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