CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/21388/2018-SM

[Arising out of Order-in-Appeal No. 213/2018 dated 30/05/2018 passed by Commissioner of CUSTOMS, BANGALORE-I (Appeal).]

M/s. JSW Steel Ltd.
JSW Centre Bandra
Kurla Complex Bandra East
MUMBAI - 400051
MH

Appellant(s)

Versus

Commissioner of Customs
Mangalore-cus
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Respondent(s)

Appearance:

Mr. M.S. NAGARAJA, ADV
M/S. T.RAJESWARA SASTRY & ASSOCIATES,
NO.48, 11TH MAIN ROAD, BANASHANKARI II STAGE, BANGALORE 560070

For the Appellant

Dr. J. Harish,
Deputy Commissioner (AR)

For the Respondent

Date of Hearing: 20/09/2018
Date of Decision: 20/09/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21384 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 30.5.2018 passed by the Commissioner (A) whereby the Commissioner (A) has upheld the Order-in-Original and declined to grant interest on delay in refund of Extra Duty Deposit (EDD).

2. Briefly the facts of the present case are that the appellants had imported various types of cooking coal and steam coal classified under CTH 2701 1910 of Customs Tariff Act, 1975 through New Mangalore Port under 12 Bills of Entry. The import was permitted under provisional assessment pending investigation and determination of the value of imported goods from related person. The appellant had paid customs duty as assessed along with 1% EDD pending investigation by Special Valuation Branch (SVB). The Additional Commissioner of Customs, GATT Valuation Cell, Mumbai vide Order-in-Original dated 9.9.2015 ordered acceptance of the 'transaction value' as declared in the invoices and directed the customs authorities to finalize the assessment. Thereafter, the appellant became entitled to refund of 1% EDD paid and filed an application on 22.4.2016 seeking refund of 1% EDD amounting to Rs.3,06,76,376/- paid in respect of 12 Bills of Entry along with the relevant documents. The Asst. Commissioner of Customs (Refund), Mangalore initially returned the claim on 29.4.2016 as being premature. The ACCE

subsequently vide Order-in-Original No.28/2016 (Refund) dated 12.7.2016 held that the claim for refund was premature on the ground that though the SVB order has been accepted in review, the DRI, Nagpur had initiated certain investigations into the imports made by the appellants and has directed not to finalize any provisional assessment of Bills of Entry pending completion of investigation. Aggrieved by the said order, the appellant filed appeal before the Commissioner (A) who vide Order-in-Appeal No.42/2017 dated 17.2.2017 referred to the CBEC Circular No.11/2001 dated 23.2.2001 which stipulates that where provisional assessment is being resorted to, the investigation and finalization of assessment must be completed with four months from the date of receipt and if no decision is taken within four months, the EDD should be discontinued and the concerned DC/AC will be held responsible in delay in finalization. The Commissioner (A) in his order has relied upon the decision rendered in the case of ***Persistent Systems Ltd. vs. CCE: 2016 (43) STR 117 (Tri.-Mum.)***. The Commissioner (A) has also observed in para 11 of the said order that DRI cannot stay or obstruct the operation of the proceedings relating to SVB, which has reached its finality and DRI may enforce the results of its investigations under separate proceedings as provided. Finally, the Commissioner has held that the appellant is eligible for refund of 1% EDD subject to verification of documents and satisfaction of factum of unjust enrichment. Thereafter, ACC, Mangalore vide Order-in-Original No.152/2017 dated 2.1.2018 has implemented the order of the Commissioner (A) and sanctioned refund of 1% EDD amounting to Rs.3,06,76,376/-. Further, the ACC, Mangalore held that the appellant did not submit all the required details in original, however, the refund was sanctioned after due verification of all the documents from the concerned authority. Therefore, he did not award interest on the ground that the refund is sanctioned within three months from the date of receipt of the last document from the appellant. Aggrieved by the said order, the appellant challenged the said order with regard to rejection of claim for payment of interest. The Commissioner (A) vide impugned Order-in-Appeal dated 30.5.2018 has held in para 11 that the refund application was filed on 22.4.2016 and the same was not complete in all respects as envisaged in para 4.1 of CBEC Custom Manual inasmuch as relevant documents were not enclosed to the said application. The Commissioner (A) has also observed that the appellant has furnished the material documents in piecemeal manner, therefore, the appellant is not entitled for the interest.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order denying the interest on the delayed payment of EDD is not sustainable in law as the ground made out by both the lower authorities to deny the interest for delay in refund of EDD are patently erroneous and contrary to the documentary evidence. He further submitted that after the order of the Additional Commissioner dated 9.9.2015 accepting the transaction value and thereby, rendering 1% EDD as refundable, the appellant filed refund claim along with following documents.

(i) Copies of Bills of Entry mentioned in the Table at para 2 above.

(ii) Copies of TR-6 Challans pertaining to the said Bills of Entry in proof of having paid the EDD.

(iii) Copy of SVB Order dated 9.9.2015 passed by the ADC, GATT Cell and Mumbai.

(iv) Cost Accountant Certificate for unjust enrichment.

(v) Worksheet showing Bills of Entry wise EDD paid.

(vi) Copy of relevant pages of Balance Sheet as at 31.3.2015 & Ledger Account Extracts.

(vii) Brief Grounds of refund claim.

4.1 He further submitted that the Asst. Commissioner in his Order-in-Original dated 2.1.2018 while sanctioning refund has recorded in para 3 of the said order the list of documents submitted along with the application form for refund. He further submitted that from the adjudication order, it is clear that the appellant has submitted all the relevant documents required for verification of the payment of 1% EDD in respect of 12 Bills of Entry. Further, the appellant had also submitted documents for examining the aspect of unjust enrichment. He further submitted that as per the Order-in-Original dated 2.1.2018, the Asst. Commissioner has only observed that the applicant has not submitted all the required details in original whereas the finding of the Commissioner (A) is that the appellants have submitted the documents in piecemeal and that there was a delay in submission of the documents. This finding, according to the learned counsel, is patently erroneous and contrary to the facts recorded in the adjudication order. He further submitted that the Customs were themselves in possession of all the documentary evidence with respect to payment of 1% of EDD in respect of 12 Bills of Entry and did not require any documents or verification from any other authority.

4.2 He further submitted that it is well settled law that interest is payable under Section 27A of the Customs Act, 1962 for the delay in refund of the duty amount from the date of expiry of three months from the date of submission of the application for refund till the date of refund of the amount. The obligation to pay interest is not affected even if certain documents are submitted later because Section 27A mandates payment of interest from the date of submission of application for refund. It is obligatory on the part of the Revenue to intimate the assesse to remove the deficiencies in the application for refund within two days.

4.3 He further submitted that the issue involved in the present case is no more *res integra* and has been settled by various decisions of the Tribunal/High Court and Supreme Court consistently. In support of his submission, he relied upon the following decisions:

(i) ***Ranbaxy Laboratories Ltd. vs. UOI: 2011 (273) ELT 3 (SC)***

(ii) ***UOI vs. Hamdard (Waqf) Laboratories: 2016 (333) ELT 193 (SC)***

(iii) ***JK Cement Works vs. ACCE: 2004 (170) ELT 4 (Raj.) affirmed by Supreme Court in 2005 (179) ELT A150 (SC)***

(iv) ***CC, Airport & ACC, Bangalore vs. Pfizer Products India P. Ltd.: 2015 (324) ELT 259 (Kar.)***

(v) ***CC (Prev.) Jamnagar vs. Reliance Industries Ltd.: 2015 (317) ELT 621 (Tri.-Ahmd.)***

(vi) ***M/s. Om Refoils Ltd. vs. UOI & Anr.: 2018-TIOL-181-HC-P&H-CUS.***

(vii) ***Tata Chemicals Ltd. vs. CCE, Rajkot: 2016 (334) ELT 133 (Tri.-Ahmd.) affirmed by Gujarat High Court in Commissioner vs. Tata Chemicals Ltd.: 2016 (334) ELT A53 (Guj.)***

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the records, and the decisions relied upon by the appellants cited supra, I find that the Hon'ble Supreme Court in the case of ***Ranbaxy Laboratories Ltd.*** cited supra has categorically held that the assessee is entitled to interest after the expiry of three months from the date of filing the refund application till the refund is finally sanctioned. Here it is pertinent to reproduce para 14 and 15 from the decision of the Apex Court which is reproduced herein below:

> *"14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that*

case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

6.1 Similarly in the case of ***CC, Airport & ACC, Bangalore vs. Pfizer Products India Pvt. Ltd.*** cited supra, the Hon'ble High Court of Karnataka after considering the provisions of the grant of interest on delayed refund in para 11 has observed as under:

11. From plain reading of the said Section, it is clear, that interest would be payable if the amount is not refunded within three months from the date of the application. The rate of interest would vary from 5% to 30% per annum, as may be fixed by the Central Government by Notification from time to time. Explanation immediately after the proviso in the said Section only means that the liability to pay the amount would arise after the order of refund of the amount is finalized, either in appeal or by the Commissioner, Tribunal or the Court, but such liability would be from three months after the date of application. The same cannot be interpreted that the liability to pay interest would be from the date of the order of the Tribunal or the Court, which may be passed in appeal.

6.2 Further, I also find that the decision of the Hon'ble Supreme Court in the case of ***Ranbaxy Laboratories Ltd.*** cited supra has been followed consistently and there is no contrary judgment to that effect. Therefore, by following the ratios of the Apex Court in the ***Ranbaxy Laboratories Ltd.*** case, I hold that the impugned order is not sustainable in law and I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **20/09/2018**)

S.S GARG
JUDICIAL MEMBER

rv...