IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No. C/40351/2017

(Arising out of Order-in-Appeal C. Cus II No. 923/2016 dated 17.10.2016 passed by The Commissioner of Customs (Appeals-II) Customs House, Chennai)

M/s. Adyar Gate Hotel Ltd. : Appellant

Vs.

The Commissioner of Customs, : Respondent
Chennai IV Commissionerate

Appearance:-

Shri. Hari Radhakrishnan, Advocate
for the Appellant

Shri. S. Govindarajan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**16.07.2018**

Date of Pronouncement:20.07.2018

Final Order No. 42082 / 2018

The assessee has come in appeal against the Order-in-Appeal dt. 17.10.2016 passed by the Commissioner of Customs (Appeals-II), Chennai wherein the Commissioner (Appeals) has not acceded to the plea of the appellant for granting payment of interest at 9% per annum. on the delayed refund.

1.1 Brief facts leading to the present controversy are that the appellant had imported light and light fittings vide Bill of Entry No. 15041 dt. 25.05.1999 under Export Promotion Capital Goods (EPCG) Scheme and had claimed the benefit of Notification No. 28/97-Cus dated 01.04.1997; the benefit was initially denied by the Assistant Commissioner vide Order-in-Original No. 334/1999 dt. 08.07.1999; they cleared the goods on payment of merit rate of duty and the matter was further carried on appeal before the Commissioner (Appeals) and subsequently, to the Hon'ble CESTAT, Chennai; the Hon'ble CESTAT, vide Final Order No. 93/04 dt. 22.01.2004 had remanded the matter to the Original lower appellate authority (LAA) to reconsider the issue in the light of Circular No. 62/2002; that thereafter, the Deputy Commissioner of Customs (EPCG), once again confirmed the denial of benefit of Notification No. 28/97, vide Order-in-Original No. 2626/2004 dt. 02.08.2004; that the appeal was further carried on appeal for the second time, to the Commissioner (Appeals) and thereafter, to the Hon'ble CESTAT. The Hon'ble CESTAT has now settled the issue vide Final Order No. 41482/2015 dt. 28.02.2015 and has allowed the appeal and held that the goods are entitled to the benefit of Notification No. 28/97 and has also ordered consequential relief; that based on the order of Hon'ble CESTAT, the appellant filed a refund claim on 16.12.2015 with Assistant Commissioner of Customs (refunds) for amount of Rs. 7,62,841/- along with interest @9% per annum placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Sandvik Asia Ltd. Vs. Commissioner of Income Tax, Pune, reported in 2006 (196) E.L.T. 257 (S.C.)***; that the LAA did not process the refund claim within the time limit stipulated by the Board, they filed a Writ Petition No. 3996 of 2016 before the Hon'ble High Court of Madras; the Hon'ble High Court of Madras vide order dt. 13.04.2016 directed the Assistant Commissioner to consider the refund claim on merits and in accordance with law; thereafter the above mentioned impugned order was passed wherein the LAA had sanctioned only Rs. 1,31,761/- as against the claimed amount and ordered that the same be credited into the Consumer Welfare Fund.

1.2 On appeal against the above finding, the Ld. Commissioner (Appeals), however, directed the adjudicating authority to sanction refund of Rs. 7,62,841/- by setting aside the impugned order therein, applying the ratio of Hon'ble Supreme Court's decision in the case of ***M/s. Ranbaxy Laboratories Ltd. Vs. UOI reported in 2011 (273)***

E.L.T. 3 (S.C.). On the prayer for grant of interest, the lower appellate authority has though ordered that interest be paid as per Section 27A of the Customs Act, but rejected the prayer for interest at 9% per annum on the ground that there was no such provision in the Customs Act, 1962.

2. Heard Shri. Hari Radhakrishnan, Ld. Advocate for the assessee and Shri. S. Govindarajan, Ld. DR for the Revenue.

3. We have considered the rival contentions. During the course of hearing, Ld. Advocate for the assessee has relied on the following judgments to support his contentions :

- *Titan Medical System Pvt. Ltd. Vs. Collector of Customs, New Delhi – 2003 (151) E.L.T. 254 (S.C.)*
- *PTC Industries Ltd. Vs. Union of India – 2010 (252) E.L.T. 42 (Allahabad)*
- *Sandvik Asia Ltd. Vs. Commissioner of Income Tax, Pune – 2006 (196) E.L.T. 257 (S.C.)*
- *Areva T & D India Ltd. Vs. Commissioner of Customs, Chennai – 2013 (290) E.L.T. 496 (Mad.)*
- *Deutsche Bank A.G. Mumbai V. Assessee, reported in ITA No. 3791 of 2010*
- *Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. Union of India – 2015 (324) E.L.T. 299 (Guj.)*

4.1 I find from the records that the Revenue has not challenged the direction of the Commissioner (Appeals) who has held that the appellant would be entitled to interest as per Section 27A of the Customs Act based on the decision of *M/s. Ranbaxy Laboratories Ltd. (supra).* I also note that the Hon'ble High Court of Karnataka in the case of ***C.C., Airport & ACC. Bangalore Vs. Pfizer Products India P. Ltd. reported in 2015 (324) E.L.T. 259 (Kar.)*** while considering a similar issue, has felt it proper to direct the Department to pay an additional interest at the rate of 9% per annum for the reasons contained in the judgment, in the light of Section 27A of the Customs Act.

4.2 Section 27A of the Customs Act, which is relevant, reads as under :

> *"**SECTION [27A.** Interest on delayed refunds. — If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :*
>
> ***Provided** that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant*

interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. *— Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section:*]"

4.3 From the above, it is clear that the rate of interest varies between 5 to 30% per annum, as is fixed by the Central Government by Notifications. I also note that there has been many such notifications for various periods right from 1995, prescribing different rates of interest. For the sake of convenience few of the available notifications are reproduced below:

Period	Rate	Notification No. & Date
26-5-1995 to 11-5-2000	15%	32/95 Cus. (NT), dt. 26-5-1995
12-5-2000 to 10-5-2001	15%	36/2000 Cus. (NT), dt. 12-5-2000
11-5-2001 to 12-5-2002	9%	21/2001 Cus. (NT), dt. 11-5-2001
13-5-2002 to 11-9-2003	8%	25/2002 Cus. (NT), dt. 13-5-2002
	6%	75/2003 Cus. (NT), dt. 12-9-2003

There could be similar Notifications also for the later period.

4.4 I am therefore of the firm view that the appellant is entitled for interest on refund as claimed but however, the same is subject to conditions of Section 27A and the Notifications issued by the Government.

5. I therefore allow the appeal. The adjudicating authority is therefore directed to ascertain such Notifications available till the date of passing the consequential order and compute the interest at the prescribed rates for the period involved in the case on hand. It is ordered accordingly.

(Pronounced in open court on **20.07.2018**)

(P Dinesha)
Member (Judicial)

Sdd