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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10350 of 2018-SMC

(Arising out of OIO-RAJ-EXCUS-000-COM-06-07-17-18 dated 16/11/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Essar Power Gujarat Ltd **.....Appellant**
44km Milestone, Jamnagar Okha Highway, Khambalia,
JAMNAGAR,
GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Rajkot **......Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

With

Customs Appeal No. 10351 of 2018-SMC

(Arising out of OIO-RAJ-EXCUS-000-COM-06-07-17-18 dated 16/11/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Essar Power Gujarat Ltd **.....Appellant**
44km Milestone, Jamnagar Okha Highway, Khambalia,
JAMNAGAR,
GUJARAT

VERSUS

Commissioner of C.E. & S.T.-Rajkot **......Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:
Shri Akshit Malhotra & Mrs. Dimple Gohil, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10141-10142/2025

DATE OF HEARING/ DECISION:27.02.2025

SOMESH ARORA

In this case, for a power project, the appellants had sought waiver of interest on the goods which were initially in warehouse and were cleared later. The claim was supported by the CBIC Circular No. 10/2006 dated 14.02.2006, in which it was directed to the field formations that waiver of interest on power projects even in case of some delay, in clearance from warehouse should be appropriately considered by the Chief Commissioners, since such costs imposed by the department have the propensity to increase working capital requirements and eventually the project cost, for the project which are of national importance. The CBIC Circular clearly covers the projects which are in the nature of power project, is extracted below: -

> *"4. The guidelines where the interest would generally be waived have been framed keeping in mind the fact that for certain specified categories of imports such as ship stores and others, the import duty is finally not payable. In certain other cases, it was considered that in view of the production programme or nature of activity of the importers such as Ship Building Industry, Power Generating Project, the imported goods have to be generally retained for a longer period of time. Charging of interest would escalate the costs unnecessarily. In essence the guidelines cover the following cases. This would however be subject to the individual merits of a case:-*
>
> > *(i) Goods supplied as ship stores/aircraft stores*
> >
> > *(ii) Goods supplied to diplomats*
> >
> > *(iii) Goods used in the units operating under manufacture-in-bond scheme*
> >
> > *(iv) Goods imported by 100% EOUs*
> >
> > *(v) Goods warehoused and sold through duty free shops*
> >
> > *(vi) Machinery, equipment and raw materials imported for building and fitment to ships*
> >
> > *(vii) Petroleum products*
> >
> > *(viii) Plant and Machinery imported for projects*
> >
> > *(ix) Machinery, equipment and raw-materials imported for manufacture and installation of power generation units*
> >
> > *(X) Goods imported under OGL and warehoused for subsequent clearance against valid advance licences/Import-Export Pass Book Scheme or any similar scheme*
> >
> > *(xii) Goods imported in bulk by canalizing agencies/public sector trading or service agencies and warehoused for subsequent release for export production (xii) Imports under EPCG Scheme*
> >
> > *(iii) Import of Capital Goods by Public Sector Undertakings"*

From Srl. No. (ix), it is quite clear that the circular covered the power projects which is the type of service, the appellants have providing in the present instance. Initially on approaching the Chief Commissioner, it was responded to them that they should apply for waiver of interest, once the project is completed. Later when they applied for the same, it was rejected by the Chief Commissioner vide his letter dated 22nd August, 2017 and vide the office letter of the office of Chief Commissioner dated 6th November, 2017, which is at page 29 of the appeal paper book, and is reproduced below: -

EXHIBIT -'A' 29

सत्यमेव जयते

भारतसरकार
GOVERNMENT OF INDIA
वित्तमंत्रालय,राजस्वविभाग,
Ministry of Finance, Department of Revenue,
प्रधानमुख्यआयुक्तकाकार्यालय,
Office of the Principal Chief Commissioner,
केंद्रीयजीएसटीक्षेत्र, अहमदाबाद,जीएसटी भवन, राजस्वमार्ग, अम्बावाडीअहमदाबाद३८००१५.
Central GST Zone, Ahmedabad, GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad – 380015

NATION TAX MARKET

BY SPEED POST

F.No. IV/16-01/CCO/Tech-Cus/16-17 110 Date: November 06, 2017

To
M/s. Essar Power Gujarat Limited
Essar House
11 K.K. Marg
Mahalaxmi
Mumbai – 400 034.

Gentleman,

Sub: Waiver of Interest on warehoused goods request regarding.

*****

1. Please refer to your letter dated 12.10.2017 on the above mentioned subject.

2. In this regard, it is to inform that the request for waiver of interest of Rs. 24,23,880/- has already been rejected by the Chief Commissioner, CGST, Ahmedabad Zone. The same has been communicated to the Additional Commissioner, CGST & C.Ex., Rajkot Commissionerate vide this office letter of even number dated 22.08.2017 and the copy of the same is enclosed for your ready reference.

Yours sincerely,

6/11/17

(K. PADMAVATHY, IRS)
Joint Commissioner(CCO)

5 रु. कोर्ट फी COURT FEE Rs.5 भारत INDIA पाँच रुपये FIVE RUPEES

183

31

भारत सरकार
GOVERNMENT OF INDIA
वित्त मंत्रालय, राजस्व विभाग,
Ministry of Finance, Department of Revenue,
प्रधान मुख्य आयुक्त का कार्यालय,
Office of the Principal Chief Commissioner,
केंद्रीय जीएसटी क्षेत्र, अहमदाबाद, जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद ३८००१५.
Central GST Zone, Ahmedabad, GST Bhavan, Revenue Marg, Ambawadi, Ahmedabad – 380015

सत्यमेव जयते

NATION TAX MARKET

F.No.IV/16-01/CCO/Tech-Cus/16-17 Date: 22.08.2017

To,
The Additional Commissioner,
CGST & Central Excise,
Rajkot Commissionerate

Sir,

Sub: Waiver of interest on Custom duty on warehoused goods- request by M/s Essar Power Gujarat Ltd.-reg.

****

Please refer to your letter F. No. IV/16-67/Tech/2016-17 dated 18.05.2017 on the above subject matter.

In this regard, the Chief Commissioner, CGST & Central Excise, CCO, Ahmedabad Zone has opined that M/s Essar Power Gujarat Ltd are liable to pay interest as applicable and has rejected the request for waiver of interest of Rs. 24,23,880/-

This is for your kind information and further necessary action.

Yours faithfully,

(Rajesh Kumar)
Deputy Commissioner

22/8/17

9/c

The letter was communicated by the Joint Commissioner to the party stating no reason whatsoever for rejection of waiver of interest of Rs. 24,23,880/-. The order is also at page 31 of the paper book on vide letter dated 22nd August, 2017 by which after rejection, the appellant party was directed to pay interest. Aggrieved by both these letter orders, the appellants are here before this Tribunal.

2. On being asked the Learned Authorised Representative has only stated that the request has been rejected by the Chief Commissioner as conveyed vide above two letters and could not give any further reasons for this.

3. This Court has considered the materials placed before it, along with CBIC Circular and finds that the order has conveyed of the Chief Commissioner, is totally unreasoned and has denied natural justice, as even the party was not heard in the matter. The discretion has been exercised in most arbitrary manner without exhibiting any reasons, whatsoever. It is a trite law that even the administrative orders which seek to deny party any of it is entitlement need to be reasoned so the courts can exercise a mind as so whether they were correctly arrived at or not.

4. In the instant matter, this court finds that it has been completely denied of looking into the reasons of the Chief Commissioner. Further this court finds that while the CBIC Circular is well-reasoned and gives out as to why certain kind of projects, which include, interalia, the power projects deserve to be considered sympathetically for waiver of interest, no such application of mind or reasoning is appearing from the order of the Chief Commissioner conveyed to the party vide the aforesaid letters. In view of the foregoing, the matter is remitted back to Chief Commissioner with direction to give reasoned order, after hearing the party as it affects their interest and also unnecessarily raises project cost of the power project.

5. Even the orders which were passed on the basis of the rejection letters of the Chief Commissioner by the lower authorities will need reconsideration but only after Chief Commissioner has passed his reasoned order. The order, in this regard is dated 16th November, 2017 passed by the Commissionerate of Central GST and Central Excise, Rajkot. Fresh orders will therefore need to

be passed after the Chief Commissioner has reconsidered the matter and passed the reasoned order. All orders are set aside and matters are remitted back to the respective authorities.

6. Appeals are allowed by way of remand.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Raksha