CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

C/20733/2019-SM

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-104/2018-19 dated 15/03/2019 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

Vallabhdas & Co
42/1966(2) Elavangal House 1st Floor Friends
Lane St Benidict Road
KOCHI - 682018
KERALA

Appellant(s)

VERSUS

Commissioner of Customs Cochin-cus
CUSTOM HOUSE, WILLINGDON ISLAND
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Shri G. Subramanian, Advocate
CENTRAL TAX ASSISTANCE BUREAU
KARIMPATTA ROAD, ERNAKULAM, COCHIN-682016
COCHIN - 682016
KERALA

For the Appellant

Shri Gopakumar, Jt. Commissioner(AR)

For the Respondent

CORAM:

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

Final Order No. 20696 / 2019

Date of Hearing: 26/08/2019

Date of Decision: 26/08/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 15/03/2019 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has partly allowed the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant had imported Rock Phosphate under 72 Bills of Entry during the period 2012-2015 and cleared these on payment of assessed duty including Special Additional Duty (SAD) under sub-section (5) of Section 3 of the Customs Tariff Act. The goods were locally sold and thereafter the appellant filed 17 refund claims for refund of SAD paid after following the due procedure. The Assistant Commissioner rejected the refund claims on the ground that the appellant had not collected any sales tax / VAT on sale of the imported goods. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) and the Commissioner(Appeals) has also rejected the refund claims. Thereafter the appellant filed appeals before the CESTAT and the Tribunal vide Final Order No.20564-20581/2017 dt. 27/04/2017 allowed the appeals of the appellant. Thereafter the appellant on the basis of the decision of the Tribunal, requested the Department for sanction of refund due along with eligible interest. Thereafter the Asst. Commissioner sanctioned the refund of SAD paid at the time of import but did not grant interest as demanded by the appellant on the ground that there is no provision for payment of interest in such cases of refund. Aggrieved by the denial of interest, appellant filed appeal before the Commissioner(Appeals) who has held that the appellant is entitled to interest from the expiry of 3 months from the date of order by the Tribunal which has given cause of action for refund. Aggrieved by the said order, appellant filed the present appeal.

3. Heard both sides and perused records.

4. The learned counsel for the appellant submitted that the impugned order denying the interest for the delayed sanctioning of refund is not sustainable in law. He further submitted that as per the Notification No.102/2007-Cus., the refund is subject to the statutory provision of Section 27 as well as Section 27A, if the refund ordered under Section 27(2) has not been paid within 3 months of the receipt of the application under Section 27(1), the delay period has to be considered from the date immediately after the expiry of 3 months from the date of receipt of the claim. He further submitted that in the present case, there was an inordinate delay in sanctioning the refund and therefore appellant is entitled to claim interest.

5. On the other hand, the learned AR defended the impugned order and submitted that the Commissioner(Appeals) has observed that the appellant is entitled to interest under Section 27A of the Customs Act but the relevant date would start from the date of the order passed by the CESTAT. He further submitted that it is the order of the CESTAT which has given cause of action for refund and therefore from that date itself 3 months would be counted. Learned AR relied upon the decision of the Hon'ble Madras High Court in the case of Shakun Overseas Ltd. Vs. CC(Appeals), Chennai [2013(297) ELT 14 (Mad.)] wherein it has been held that the refund claim can be validly be made only after the disposal of the appeal by the Tribunal and cannot any date prior to that date, which means the date on which the order was passed by the Collector of Customs would not be any relevance for the purpose of limitation.

6. After considering the submissions of both sides and perusal of the material on record, I find that the Commissioner(Appeals) has given proper justification for not granting the interest. The relevant finding, as contained in para 5 of the impugned order, is reproduced herein below:-

> *5. I have carefully considered the Order-in-Original, the grounds of appeal, submissions made at the time of personal hearing and the evidences on record. There is no doubt that Section 27A of the Customs Act, 1962 casts an obligation on the department to pay interest to the applicant in case where refund has not been paid within three months from the date of receipt of application, consequent to an Order for refund. Explanation to this Section clarifies that where any order of refund is made by Commissioner(Appeals) / Appellate Tribunal against an order passed by the Assistant / Deputy Commissioner of Customs / commissioner(Appeals), it shall be deemed to be an order under Section 27(2) for payment of refund. Thus it is clear from the statutory provisions that an order passed by CESTAT has to be taken as the order for refund for the purpose of ascertaining the delay in the payment of refund. In the instant case, the appellant filed the refund application in pursuance to the Order passed by the CESTAT on 06.06.2017 but the refund was sanctioned only on 13.09.2017. This refund should have been sanctioned to the appellant within three months of the receipt of their application, which is before 06.09.2017. therefore, I find that the appellant is eligible for interest for the period from 06.09.2017 to 13.09.2017. The argument by the appellant that they are eligible for interest for delayed payment of refund for 348 to 1569 days cannot be accepted as there is no provision in the law for the same. …. ….*

7. Further I find that the decision in the case of Shakun Overseas Ltd. is applicable in the present case and therefore I do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **26/08/2019**)

S.S GARG
JUDICIAL MEMBER

Raja...