Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO.3

Customs Appeal No. 11800 of 2014-DB

(Arising out of OIA-18-2014-CUS-COMMR-A—AHD dated 17/01/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

Commissioner of C.-Ahmedabad **........Appellant**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,GUJARAT

VERSUS

Petronet Lng Ltd **........Respondent**
Gidc Industrial Estate,
Plot No. 7/a, Dahej, Taluka : Vagra,
BHARUCH,GUJARAT

WITH

Customs Appeal No. 11447 of 2017-DB

(Arising out of OIA-AHD-CUSTM-000-APP-009-010-17-18 dated 01/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Petronet Lng Limited **........Appellant**
Gidc Industrial Estate, Plot No.7/a, Dahej,
Taluka- Vagra
BHARUCH-GUJARAT

VERSUS

Commissioner of C.-Ahmedabad **........Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,GUJARAT

AND

Customs Appeal No. 11448 of 2017-DB

(Arising out of OIA-AHD-CUSTM-000-APP-009-010-17-18 dated 01/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Petronet Lng Limited **........Appellant**
Gidc Industrial Estate, Plot No.7/a, Dahej,
Taluka- Vagra
BHARUCH, GUJARAT

VERSUS

Commissioner of C.-Ahmedabad **........Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO, NAVRANGPURA,
AHMEDABAD,GUJARAT

APPEARANCE:
Miss Mannat Waraich, Advocate, appeared for the Appellant- Assessee
Shri A R Kanani, Superintendent (AR), appeared for the Respondent- Revenue

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

Final Order No. 12365-12367/2024

DATE OF HEARING: 09.08.2024
DATE OF DECISION: 15.10.2024

RAMESH NAIR

The issues involved in these three appeals are as under:-

Revenue's Appeal No. C/11800/2014-DB

1.1 In this appeal the issue involved is whether the appellant's refund claim of duty paid on short landing of goods namely, LNG is hit by mischief of unjust enrichment or otherwise. The background of this case is that the adjudicating/ sanctioning authority though on merit sanctioned the refund claim but credited into Consumer Welfare Fund on the ground of Unjust Enrichment. The Learned Commissioner (Appeals) taking cognizance of this Tribunal's earlier order in the same case reported as Petronet Lng Ltd vs. Commissioner of Customs, Ahmedabad2012 (275) E.L.T. 568 (Tri.-Ahmd.) held that there is no Unjust Enrichment in this case and accordingly, allowed the appeal. The revenue being aggrieved by the order of the Commissioner (Appeals) filed the present appeal along with the Stay application. The revenue's Stay Application has been rejected. Thereafter, the department has released the refund by passing a detailed adjudication order dated 17.01.2014.

Assessee's Appeals No. C/11447/2017-DB & C/11448/2017-DB

1.2 In these appeals, the issue involved is that in respect of the refund involved in the above case whether the assessee is entitled for interest from 3 months of filing of the refund application till the sanction of the refund or from the date of Commissioner (Appeals) order on the refunds matter.

2. Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the revenue appellant submits that the adjudicating authority has rightly credited the refund in the Consumer Welfare Fund as the appellant could not give proper documents to establish that the incidence of duty paidon the short landing of the imported goods has not been passed on. Therefore, the order of the Learned Commissioner (Appeals) is not legal and correct. Hence, the same deserves to be set aside. He also reiterates the grounds of appeal in the revenue's appeal.

2.1 As regard the assessee's appeal, he submits that as per the Hon'ble Gujarat High Court judgment in Manisha Pharmo Plast Pvt. Ltd Vs. Union of India 2010 (262)E.L.T.165(Guj.) the assessee are entitled for the interest only from the date of Commissioner (Appeals) order whereby, the refund was allowed.

3. Miss Mannat Waraich, Ld. Counsel appearing on behalf of the assessee in respect of the revenue's appeal submits that in the appellant's own case in respect of the same refund, the Tribunal in the case reported at Petronet Lng Ltd 2012 (275) E.L.T. 568 (Tri.-Ahmd.) already decided that the Unjust Enrichment is not applicable in respect of the duty paid in case of short landing of goods and set aside the order whereby, the amount of refund was ordered to be credited into Consumer Welfare Fund. Therefore, the issue is no longer res-integra. She further submits that the appellant have shown the amount as receivable in their books of accounts and a Chartered Accountant's certificatewas also produced to this effect. The sanctioning authority after rejecting the Stay application of the revenue in the present appeal, given a detailed finding, whereby, it was conclusively accepted that there is no Unjust Enrichment and thereafter, the refund was sanctioned. Therefore as of now, the issue of Unjust Enrichment does not exist.

3.1 As regard the assessee's appeals on the claim of interest on the refund of duty, she submits that the sole reliance of the revenue is on the Hon'ble High Court of Gujaratjudgment in the case of Manisha Pharmo Plast Pvt. Ltd Vs. Union of India (supra)this judgment has been reversed by the Hon'ble Supreme Court as reported at Manisha Pharmo Plast Pvt. Ltd. vs. Union of India 2020 (374) E.L.T. 145 (S.C.) which has considered the landmark decision on this particular issue of interest in the case of Ranbaxy Laboratories Ltd vs. Union of India 2011(273)E.L.T.3 (S.C.). Therefore, the assessee is entitled for the interest after 3 months from the date of filing of refund application.

4. We have carefully considered the submission made by both the sides and perused the records. As regard the revenue's appeal involving the issue of Unjust Enrichment in respect of the refund of duty paid on short landing of imported goods. We find that there is no dispute that the appellant have shown the refund amount as receivable in their books of accounts and a Chartered Accountant's certificate was issued to this effect. Therefore, firstly the duty paid in respect of goods which have not arrived in India therefore, question of passing ofthe incidence of duty does not arise. Secondly, the amount of duty so paid on the short landing of the goods was shown as

receivable in the books of accounts which has been certified by a Chartered Accountant. On this issue, the Tribunal in the decision in the appellant's own case reported at PetronetLng Ltd vs. Commissioner of Customs, Ahmedabad 2012 (275) E.L.T. 568 (Tri.-Ahmd.) already considered the issue of Unjust Enrichment and held that in thisfact Unjust Enrichment is not applicable. The Ld. Commissioner (Appeals) in the impugned order considered the Tribunal's decision and allowed the appeal of the assessee.Moreover, after rejection of the Stay application of the revenue in the present appeal, the sanctioning authority i.e. Assistant Commissioner Customs Division, Suratvide Order-In-Original No.56/AC/SRT/REFUND/2015 dated 30.09.2015 considered the issue of Unjust Enrichment as a fresh and observed in para 16 as under:-

> *"16. I have gone through this office letters dated 05.09.2014, 24.09.2014, 17.10.2014, 03.11 2013, 27.11 2014 and dated 02.12.2014 written to claimant to produce provide B/E wise details of refund claim amounting to Rs. 2,06,87,123/- and to provide copy of Chartered Account Certificate alongwith breakup of Sundry Debtor's etc, but instead of submitting the same, the claimant vide their letter dated 04.12.2014 (forwarded through Supdt., CH, Dahej) again submitted the copy of C A. Certificate dated 18.06.2012 reflecting the quantum of customs duty of Rs 1,49,39,966/ only along with its breakup and claimant also requested to process the refund claim of Rs 1,49,39,966/- only alongwith interest. This office vide letter dated 15.12.2014, dated 29.12.2014 & dated 06.01.2015 again requested to claimant to provide breakup of Sundry Debtor's as per balance sheet and Bill of Entry wise details/annexure, from where the refund claim of Rs. 2,06,87,123/ has arisen. The claimant vide this their letter dated 05.02.2015 again submitted the copy of C. A. Certificate dated 18.06.2012 reflecting the quantum of customs duty of Rs 1,49,39,966/- only and requested to process the refund claim only to the extent of Rs 1,49,39,966/- alongwith interest. This office vide letter dated 13.02.2015, dated 26.02.2015 and dated 11.03.2015 requested to the claimant to produce afresh CA certificate alongwith relevant ledger/Journal Voucher/books of account, where the amount of Rs 1,49,39,666/- is shown as receivable in their books of account with its present status and also to clarify their stand on the refund claim of Rs 3,02,204/- in respect of Bill of Entry No. F-276/05-06 dated 15.02.2006. The claimant vide letter dated 16.03.2015 submitted fresh CA certificate dated 03.03.2015 wherein it is certified that the quantum of customs duty amounting to Rs 1,49,39,966/- is still shown as receivables in the books of accounts. The claimant in their letter dated 16.03.2015 also submitted that differential amount of Rs 57,47,157/- (Rs 2,06,87,123/- Rs 1,49,39,966/-) and the amount of Rs 3,02,204/- in respect of Bill of Entry number F-276/05-06 dated 15.02.2006 shall not be claimed by claimant in future and accordingly requested to process the refund claim of Rs. 1,49,39,966/ only. Therefore, the claim reduced from Rs. 2,09,89,327/- (Rs 2,06,87,123/+ Rs 3,02,204/-) to Rs 1,49,39,966/-, for which the claimant have produced the CA certificate dated 03.03.2015."*

4.1 In view of the above observation of the Assistant Commissioner and also the decision of this Tribunal and our observation that the amount of refund has been shown as receivable which is supported by Chartered Accountant's certificate there is absolutely no doubt that the incidence of duty paid on short landing of goods has not been passed on to any other person. Therefore, there is no case of Unjust Enrichment against the assessee. Accordingly, the impugned order passed by the Learned Commissioner (Appeals) is absolutely legal and in order which does not require any interference and hence, the same is upheld, revenue's appeal is dismissed.

4.2 As regard the assessee's appeals on the claim of interest on refund the limited issue to be decided is that from which date the interest on refund is applicable. In the facts of the present case we find that the appellant is seeking interest from 3 months from the date of the filing of refund application whereas, the revenue is of the view that in the light of Hon'ble Gujarat High Court judgment in the case of Manisha Pharmo Plast Pvt. Ltd (supra) the interest is payable only when the favourable order on refund was passed by the Commissioner (Appeals). We find that as regard the Hon'ble Gujarat High Court judgment in the case of Manisha Pharmo Plast Pvt. Ltd(supra) the same was appealed against before the Hon'ble Supreme Court vide its judgments reported as Manisha PharmoPlast Pvt. Ltd Vs. Union of India 2020(374)E.L.T.145(S.C.) set aside the Hon'ble Gujarat High Court judgment and allowed the assessee's appeal, the said judgment is reproduced below:-

> *"Heard Learned Counsel for the parties.*
>
> ***2.*** *The High Court, vide impugned judgment [2010 (262) E.L.T. 165 (Guj.)], has denied relief of statutory interest payable to the appellant under Section 11BB of the Central Excise Act, 1944 read with the Circular No. 670/61/2002-CX.8, dated 1-10-2002 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi. The High Court noted that the appellant had filed application for refund on 30-12-1999 but denied the relief of interest on the finding that the adjudication of the claim attained finality only after dismissal of the proceedings before the High Court on 18-7-2005; whereas the Department had already paid refund amount to the appellant on 26-6-2005. These facts are not in dispute.*
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> ***3.*** *In light of these facts and the exposition in paragraph 17 in Ranbaxy Laboratories Ltd. v. Union of India &Ors. [(2011) 10 SCC 292 = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)], it was not open to the Department to deny the relief of statutory interest. Paragraph 17 of the said decision reads thus :-*
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> > *"17. We, thus find substance in the contention of Learned Counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :*
> >
> > *"Heard both the parties.*

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33 :

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

(emphasis supplied)

The special leave petition is dismissed. No costs.''

4. *The approval of the dictum of the Rajasthan High Court [2004 (170) E.L.T. 4 (Raj.)] in paragraph 17 referred to above, directly deals with the claim of the appellant before this Court who had made application for refund on 30-12-1999 and, therefore, the statutory interest ought to commence after non-payment within three months from the date of application, being the starting point envisaged by Section 11BB of the Act. We find no reason to deviate from the view so taken in Ranbaxy Laboratories Ltd. (supra).*

5. *Hence, this appeal should succeed. The claim of the appellant regarding statutory interest under Section 11BB of the Act is allowed in the above terms. The amount be calculated and paid expeditiously and not later than three months from today. The impugned judgment of the High Court in this regard is set aside. Appeal is allowed in the aforementioned terms. There shall be no order as to costs."*

From the above judgment, it can be seen that Landmark judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd (supra) was followed and held that the interest on refund is payable from 3 months of date of filing refund application. Therefore, the appellant are entitled for the interest on refund from the date after 3 months of filing a refund application.

5. Hence, the impugned orders are set aside, assesse's appeals are allowed.

(Pronounced in the open court on 15.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi