CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

SINGLE MEMBER

Customs Appeal No. 51213 of 2019

[Arising out of Order-in-Appeal No. DLI-CUSTM-TKX-APP-3597-18-19 dated 28.02.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s Jagdamba Tin Suppliers **Appellant**
KN/B-11, Gali No. 10, Anand Parvat, New Delhi

Versus

The Commissioner of Customs (Import)
ICD, Tughlakabad, New Delhi **Respondent**

Appearance
Shri R S Yadav, Advocate for the appellant

Shri P Juneja, Authorized Representative for the respondent

CORAM: **HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)**

Date of Hearing: 04.12.2019
Date of Decision: 09.01.2020

FINAL ORDER NO. 50012 /2020

BIJAY KUMAR:

1. This appeal seeks to assail the order dated 28.02.2019 passed by the Commissioner(Appeal), New Customs House, New Delhi-III, by which the order dated 04.04.2016 passed by the lower adjudicating authority has been sustained. The lower adjudicating authority vide the order dated 04.04.2016 rejected the interest refund claimed filed by the Appellant amounting to Rs. 33,27,042/- (Rs. Thirty Three Lakhs Twenty Seven Thousand Forty Two Only).
2. Facts of the case are that the Appellant had imported consignment of Tin Plate Waste/ Waste Sheets/Coils, secondary material in guise of 'Tinplate Prime' so as to pay less amount of customs duty instead of

05% basic customs duty on the secondary material in place of 20 % BCD plus CVD at the rate of 16% plus 2% ED Cess on CVD. The investigation was taken up by SIIB Officer of the Customs House and during investigation a sum of Rs. 25 Lakhs was deposited pending investigation. Show Cause Notices dated 24.07.2006 was issued to the Appellant, which was adjudicated by the Commissioner of Customs vide order dated 08.03.2009 in favour of the Appellant. The Department filed an appeal before Hon'ble CESTAT which came to be rejected vide Final Order No. C/A/52096/2015-CU-(DB) dated 13.05.2015. The Appellant's refund claim for the amount of Rs. 25 Lakhs deposited during the investigation was rejected vide order dated 05.12.2012 on the ground that the refund claim was barred by limitation under Section 27 of the Customs Act, 1962. This order of rejecting refund by Deputy Commissioner was set aside vide order dated 25.03.2013 and thereafter the refund claim was sanctioned to the Appellant by order dated 15.07.2003, however, the interest on the said amount was not sanctioned to the Appellant. The Appellant again filed refund claim for interest on account of delayed sanctioned of refund. This claim was again rejected, which was sustained in the impugned order. Being aggrieved the Appellant is in appeal before this Tribunal.

3. Heard Ld. Advocate on behalf of the Appellant and Ld. Authorised Representative on behalf of the Respondent.

4. The issue involved in this case is regarding the sanction of interest on delayed refund for the deposit made by the Appellant during the investigation. After protracted litigation the demand raised on the Appellant was found to be not sustainable and, accordingly, the refund

was granted for the deposit made during the investigation. In this case, I find that the deposit that has been made by the Appellant is required to be returned with interest in terms of provisions of Customs Act read with CBEC Circular No. 984/08/2014-CX dated 16/09/2014 paragraph 5 of the Circular, which is reproduced as under;

> 5. Refund of pre-deposit:
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> 5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.
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> 5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.
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> 5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.
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> 5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.
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> 5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

> 5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra.

5. In view of instruction from CBEC, which is binding on the adjudicating authority and also the legal provisions of Section 27 of the Customs Act which mandates the Department to grant interest on refund to the Appellant which has not been done in this case. This is a case of pure harassment to the Appellant by the Departmental Officer in order to get the legitimate due from the Department. The amount of deposit during investigation has been taken illegally and retained by the Department due to callous attitude of the departmental officer including that of Commissioner (Appeals), who has acted contrary to provisions of Customs Act and also against the directions given by the Central Board of Customs and Excise as indicated above. In the circumstances, I am of the opinion that interest is required to be granted to the Appellant for the delayed refund for deposit during investigation as per law.

6. The Appeal is, accordingly, allowed.

(Order pronounced on **09.01.2020**)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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