

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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 10989 of 2021

(Arising out of KDL-CUSTM-000-APP-004-21-22 dated 26.07.2021 passed by
Commissioner of Customs (Appeals), Ahmedabad)

KLJ Plasticizers Ltd.

KLJ House, 8A 8th Floor Shivaji Marg
Najafgarh Road, New Delhi-110015

...Appellant

VERSUS

C.C. – Kandla

Custom House
Kandla-Gujarat

...Respondent

APPEARANCE:

Shri Jayant Kumar, Advocate appeared for the appellant

Shri Sarjeet Kumar, Authorised Representative appeared for the Respondent

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

FINAL ORDER NO. 11077 /2025

DATE OF HEARING: 29.09.2025

DATE OF DECISION: 20.11.2025

SOMESH ARORA:

The appellant filed a refund claim of amount paid under section 27 of the Customs Act, 1962 which the appellant had paid on 14.10.2014 during the course of an investigation in a matter of duty evasion. The investigation proceeded on the premise that actual consumption of certain inputs was less than that allowed as per advance authorizations. After show cause notice and adjudication thereof, the matter reached CESTAT, Ahmedabad where it was decided in favour of the appellant. Hon'ble Tribunal observed (order No. A/10569-10574/2019 dated 25.03.2019) held that once the SION norms are fixed and the manufacturer has manufactured goods under the said norms and the export obligation stands fulfilled, the revenue cannot demand duty on the ground that the actual consumption was less than SION. On the basis of this order, the appellant claimed consequential refund of amount paid. The adjudicating authority sanctioned the refund of Rs. Five Crore vide Order-in-Original dated 08.11.2019. Subsequently, the appellant filed an application dated 21.01.2020 claiming interest on Rs. Five Crore which was rejected by the adjudicating authority in his letter dated 16.03.2020 mainly on the ground that the issue of interest stands decided in the OIO dated 08.11.2019. The appellant preferred an appeal before the

Commissioner(A) and the Commissioner(A) rejected their appeal mainly on the following grounds.

- Ample opportunities for personal hearing in the case was given to the appellant but failed to respond in any manner.
- A claim of a person for refund of any duty or interest paid by or borne by that person is governed by section 27 of the Customs Act, 1962. Further, Section 27A of the Customs Act, 1962 provides for payment of interest if any duty ordered to be refunded under sub-section (2) of section 27 is not refunded within three months from the date of receipt of refund application. With regard to denial of interest on the refund of Rs. Five Crore sanctioned vide OIO dated 08.11.2019, In para 27 of the OIO dated 08.11.2019, it is clearly stated that the refund claim is being sanctioned within three months from the date of receipt of complete application, therefore, no interest is required to be paid under section 27A of the Customs Act, 1962. The adjudicating authority in para 5 of his letter dated 16.03.2019 states that with respect to the current application dated 21.01.2020 for interest on the refund claim sanctioned, the issue of interest has already been decided vide OIO dated 08.11.2019. In such a situation, there is no illegality in the adjudicating authority's decision vide letter dated 16.03.2020 as far as the demand of interest under section 27A of the Customs Act, 1962 is concerned.
- Appellant's main ground of appeal is that the amount deposited during investigation was a deposit with the Government and section 27 has no applicability in this case. As per appellant, the interest on the deposit of Rs. Five Crore needs to be paid by the revenue for the period from 18.09.2014 to 08.11.2019 which comes to Rs.4,08,69,863/- In this regard, the fact of the matter is that the refund claim sanctioned vide OIO dated 08.11.2019 was processed in terms of provisions of section 27 of the Customs Act, 1962 and as already explained, Section 27 deals with the refund of duty and interest. Thus, the refund was sanctioned as a refund of duty and any delay in sanctioning the claim would have attracted the provisions of section 27A, i.e., interest for delayed refund, but that is not the case as per OIO dated 08.11.2019. As regards the

demand of interest from the date it was deposited till the date of sanction, the appellant has not quoted any provisions of the Customs Act, 1962 under which such interest can be demanded by the appellant. The case laws relied on by the appellant were rendered in the context of Central Excise laws and hence, cannot be applied in this case. Therefore, this argument of the appellant is untenable. Therefore, the appeal should be rejected. Department also relied on the following case law:

- 2016 (335) E.L.T. 150 (Tri. Mumbai): Interest on delayed refund of fine and penalty not permissible in absence of any provision under the law or any authority allowing such interest Section 27A of Customs Act, 1962 corresponding to Section 11BB of Central Excise Act, 1944. [para 5].

2. In response the appellant submitted as follows:

The issue involved in the present appeal is regarding claim of interest on refund of deposit made during the course of investigation. The details are as under:

Amount and date of deposit	Date of show cause notice	Date of order in original	Date of Tribunal Final Order dropping the entire demand	Date on which refund of deposit was granted	Date on which application for claim of interest on deposit was made	Date of letter/ order denying claim of interest on deposit	Date of OIA denying claim of interest on deposit
Rs. 5,00,00,000/- on 18.09.2014	29.06.2015	17.05.2016	25.03.2019	08.11.2019	21.01.2020	16.03.2020	26.07.2021

The Ld. Commissioner (Appeals) vide Impugned OIA dated 26.07.2021 has denied the interest claim on deposit on the following grounds:

- a) The issue of interest has already been decided vide OIO dated 08.11.2019 and thus there is no illegality in the adjudicating Authority's decision vide letter dated 16.03.2020 so far as the demand of interest under section 27A of the Customs Act, 1962 is concerned. [Para 4 of impugned OIA]
- b) The refund claim sanctioned vide OIO dt. 08.11.2019 was processed in terms of provisions of section 27 which deals with refund of duty and interest. [Para 4.1 of impugned OIA].
- c) There is no delay in sanction of refund which would have attracted the provisions of section 27A i.e., interest for delayed refund. [Para 4.1 of impugned OIA]

- d) As regards demand of interest from the date of deposit till the date of sanction, the appellant has not quoted any provisions of the customs Act under which such interest can be demand and the case laws rendered in the context of Central Excise Act laws and cannot be applied in this case. [Para 4.1 of impugned OIA]

Against the Impugned OIA dated 10.05.2021 the appellant has filed the present appeal before this Hon'ble Tribunal on the grounds of claim on interest on amount deposited during the investigation.

2.1 The issue of claim of interest on deposits made during the investigation is no more res integra and the Hon'ble Tribunals in plethora of cases (including cases related to customs Act) has directed to disburse the interest on refund of deposit 12% p.a. from the date of deposit till the date of refund/sanction.

2.2 The appellant relies upon the following case laws:

- Sandvik Asia Ltd., 2006 (196) ELT 257 (SC)-2006-TIOL-07-SC-IT
- Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL (para 39 to 42)
- M/S CHURCHIT INTERNATIONAL U. COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI 2025-TIOL-520-CESTAT-DEL
- M/s Batra Henlay Cables v. Commissioner of CGST-2022-TIOL-69-CESTAT-DEL (para 6]
- PR. COMMR. OF CGST, NEW DELHI Versus EMMAR MGF CONSTRUCTION PVT. LTD. 2021 (55) G.S.T.L. 311 (Tri. Del.) [para 7,8]
- Kesar Enterprises v. Commissioner CGST-2022-TIOL-01-CESTAT-ALL (para 12 to 14)
- JINDAL SPINNING MILLS LTD G-3, INDUSTRIAL AREA PANIPAT, HARYANA VS COMMISSIONER OF CUSTOMS (APPEALS), NEW DELHI 2022-TIOL-176-CESTAT-DEL [Para 18]

Further submitted that in the impugned OIA the Ld. Commissioner (Appeals) has observed that the issue of interest has already been decided vide OIO dated 08.11.2019 and thus there is no illegality in the adjudicating Authority's decision vide letter dated 16.03.2020.

2.3 It is submitted that in the OIO dated 08.11.2019, the Adjudicating authority has observed that the appellant is not eligible for interest under section 27A of the Customs Act, 1962. The relevant extract of OIO dt. 08.11.2019 is mentioned below:

"27.. Since the complete refund claim was received on 23.08.2019 and this refund is being sanctioned within three months from the date of receipt of complete application therefore no interest is required to be paid in this case under section 27A of the Customs Act, 1962."

It was submitted that the appellant had filed the separate application for claim of interest on deposit based on the following:

- The OIO dated 08.11.2019 neither sanctioned nor denied any interest on the refund of deposit, and
- the appellant is not claiming any interest under section 27A of the Customs Act, 1962.

2.4 There is no bar under the law to not file a separate application to claim interest on deposit. The appellant relies on the case of GENERAL COMMODITIES PVT LTD v. Commissioner CGST-2021-TIOL-342-CESTAT-BANG wherein the Tribunal has held that the claim of interest by a separate application under Section 11BB does not amount to review or reopen of such completed orders and the appellant has right to claim the interest under Section 11BB. The tribunal further observed that the application filed by appellant was not towards refund of Cenvat credit paid by them but towards the grant of interest on delayed sanction of refund amount. By applying the ratio of the judgment in the case of General Commodities (Supra) the appellant's claim of interest on deposit by a separate application is maintainable.

2.5 In view of the above facts and relied upon case laws, it was prayed before this Tribunal that the present appeal of the appellant be allowed with directions to disburse interest @12% from the date of deposit till the date of actual refund.

2.6 During the course of hearing from the side of the bench, the issue was raised as to whether when interest amount is not worked out by either side, the Single Member Bench will have jurisdiction or not and also whether decisions taken in equity jurisdiction by the High Court after allowing interest can be taken to be having precedential value for the Tribunal and can be valid in later and spirit as seems to have been done in certain averments made by the appellant. On this point, comments from appellant side, respondent side as well as freedom was afforded to the Bar to make its own representation if so desired. Time was accordingly afforded. However in response, after lapse of one month

time, following submissions were received from the appellant on the points raised.

JURISDICTION OF SINGLE MEMBER BENCH TO DECIDE THE PRESENT APPEAL:

3. Section 129C(4) of the Customs Act, 1962 provides the framework for matters that can be disposed of by a Single Member Bench. The relevant provision states as hereunder:

"129C. Procedure of Appellate Tribunal.

(4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where-

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

(b) in any disputed case, other than a case where the determination of any question having a relation to duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved, or

(c) the amount of fine or penalty involved does not exceed fifty lakh rupees."

Upon analysis of Section 129C(4)(b) and (c), the following categories of cases are specifically excluded from Single Member Bench jurisdiction:

- a) Cases involving determination of rate of duty for assessment purposes.
- b) Cases involving determination of rate of duty for assessment purposes.
- c) Cases where difference in duty or duty involved exceeds Rs. 50 Lakhs.
- d) Cases where difference in duty or duty involved exceeds Rs. 50 Lakhs.

3.1 The present case pertains exclusively to claim of interest on refund of revenue deposit. Interest is neither duty, nor fine, nor penalty. Therefore, disputes regarding interest do not fall within the excluded categories mentioned in Section 129C(4) of the Customs Act, 1962.

3.2 The phrase "any disputed case, other than" in Section 129C(4)(b) of the Customs Act, 1962 creates a broad category of cases that can be heard by a Single Member, with specific exclusions carved out. Interest disputes are not among these exclusions.

3.3 The Hon'ble CESTAT, New Delhi examined an identical issue under Section 35D of the Central Excise Act. 1944 (which is *pari materia* to Section 129C of the Customs Act, 1962) in *Dhampur Sugar Mills Ltd. vs.*

Commissioner of Central Excise, Meerut, 2006 (204) E.L.T. 106 (Tri. - Del.). The Hon'ble Tribunal held as under:

"4.1 It will be evident from Section 35-D(3) that any disputed cases other than those excluded in clause (a) can be heard by a Single Member provided the difference in duty involved or duty involved does not exceed Rs. 10 lakhs. Therefore, under clause (a) of Section 35-D(3), the following cases cannot be heard by a Single Member -

- (1) Cases where the determination of any question having a relation to the rate of duty for the purpose of assessment is an issue.
- (2) Cases where determination of any question having a relation to the value of goods for the purpose of assessment is an issue
- (3) The difference in duty involved or the duty involved exceeds Rs. 10 lakhs.
- (4) The amount of fine or penalty involved exceeds Rs. 10 lakhs.

4.2 The question of liability to pay interest will ordinarily arise in the context of disputes relating to duty and/or penalty and will not stand excluded under clause (a) of Section 35-D(3) unless there is dispute involved in relation to rate of duty, value of goods, or the duty and/or penalty exceeds Rs. 10 lakhs. Mere disputes regarding interest are not excluded, Sub-section 3(a) and (b) of Section 35-D, clearly indicates that all disputed cases other than the excluded categories, can be heard by a member of the Appellate Tribunal sitting Single."

The Dhampur Sugar Mills decision clearly establishes that disputes regarding interest alone are not excluded from Single Member Bench jurisdiction, as interest is distinct from duty, penalty. or fine.

3.4 The decision in Dhampur Sugar Mills Ltd. (supra) was followed by the Hon'ble CESTAT. Chandigarh in the case of Commissioner of Central Excise & Service Tax, Rohtak vs. Som Sugandh Industries, reported in 2021 (375) E.L.T. 367 (Tri.-Chan.).

3.5. The consistent judicial interpretation across different benches of CESTAT reinforces that Single Member Benches have jurisdiction over interest disputes irrespective of the monetary quantum involved.

QUANTIFICATION OF INTEREST:

4. It is submitted that there is no express statutory provision under the Customs Act, 1962 that specifically prescribes the rate of interest payable on refund of amounts in circumstances such as the present case.

4.1 However, the absence of an explicit provision does not mean that the right to interest is extinguished. The Hon'ble Courts & Tribunals have consistently held that when amounts are wrongfully retained by the

Revenue, interest must be paid to compensate for the deprivation of use of money.

4.2 The Hon'ble CESTAT, Allahabad in Parle Agro Pvt. Ltd. vs. Commissioner, CGST, Noida, 2022 (380) E.L.T. 219 (Tri. All.) addressed this exact legal position and provided comprehensive guidance on quantification of interest in the absence of statutory provisions. The Hon'ble Tribunal in Parle Agro observed:

"33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded.

34. To be able to have some guidance regarding the rate of interest in case revenue deposit has to be refunded, the aid of the interest provisions under Section 11AA (which deals with interest on delayed payment of duty), Section 11BB (which deals with interest on delayed refunds under Section 11B(2) and Section 11DD (which deals with interest on the amount collected in excess of the duty) can be taken.

35. The Notification issued under Section 11AA of the Excise Act provides interest at the rate of fifteen per cent per annum. The notification is reproduced below:

.....

36. The Notification issued under Section 11BB provides interest at the rate of six per cent per annum. It is reproduced below:

.....

39. In this connection reference can also made to the decisions of the Allahabad High Court in Pace Marketing Specialities and Ebiz.Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40. In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41. In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.

42. Thus, for the reason stated above, Excise Appeal No. 70628 of 2019 is allowed and the order dated 28-5-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment. Excise Appeal No. 70674 of 2019 filed by the Principal Commissioner for setting aside the order dated 28-5-2019, passed by the Commissioner (Appeals) is dismissed."

The foundation for awarding interest in the absence of statutory provision rests on the judgment of the Hon'ble Supreme Court in Sandvik Asia Ltd. vs. Commissioner of Income Tax [2006 (196) E.L.T. 257 (S.C.)].

4.3 While the Sandvik Asia case arose in the context of income tax, the Hon'ble Supreme Court laid down a universal principle that when the Revenue wrongfully retains money belonging to the assessee/taxpayer, interest must be paid as compensation for deprivation of use of money.

4.4 It is submitted that the rate of 12% per annum has been adopted as a reasonable and equitable rate, balancing the interests of both the Revenue and the taxpayer, considering the varying rates prescribed under different fiscal statutes (ranging from 6% to 18%).

4.5 In the present case, interest can be quantified using the following framework:

- a) Rate of Interest: 12% per annum (following Sandvik Asia Ltd. and Parle Agro Pvt. Ltd.)
- b) Period of Calculation: From the date of deposit/payment until the date of actual refund.

III. PRECEDENTIAL VALUE OF DECISIONS FROM COURTS OF EQUITY JURISDICTION:

5. The question posed regarding whether orders passed by Courts of Equity Jurisdiction (Hon'ble Supreme Court or High Courts) can be followed by Tribunals is answered in the affirmative. Article 141 of the Constitution of India provides:

"141. Law declared by Supreme Court to be binding on all courts.-

The law declared by the Supreme Court shall be binding on all courts within the territory of India."

This constitutional mandate establishes that the law declared by the Hon'ble Supreme Court is binding on all courts within the territory of India.

5.1 Further. High Court judgments within their territorial jurisdiction have binding force on subordinate courts and tribunals operating within that jurisdiction under Article 215 & 227 of the Constitution of India. The Hon'ble Supreme Court in the case of East India Commercial Co. Ltd., Calcutta vs. The Collector of Customs, Calcutta [1983 (13) E.L.T. 1342 (S.C.)] has laid down as follows:

"31. As we have already noticed in the earlier stage of the judgment, the notice issued by the respondent charges the appellants thus:

.....

Section 167(8) of the Sea Customs Act can be invoked only if an order issued under x 3 of the Act was infringed during the course of the import or export. The division Bench of the High Court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215. every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

The Hon'ble Supreme Court in the case of Union of India vs. Kamalakshi Finance Corporation Ltd. [AIR 1992 (SC) 711] also laid down as follows:

"The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities

The Hon'ble CESTAT across various benches has consistently applied the principles laid down in Sandvik Asia Ltd. The said principle has been laid down in the following cases:

- a) Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL [para 39 to 42].
- b) M/S CHURCHIT INTERNATIONAL vs. COMMISSIONER OF CUSTOMS (EXPORT). NEW DELHI [2025-TIOL-520-CESTAT-DEL].
- c) M/s Batra Henlay Cables vs. Commissioner of CGST [2022-TIOL-69-CESTAT-DEL] [para 6]
- d) PR. COMM. OF CGST, NEW DELHI vs. EMMAR MGF CONSTRUCTION PVT. LTD. 2021 (55) G.S.T.L. 311 (Tri. Del.) [para 7, 8]
- e) Kesar Enterprises v. Commissioner CGST-2022-TIOL-01-CESTAT-ALL [para 12 to 14]

f) JINDAL SPINNING MILLS LTD G-3, INDUSTRIAL AREA PANIPAT,
HARYANA VS COMMISSIONER OF CUSTOMS (APPEALS), NEW DELHI
2022-TIOL-176-CESTAT-DEL [Para 18]

6. In the instant case the matter was claimed to be covered by various decision by the appellants. Two propositions were however sought to be answered by both sides to reply. Opportunity was also afforded to the Bar. In response, however only the appellant has responded. There has been no response from the side of AR or the Bar. The first proposition was as to whether the Single Member can decide the matter when there is a possibility of refund of more than Rs.50 Lakh eventually getting involved but when the same has not been determined and has been rejected as a proposition. The registry considering the appeal memo has not indicated any amount and only a mere proposition has been listed before Single Member Bench. In response to the Division of powers of Single Member Bench and Division Bench in relation to the proposition, the appellants have submitted as follows:

- Section 129(C) which indicates the procedure of the Customs Act, 1962 – indicates the provision of procedure before Appellate Tribunal. Same has been reproduced (supra). The appellant have indicated that the excluded category includes:
- Cases involving determination of rate of duty for assessment purposes.
- Cases involving valuation for assessment purposes
- Cases where itself any duty or duty involved exceed Rs. 50 Lakh

5.2 It was his submission that since the case involves exclusively the claim of interest on refund of Revenue deposit, interest is neither duty nor fine nor penalty nor has yet become determinate therefore the plain question as in the present case is whether interest is grantable or not cannot be held in the exclusion category in Section 129C(4) of the Customs Act, 1962. Therefore, what is not excluded gets included in the jurisdiction of Single Member. Learned Advocate to support his case has also relied on Dhampur Sugar Mill Limited as reported in 2006 (204) ELT 106 (Tri-Delhi), wherein it was again emphasized that what is not excluded specifically gets included within the jurisdiction of Single Member Bench. He also points out that the decision was also followed by CESTAT in the Commissioner of CCE & ST Rohtak vs Som Sugandh Industries reported at 2021 (375) ELT 367 (Tri.-Chandigarh). Above submissions have been duly considered

by this court and this court finds substance in the point made by the appellant. That whatever is not specifically excluded is very much included when there is a possibility only that the amount consequent to a positive decision which may eventually get sanctioned by the department only may exceed Rs. 50 Lakh alternatively. This court also find that the exclusion of the Single Member has to be either by the statute as has been indicated above by the financial limit of duty as well as for the cases involving classification and valuation disputes. Such exclusion can also flow from the administrative mandate as is the case with the instructions issued and which are forwarded by the Registry in relation to matters pertaining licensing of CHA. In the absence of there being no specific exclusion through statutory provision or by administrative mandate, it will be incorrect to surmise with the Single Member Bench simply on the basis of possibility in future cannot be decided by Single Member Bench. Therefore, the first query is answered in affirmative stating that in matters like this Single Member Bench has the jurisdiction. This is more so, as the department had itself agreed to the jurisdiction of Commissioner (Appeals) who has pecuniary jurisdiction coinciding with that of the single bench. It is thus held that when only legal issue is thrown open and no amounts are decided by any prior adjudication, so as to indicate pecuniary involvement, the issue can be decided by Single Member, unless some administrative instructions of the President (as in case of C.H.A. disciplinary proceeding matter) provide otherwise. Held accordingly.

II. Whether in the absence of any statutory mandate, the decisions of High Courts or Supreme Courts can be followed by the Tribunal if seemingly they are delivered in equity or writ jurisdiction?

The question was raised as the matter was considered as otherwise covered. This question was raised as it was claimed that the issue is covered and interest has been granted in a number of cases by High Courts and they have been followed even by this Tribunal and interest has been granted even in the absence of specific provision and in the absence of specific rate of interest for the specific purpose have not been given by the statute. The counsel for the party has made his submissions.

6. This court has considered various case law and submissions quoted by the either party. While department has mainly rejected the claim on the ground that only provisions of Customs Act, 1962 which is Section 27A allows under Section 2 of Section 27 and interest to paid to the party is within three months from the date of receipt of application same is not paid. The department is of the view that sanctioning of refund of Rs. 5 Crore of deposit paid vide OIO dated 08.11.2019 which was done three months of the date of receipt of complete application of refund discharged them from any liability to pay interest as per provisions of Section 27A of the Customs Act. Therefore, even the Appellate Authority held that once the refund has been sanctioned within the period of three months from filing of the application, the department stands discharged from any interest obligation under Section 27 or 27A of the Customs Act. However, with the support of case law, party is of the view that what has been sought was the refund of deposit of the money paid during investigation and such deposit stand on different footing and in support has relied upon various case laws. Party also submits from the date of deposit to the date of disbursement of refund of interest in the interregnum. In light of following, he relied upon the decision of Sandvik Asia Ltd. reported at 2006 (196) ELT 257 (SC) which though was delivered in the income tax wherein principle has been laid down that for withholding of any amount from an assessee without authority of law, Revenue must compensate assessee and this has to be done irrespective of absence of any statutory provisions. Doctrine of compensation was thus propounded by the Apex Court.

6.1 Next decision relied upon by the party is Parle Agro Private Limited vs Commr. CGST as reported in 2021-TIOL-306-CESTAT-ALL and Kesar Enterprises reported in 2022 (380) ELT 319 (Tri. Amd.). This decision inter alia, quoted the decision as reported in 2017 (49) STR 399 (All High Court) in Kesar Enterprises which decision independent of Sandvik Asia Limited case decided in the Writ Jurisdiction that till the time money paid by the assessee was not appropriated, the same was in the nature of deposit/ pre-deposit which was involuntary deposit by assessee since no one deposit huge money without operation of law in tax. The Hon'ble Allahabad High Court laid down in such cases principle of unjust enrichment will not apply and directed the department to pay assessee interest @12%

after three months of passing of order by Commissioner till amount was actually paid. In the matter of Parle Agro, coordinate bench referred to various decisions including the Sandvik Asia Limited vs CCE Pune (cited supra), the case of Pace Marketing Specialties reported in 2011 (274) ELT 13 (All.) which again allowed 12% interest and also noted in para 39 to 41 as follows:

“39.In this connection reference can also be made to the decisions of the Allahabad High Court in *Pace Marketing Specialties* and *Ebiz.Com Private Limited*, wherein after making reference to the decision of the Supreme Court in *Sandvik Asia Ltd.*, the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40.In *Riba Textiles*, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41.In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.”

It held that amount involved during investigation as also deposited pursuant to interim order passed by the Tribunal was actually refund of Revenue deposit for which no provision in Central Excise Act is exist. Thereafter following various decisions the coordinate bench allowed the payment of refund. Similarly in *Churchit International vs CC-New Delhi* 2025-TIOL-520-CESTAT-DEL, the coordinate bench treating the deposit as a Revenue deposit and not against any confirm demand, allowed @12% per annum on refund amount calculated from the date of deposit until the date of refund. The order took note of various decisions including *Parle Agro* and *Principal Commissioner of CGST New Delhi vs Emmar Mgf Construction Pvt. Ltd.* reported as 2021 (55) GSTL 311 (Tri. Del.) in para 16 of the order. It also, inter alia, took cognizance of the decision of Hon'ble Supreme Court in case of *Kuil Fireworks Industries* reported as 2002-TIOL-424-SC where the Apex Court directed the refund of pre-deposit with 12% interest. This decision was specifically on indirect tax laws and not on income tax. Similar decisions have been quoted by the appellants which for the want of repetition are not reproduced. This court also took note of decisions in the case in *Sony Pictures Network India Pvt Ltd.* reported in 2017-TIOL-1102-HC-KERALA-CUS. In view of foregoing, it is quite clear that the interest is liable to be paid on Revenue deposits and has been consistently paid @ 12% by various decisions of this Tribunal as

well as various High Courts. In this context, this Court finds that the law declared by the Hon'ble Supreme Court as well as various High Courts that the interest is grantable even if not statutorily prescribed but as of basis of compensation or delay in refunding revenue deposit is well established by now by various decisions High Courts as well as of this Tribunal. In the instant case, the appellant have made following submissions:

6.2 The issue of claim of interest on deposits made during the investigation is no more res integra and the Hon'ble Tribunals in plethora of cases (including cases related to customs Act) has directed to disburse the interest on refund of deposit 12% p.a. from the date of deposit till the date of refund/sanction.

6.3 The appellant relies upon the following case laws:

- Sandvik Asia Ltd., 2006 (196) ELT 257 (SC)-2006-TIOL-07-SC-IT
- Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL (para 39 to 42)
- M/S CHURCHIT INTERNATIONAL U. COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI 2025-TIOL-520-CESTAT-DEL
- M/s Batra Henlay Cables v. Commissioner of CGST-2022-TIOL-69-CESTAT-DEL (para 6]
- PR. COMMR. OF CGST, NEW DELHI Versus EMMAR MGF CONSTRUCTION PVT. LTD. 2021 (55) G.S.T.L. 311 (Tri. Del.) [para 7,8]
- Kesar Enterprises v. Commissioner CGST-2022-TIOL-01-CESTAT-ALL (para 12 to 14)
- JINDAL SPINNING MILLS LTD G-3, INDUSTRIAL AREA PANIPAT, HARYANA VS COMMISSIONER OF CUSTOMS (APPEALS), NEW DELHI 2022-TIOL-176-CESTAT-DEL [Para 18]

6.4 Further submitted that in the impugned OIA the Ld. Commissioner (Appeals) has observed that the issue of interest has already been decided vide OIO dated 08.11.2019 and thus there is no illegality in the adjudicating Authority's decision vide letter dated 16.03.2020.

6.5 It is submitted that in the OIO dated 08.11.2019, the Adjudicating authority has observed that the appellant is not eligible for interest under section 27A of the Customs Act, 1962. The relevant extract of OIO dt. 08.11.2019 is mentioned below:

"27.. Since the complete refund claim was received on 23.08.2019 and this refund is being sanctioned within three months from the date of receipt of complete application therefore no interest is required to be paid in this case under section 27A of the Customs Act, 1962."

6.6 It was submitted that the appellant has filed the separate application for claim of interest on deposit based on the following:

- The OIO dated 08.11.2019 neither sanctioned nor denied any interest on the refund of deposit, and
- the appellant is not claiming any interest under section 27A of the Customs Act, 1962.

6.7 There is no bar under the law to not file a separate application to claim interest on deposit. The appellant relies on the case of GENERAL COMMODITIES PVT LTD v. Commissioner CGST-2021-TIOL-342-CESTAT-BANG wherein the Hon'ble Tribunal has held that the claim of interest by a separate application under Section 11BB does not amount to review or reopen of such completed orders and the appellant has right to claim the interest under Section 11BB. The tribunal further observed that the application filed by appellant was not towards refund of Cenvat credit paid by them but towards the grant of interest on delayed sanction of refund amount. By applying the ratio of the judgment in the case of General Commodities (Supra) the appellant's claim of interest on deposit by a separate application is maintainable.

7. This point of emphasis is that the need to grant interest as well as quantum has become established at the level of Hon'ble Supreme Court as well as various High Court and same deserves to be followed without reservations or getting into the question as to whether same was initially granted in equity jurisdiction or on the basis of statutory provisions. The appellants stated that the consistent legal approach of the High Courts and Supreme Court allowing interest even in the absence of provisions and validated by this Tribunal cannot be and should not be ignored simply on the basis of lack of statutory provisions when the question involves compensation for usage of Revenue deposits by the Government.

8. This court finds that when a decision has been consistently followed even if it was initially delivered in Writ jurisdiction or was embedded to a legal principle of doctrine of compensation for deposits retained. Consistency of the same having been followed at various fora including the Divisional Benches of the Tribunal, various High Courts makes the same become a judicial precedent worthy to be followed, even in the absence of statutory provision. This court finds that the decision of Churchit International vs Commissioner of Customs-Exports, New Delhi as reported in 2025-TIOL-520-CCE-Del is a well reasoned decision

which has taken note of the decision of Hon'ble Supreme Court inter alia, in the matter of Kuil Fireworks Industrial reported as 1997 (95) ELT 3 (SC) wherein Hon'ble Supreme Court ordered pre-deposit made by the party to be refunded with 12% interest. Same has also been followed in Parle Agro and various other decisions as listed in the body of the findings of decision of Churchit International (supra). This court therefore, is inclined to follow the same and directs that interest shall be paid on the deposit made of 5 Crore which has since been refunded by the department. Such interest shall be calculated @ 12% from the date of making the deposit till the date of repayment. Appeal allowed in above terms.

(Order pronounced in the open court on 20.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha