CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

REGIONAL BENCH : COURT No.-1

APPEAL No. C/40400/2020-SM

(Arising out of Order-in-Appeal C. Cus. II No. 357/2020 dated 12.02.2020 passed by the Commissioner of Customs & (Appeals-II), Chennai).

M/s. Netel (India) Limited, Appellant
W-408, MIDC Rebale,
TTC Industrial Area,
Navi Mumbai-400 701
Maharashtra.

Vs.

The Commissioner of Customs Respondent
Custom House, No. 60, Rajaji Salai,
Chennai-600 001.

APPEARANCE

FOR APPELLANT : Shri M. Karthikeyan, Advocate
FOR RESPONDENT Shri M. Jagan Babu, AC, Authorized Representative

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Hon'ble Shri P. DINESHA, MEMBER (JUDICIAL)

Date of Hearing: **17.03.2021**
Date of Pronouncement: **26.03.2021**

FINAL ORDER No. 41439 /2021

The appellant has come in appeal against the Order-in-Appeal C. Cus. II No. 357/2020 dated 12.02.2020, whereby the interest charged under Section 18(3) of the Customs Act has been upheld.

2.1 After hearing both sides, I do not see any dispute with regard to the facts. The Assistant Commissioner in the Order-in-Original dated 07.05.2019 has charged an interest of Rs. 15,82,866/- as on the date of order, under Section 18(3) read with Section 28 AA of the Customs Act. It is the case of the appellant which is also not disputed by the Revenue that it had made a cash/security deposit of Rs. 15,17,765/- which upon finalization of the Order-in-Original has been appropriated towards differential duty along with an interest of Rs. 4,90,768/. The learned Advocate would contend, referring to Section 18 (3), that any such interest shall have to be reckoned only from the date of provisional assessment till the date of payment thereof and not till the date of order.

2.2 Section 18(3) which is referred to, reads as under:-

> "[(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order [or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.]"
> [underlined for emphasis]

A reading of sub-section (3) supra makes it clear to me that any such interest could only be charged upto the date of payment and not upto the date of order ie., 07.05.2019. Hence, the impugned charging of interest is not in order. When the statute itself prescribes both the starting point and the ending point, to say that it shall be from the first day of the month in which the duty is provisionally assessed till the date of payment thereof, to read the same as "on the date of order" is beyond the legislative intent. Therefore, I am of the view that the impugned order to this extent is not sustainable and hence, the same is set aside. The matter is remanded to the file of the adjudicating authority to verify from the records and charge the interest only upto the date of payment as mandated in Section 18 (3) and not as upto the date of Order-in-Original. Opportunity may be given to the appellant-assessee keeping in mind the Principles of audi alteram partem passing an order as to calculating the interest liability upto the date of payment, in accordance with law.

(Order pronounced in the Open Court on 26.03.2021)

(**P. DINESHA.)**
MEMBER (JUDICIAL)

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