FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **29/04/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51213/2015-CU[DB]** dated **01/04/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/317/2009	**SUREN INTERNATIONAL LTD.** RZ-85, BHAWANI KUNJ,D-2, VASANT KUNJ, NEW DELHI-110070
		Name and Address of Respondent
2		-C.C. (ICD) NEW DELHI ICD, Tughlakabad, New Delhi 110020.

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Copy To

3Advocate(s) / Consultant(s):

Santosh Kumar Dwivedi,Adv
153, LAWYER CHAMBER,
HIGH COURT OF DELHI,
NEW DELHI

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4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj. New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -38
14 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

Court No. I

Date of hearing / decision: 01.4.2015

Customs Appeal No. 317 of 2009

(Arising out of Order in appeal No. CC(A) Cus/ICD/42/2009 dated 23.2.2009 passed by the Commissioner (Appeals), Customs, New Delhi.)

For approval and signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Suren International Ltd. Appellant

Vs

C.C., New Delhi Respondent

Appearance:

Present Shri Nipun Kumar, Director for appellant
Present Shri B.B. Sharma, A.R. for the respondent

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

FINAL ORDER NO. 51213/2015

Per R.K. Singh:

Appeal has been filed against Order-in-Appeal No.CC(A)Cus/ICD/42/2009 dated 23.2.2009 which upheld the Order-in-Original dated 28.11.2008 in term of which the appellant's refund claim of Rs.158,21,959/- seeking refund of interest paid by them had been rejected.

2. The appellant had imported certain goods and filed several Bills of Entry in respect thereof in the month of July, 2001. On the basis of intelligence that the goods imported by them under those Bills of Entry were misdeclared and that the appellant had earlier also imported similar goods by indulging in misdeclaration, goods covered by the Bills of Entry filed in July, 2001 (30.7.2001 and 31.7.2001) as also those lying in godown were seized as they were found to be misdeclared. The case was eventually adjudicated by Commissioner of Customs ICD, TKD vide Order-in-Original dated 30.6.2003. The appellant filed appeal against the said Order-in-Original and the Tribunal stayed the operation thereof. The stay was vacated on 13.5.2005. The appellant filed appeal before High Court but no stay was granted. The goods were released after the appellant deposited the customs duty, redemption fine, penalty and interest on delayed payment of duty in the wake of the Order-in-Original dated 30.6.2003.

3. The appellant submitted the impugned refund claim on the ground that it was asked to pay interest on delayed payment of duty under Section 28AA of the Customs Act, 1962 with effect from 29.9.2003 i.e. three months after the date of passing of the Order-in-Original whereas the Department started processing Bills of Entry in year 2005 and therefore, the interest should not have been demanded and recovered before finalizing Bills of Entry in the year 2005.

4. During the hearing, the appellant reiterated the same contention.

5. We have considered the appellant's contentions and the facts and circumstances of the case. The primary authority in the impugned order has clearly noted as under:

> "I find that the party has filed the refund claim on 28.2.2008 and as per party's own submission, the amount of interest was paid on dates - 0312.07, 27.2.07, 27.9.06, 28.9.06, 03.10.06, 28.9.05, 01.9.06, 10.6.05, 4.9.06, 24.11.06, 26.12.06 & 09.03.07. As such, the claim of refund except for the first and last payment of interest are barred by time in terms of Section 27 of Customs Act, 1962, and which is liable to be rejected on this ground itself."

We find that in the ground of appeal, this finding of the adjudicating authority has not been contested or rebutted.

6. Further Section 28AA of the Customs reads as under:

> **SECTION 28AA. Interest on delayed payment of duty. -**
>
> (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28 shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

From the aforesaid Section, it is clear that the interest becomes chargeable after three months from the date of determination of duty chargeable. It is evident that the determination of duty chargeable happened on the date (30.6.2003) of Order-in-Original.

Therefore, charging of interest w.e.f. 29.9.2003 is clearly in conformity with the provision of said Section 28AA. Grant of stay by the CESTAT against the operation of said Order-in-Original and the vacation thereof subsequently do not in any way alter the date of determination of duty chargeable which remained the date of the adjudication order. Incidentally, in the impugned Order-in-Appeal, the Commissioner (Appeals) goes to the extent ~~to~~ of asserting that in terms of Section 28AB ibid interest was to be charged from the date of seizure in the year 2001. However, this observation is not relevant for the issue at hand.

8. In the light of the foregoing, we find no merit in the appeal and the same is, therefore, dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

scD