CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Customs Appeal No. 51226 of 2020-SM

(Arising out of order-in-appeal No. 50(SM) CUS/JPR/2020 dated 17-18.09.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods, Service Tax, Jaipur).

M/s Greenlam Industries Limited **Appellant**
E-176-179, SP-02
RIICO Industrial Area, Phase-II
Behror, District – Alwar, Rajasthan.

VERSUS

Commissioner of Customs (Prev.) **Respondent**
NCR Building, Statue Circle, C-Scheme
Jaipur-302005.

APPEARANCE:

Shri Arun Goyal, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50300/2022

DATE OF HEARING: 13.10.2021
DATE OF DECISION: 30.03.2022

ANIL CHOUDHARY:

The appellant is a manufacturer, registered with the Central Excise Department and thereafter under GST, and also allotted IEC code.

2. Brief facts of the case are that the appellant had imported inputs vide Bill of Entry No 5568839 dated 14.03.2018 & 5814945 dated 31.03.2018 under Advance Licence, by availing the benefit of Notification No 18/2015-Cus. dated 01.01.2015 as amended by

Notification No 79/2017-Cus. dated 13.10.2017 That prior to introduction of GST, Notification No 18/2015-Cus. dated 01.01.2015 granted exemption from BCD, CVD & SAD for import of inputs under Advance Authorization for physical exports. On introduction of GST, the said notification was amended vide Notification No 26/2017-Cus dated 29.06.2017 to grant exemption from BCD alone. Subsequently vide Notification No 79/2017-Cus. dated 13.10.2017, the notification was further amended to grant exemption from IGST as well as compensation Cess, subject to pre import condition.

3. That appellant imported goods against the above bills of entry by availing the exemption under Notification Nos. 18/2015 read with 79/2017 ibid. DRI initiated investigation against several importers on the ground of non fulfillment of 'pre import condition', and was extended to the appellant also.

4. That Appellant to avoid harassment, on insistence by Revenue paid IGST not paid at the time of import, along with interest or Rs. 97,032/-.

5. That the pre-import conditions were challenged before Hon'ble High Court of Gujarat in case of **Maxim Tubes Company Pvt. Ltd., & Ors. Vs UOI**, wherein the provisions of pre import condition were held ultra vires the Foreign Trade Policy, **2019-TIOL-459-HC-AHM-CUS**.

6. That the appellant had discharged duty, levy was held as unconstitutional and ultra vires. Thus the appellant applied for refund of tax and interest, collected without authority of law, on 13.05.2018.

As IGST amount was claimed as ITC and passed on to the customers, the refund of the same was not claimed but interest paid on IGST amount was sought as refund, amounting to Rs 97,032.00

7. That the Deputy Commissioner ICD Kathuwas, proposed rejection of refund amounting to only Rs 97,032/- vide Show Cause Notice dated 19.08.2019, on following grounds.

- *That the date of reassessment i.e. 18.09.2018, comes after the due date of 31.03.2018 for availing exemption of duty. Further it appears that the claimant has suo moto deposited the duties without initiation of coercive action by the department.*
- *That the claimant is not the petitioner in the case law cited of the Gujarat High Court*
- *That the order of Gujarat High Court had simply stayed the proceedings of coercive recovery of the past transaction, and pre-condition as per Notification No 79/2017 were to be considered later and not yet decided in the case.*
- *That the claimant has not submitted any correspondence of DRI regarding investigation conducted by DRI whereby the claimant was directed to pay interest.*
- *That the CA certificate reflects that they have availed the IGST fraction as ITC refund and the remaining portion of Interest for which refund is claimed is on account of late payment of IGST. Therefore the refund of interest payment on account of late payment of IGST does not arise.*

8. He upheld all the allegation and rejected the refund claim of Rs.97,032/- proposed in the Show Cause Notice.

9. In appeal filed, the learned Appellate Authority upheld the OIO by observing as under:-

- *The appellant had pleaded before the Adjudicating Authority as well in the present appeal that they had deposited the said duties and interest on account of some directions from the DRI, but they had not given any such evidence, which is discussed in the impugned order*

- *That at the time of re-asessment the exemption was not available and the appellant was required to discharge the duty liability on such imports. I therefore find that since there was a delay in payment of duties in respect of the import made under above referred BoEs, interest on such delayed payment of duties was rightly paid in the instant case.*

10. It was further observed, that the operation of judgement in case of **Maxim Tubes Manufacturing Co Pvt. Ltd.,** has been stayed by Apex Court.

11. Being aggrieved, the appellant is before this Tribunal.

12. Learned Counsel for the appellant points out that the appellant is a regular importer of inputs under 'Advance Authorisation' as the manufacturer of finished goods and also exports the same. Evidently, the Bills of Entry was filed in the month of March, 2018 and were passed soon thereafter giving the benefit of exemption of custom duty, CVD, and IGST. Thereafter, the Revenue has taken steps for collection of IGST (due to change of opinion), which was admittedly deposited with interest on 15.09.2018. Later on, the appellant has filed the refund claim of IGST alongwith the interest component of Rs.97,032/- on 13.05.2019. As the appellant has taken the benefit of cenvat credit being eligible on the amount of IGST, they restricted their claim to the amount of refund of interest Rs.97,032/-. It is also

pointed out that vide amended Notification No. 79/2017-Cus. dated 13.10.2017, the earlier exemption notification was amended to grant exemption from IGST and compensation cess also. Thus, the collection of IGST being without authority of law there is no question of charging of any interest on the same and accordingly entitled to refund of interest Rs. 97,032/-. It is evident from the facts on record that appellant have deposited the IGST as well as the interest amount of Rs. 97,032/-, only on being insisted by the Revenue, after four months of passing of the Bill of Entry.

13. The Commissioner (Appeals) have also erred in holding that IGST was payable at the time of re-assessment in September, 2018, in view of the exemption granted from IGST vide Notification No. 79/2017-Cus. Further, no IGST was payable in view of the ruling of Hon'ble Gujarat High Court in the case of **Maxim Tubes Company Pvt Ltd Vs UOI**, wherein the provisions of pre-import condition imposed in the exemption notification were held ultra vires the Foreign Trade Police. It is further urged that the Commissioner (Appeals) has erred in observing that as the Bill of Entry were re-assessed in September, 2018, the exemption was available upto 31.03.2018. Learned Counsel assailing the said observation urges that the applicability of exemption etc. has to be judged as on the date of the filing of Bill of Entry and not with regard to date of finalisation of the assessment. Accordingly, he prays for allowing the appeal with consequential benefits.

14. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

15. Having considered the rival contentions, I find that the Commissioner (Appeals) has admitted that the benefit of exemption from IGST and cess was available to the appellant till 31.03.2018 under Notification No. 79/2017-Cus. I find that the Court below have erred in holding that the exemption is not available to the appellant - assessee as the assessment/re-assessment of the Bill of Entry was finalised in September, 2018 (after 31.03.2018). I hold that the entitlement of exemption from duty on filing the Bill of Entry is with respect to the date of filing of the Bill of Entry. Thus, I hold that the exemption of IGST as well as BCD + cess was available in respect of Bill of Entry, which was filed on 14.03.2018 and 31.03.2018. I further take notice that the Government vide amending Notification No.01/2019-Cus. dt. 10.01.2019 have withdrawn the pre-import condition No. (XII) from Notification No.18/2015-Cus. in public interest.

16. In view of my findings, the appeal is allowed and the impugned order is set aside. The Adjudicating Authority is directed to grant refund of Rs. 97,032/- alongwith interest as per Rule, within a period of 45 days from the date of receipt of copy of this order.

(Pronounced on 30.03.2022).

(Anil Choudhary)
Member (Judicial)

Pant