CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No 23046 OF 2014

(Arising out of Order-in-Appeal No COC-CUSTM-000-APP-146-14-15 Dated: 02.07.2014 passed by COMMISSIONER OF CUSTOMS,(APPEALS) COCHIN-9)

M/S. BHARAT PETROLEUM CORPORATION LTD
Irimpanam installation, Irimpanam, P.O.
Cochin- 682 309.

Appellant

VERSUS

COMMISSIONER OF CUSTOMS
Custom House, Willingdon,
Cochin – 682 009

Respondent

APPEARANCE:

Shri Mr. Kurian Thomas, Advocate for the Appellant

Shri K. Vishwanath , Authorised Representative for the Respondent

CORAM: HON'BLE P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20198/2024

DATE OF HEARING: 15.03.2024
DATE OF DECISION: 15.03.2024

PER : P.A. AUGUSTIAN

The issue of the present appeal is regarding interest for the delay in payment of additional duty. The appellant had imported high speed diesel and motor spirit during 2008-10. Due to some mistake in the EDI system, appellant was forced to pay additional excise duty as CVD and released the goods provisionally. Thereafter, when the system was updated, the assessment was finalized and appellant was liable to get huge amount as refund. When communication was made for refund of excess amount, respondent insisted for submission of refund application and after submitting refund application, some defects were noticed and only after considerable time, due amount was paid without any interest for the delay. Aggrieved by said order, a request was made demanding interest before the adjudication authority and adjudication authority rejected the claim by order dated 17.05.2012.

2. Aggrieved by said order, an appeal was filed before the Commission Appeals and Ld commissioner (Appeal) also rejected the appeal on the ground that there is no provision in the Customs Act,1962 to grant of such interest and also with the remarks that the Government is not a financial institution, which does out interest for monies received. Aggrieved by said order, present appeal is filed.

3. When appeal came up for hearing, Learned Counsel for the appellants draw our attention to the provision of Section 18(2) of the Customs Act, 1962 and submits that as per the amendment brought under Section 18 of the Customs Act, 1962, if the goods are provisionally assessed, as per Section 18(4) of the Customs Act, 1962, on final assessment, if any amount is refundable to importer, and if said amount is not paid within 3 months from the date of assessment of duty finally assessed, there shall be paid interest on such

unrefunded amount at a such rate fixed by Central Government under Section 27A till the date of refund of such amount.

4. The Learned Counsel also draw our attention to the decision of the Tribunal in the matter **GKN Drive Line (INDIA) LTD Vs C C New Delhi (Reported in 2013 (295) ELT 466 (Tri-Del))** where it is held that:

> 3. Against rejection of claim of interest on the refund arising out of finalization of provisional assessment when the appellant came in appeal before ld. Commissioner (Appeal), ld. Appellate Authority by order date 04-8-2008 rejected the appeal on the ground that refund did not arise under provisions of Section 27 Customs Act, 1962 because Explanation-II appearing under Section 27 prescribed limitation for filing refund application and a refund arising on finalization of provisional assessment under Section 18(2))(a) of Customs Act, 1962 shall not be a refund ipso facto under Section 27 of the said Act.
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> **8.6** It has been held by Hon'ble High Court of Delhi in the case of *Commissioner of Customs* v. *Indian Oil Corporation* – 2012(282) E.L.T. 368 (Del.) that sub-sections (3), (4) and (5) introduced to Section 18 of Customs Act, 1962 have no retrospective effect. Thus right to interest under Section 18(4) of Customs Act, 1962 before 13-7-2006 is accordingly barred. However delay in granting refund having been made even after 18-7-2006 till 13-7-2007, appellant is entitled to interest on the refund from 13-7-2006 to 13-7-2007 only. Thus the appeal succeeds partly and it is ordered accordingly.

5. The Learned AR appearing for the respondent seriously objected the demand of interest and submits that the appellant has not raised the demand of interest under Section 18(4) of the Customs Act ,1962 at any time and rising the same only before this Tribunal. The Learned AR further submits that the delay in refund of due amount was not due to any willful negligence on the part of respondent and it is only due to the delay caused by the Appellant to

submit proper records as per the deficiency memo issued to the appellant. The Learned AR also reiterated finding the impugned orders.

6. In response to the submissions made by Ld DR, Learned Counsel for the appellant produced the copy of the argument note submitted before the Commission Appeals at the time of personal hearing and submits that inspite of making specific averments regarding demand of interest under Section 18(4) of the Customs Act, 1962, the Commissioner (Appeals) as per impugned order dismissed the appeal on the ground that the amount that there is no provision in the Customs Act, 1962 to grant of such interest.

7. Heard both sides, as per the Section 18(4) "subject to subsection (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally (or re-assessment of duty, as the case may be), there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount. In appellant's case, since principal amount already sanctioned by proper authority, provisions of unjust enrichment under Section 18(5) of the Customs Act, 1962 is also not applicable.

8. As per Section 18(4) of the Customs Act, 1962, it is clear that on finalization of assessment of duty, assessee is entitled for

refund and if refund is not made within 3 months from the date of such assessment, assessee is entitled for interest on such amount as per the rate fixed by Central Government under Section 27A of the Customs Act, 1962, till the date of refund of such amount. The ratio of the judgement relied by the appellant the matter of GKN DRIVE LINE (MEDIA) LTD. (Supra), right to interest under Section 18(4) of Customs Act, 1962 is applicable if the due amount is not paid within 3 months from the date of final assessment and not to reckoned 3 months after submission of refund claim as per section 27 of the Customs Act, 1962. Only for the rate of interest, rate fixed by Central Government under Section 27A will apply.

9. Regarding Objection made by the Ld DR, since the prayer of the appellant is to allow interest as per law, appellant will have the right to raise the question of law in appeal stage also. However considering the fact that adjudication/appellate authority has not considered the provisions of Sections 18(4) of Customs Act, 1962 in appellant’s case, the appeal is remanded to adjudication authority to consider the plea of the appellant regarding their entitlement of interest under Section 18(4) of the Customs Act, 1962. The Adjudication Authority directed to consider and pass appropriate orders within 4 months after the receipt of the final order.

Appeal is allowed by way of remand.

(Dictated and pronounced in Open Court)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar