CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.
PRINCIPAL BENCH – COURT NO.II

Customs Appeal No.50805 of 2020 (SM)

[Arising out of Order-in-Appeal No.22(SM)CUS/JPR/2020 dated 12.03.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur]

M/s.Kuber India **Appellant**
B-18, Shri Giriraj Kunj,
Jobner Bagh,
Station Road,
Jaipur-302 006.

Versus

Commissioner of Customs, **Respondent**
Customs Commissionerate,
NCRB, Statue Circle, C-Scheme,
Jaipur.

APPEARANCE:

Shri Suhrid Bhatnagar, Advocate for the appellant.
Ms. Tamanna Alam, Departmental Representative for the respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.52080/2021

DATE OF HEARING/DECISION:12.11.2021

ANIL CHOUDHARY:

Heard the parties.

2. The dispute in this appeal is whether the appellant is entitled to interest on the excess amount of customs duty deposited under protest at the time of passing of the Bill of Entry on provisional basis, till the date of refund of the excess amount deposited.

3. The brief facts are that the appellant had imported five old and used printing machines under Bill of Entry No.0909 dated 2.6.2010. The importer /appellant declared assessable value Rs.15,36,600/-. The Revenue entertained a view that the assessable value is not correct and accordingly

initiated proceedings for enhancing and re-fixing the assessable value. The Commissioner of Customs, Jodhpur, Hqrs at Jaipur vide Order-in-Original No.04/2011 dated 05.05.2011 determined the assessable value at Rs.50,75,000/-. The importer paid the duty on enhanced value to release the goods. Being aggrieved with the said order, the claimant filed appeal before the Hon'ble CESTAT, New Delhi. The Hon'ble CESTAT, New Delhi vide Final Order No.C/A/52670/2016-CU(DB) dated 29.07.2016 set aside the said order-in-original passed by the Commissioner of Customs, Jodhpur (Jaipur) and held that the said order is without merit and allowed the claimant's appeal.

4. Further, the Hqrs. (Review), Customs Commissionerate, Jaipur vide letter C.No.VIII(28) Cus/CESTAT/10/2014/8690 dated 13.10.2016 has intimated that the Final Order No.C/A/52670/2016-CU(DB) dated 29.07.2016 has been accepted by the Department.

5. Thereafter, the appellant filed the refund claim for the excess duty paid of Rs.8,41,826/-, which was rejected on the ground of unjust enrichment. Thereafter, the matter reached before this Tribunal in Customs Appeal No.52687 of 2018 (SM), vide Final Order No.50704 of 2019 dated 17.05.2019, wherein this Tribunal held that under the facts and circumstances, there is no case of unjust enrichment. Accordingly, allowed the appeal of the appellant/assessee.

6. Thereafter, vide order-in-original dated 2.9.2019, although the refund has been granted for the excess amount of Rs.8,41,826/-, but the interest was denied observing that the provisions regarding interest on refund provides for grant of interest, as contained under Section 27 A of the Customs Act, 1962, only after the refund is not granted within three months from the date of application.

7. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order observed that the appellant had filed refund claim for the first time on 24.10.2016. However, the interest has been claimed from 5.8.2011 (the provisional asessement was finalised on 5.5.2021), and accordingly, held that the appellant is entitled to interest 3 months after 24.10.2016, being the date of filing the refund claim, as per Section 27A of the Customs Act.

8. Having considered the rival contentions, I find a wrong section has been considered by the Commissioner (Appeals) in the impugned order. The amount deposited provisionally is an amount deposited under protest and partakes the character of pre-deposit from the date of such deposit, as the matter was subjudice. Further, Section 129 EE of the Customs Act read with ruling of Hon'ble Supreme Court in the case of **Sandvik Asia Ltd. – 2006 (196) ELT 257 (SC),"** provides for grant of interest on the amount of pre-deposit from the date of deposit till the date of grant of refund". Accordingly, I allow this appeal and hold that the appellant is entitled to interest from the date of deposit of duty till the date of grant of refund @ 6% P.A. (at the prescribed rate). I further direct that such interest should be disbursed to the appellant within a period of 45 days from the date of receipt/service of copy of this order.

[order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.