# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI.

## PRINCIPAL BENCH - COURT NO. II

## Customs Appeal No.50211 of 2021 (SM)

(Arising out of Order-in-Appeal No.CC(A)CUS/D-II/Export/ICD/TKD/933/2020-2021 dated 30.09.2020 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi]

**M/s. MSG Enterprises** **Appellant**
Shop No.1, G-27, Khasra No.86/12,
Mangal Bazar Road, Phase-I,
Vijay Vihar,
Rohini
Delhi-110 085.

VERSUS

**Commissioner of Customs** **Respondent**
ICD TKD (Export),
Tughlakabad, New Delhi.

**APPEARANCE**:

Shri Ayush Agarwal, Advocate for the appellant.
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

**CORAM:**

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

**FINAL ORDER NO.50472/2022**

**DATE OF HEARING/DECISION: 25.05.2022**

**ANIL CHOUDHARY:**

Heard the parties.

2. The issue involved in these appeal is whether the Commissioner (Appeals) has rightly rejected the claim of interest, on the grant of belated refunds, by referring to the limitation under Section 128 of the Customs Act.

3. The appellant is an importer, who imported fabrics. At the time of import, the goods were assessed at a higher value than the declared value by the proper officer. Although the appellant did not agree with the

enhancement, however, they paid the duty for taking clearance and filed appeal before the Commissioner of Customs (Appeals). On being successful in the appeal before the Commissioner (Appeals), the appellant applied for refund of the excess duty paid. The details are reflected in the table below:-

| Appeal No. | Order-in-Appeal | Date of filing refund application | Date on which refund was sanctioned | |
|---|---|---|---|---|
| | | | (in cash) | (By Cr.to scrip) |
| C/502011/ 2021 | CC(A)CUS/D-II/Export/ICD/TKD/933/2020-21 dated 30.09.2020 | 8,58,995 on 03.01.2018 | Rs.8,40,263 on 6.6.2019 | Rs.18,732 on 30.9.2020 |

4. Thereafter, the appellant approached the DGFT for allowing re-credit of the amount refunded by way of credit to the scrips. Further, the DGFT rejected the recredit in the scrips/licence. Thereafter, the appellant again approached the Adjudicating Authority for grant of refund of the amounts in cash. However, the same was refused by order dated 7.11.2019 of the Adjudicating Authority mentioning that there is no such direction/instruction/circulars for grant of refund in cash, for the amount of the duty paid through scrips.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order, observed that payment of duty, by way of debit to the licence/scrips is actual payment of duty, as it is valid mode of payment. Thus, as the appellant have paid duty at the time of importation, it is entitled to refund of such excess duty and the Department cannot be permitted to pay it by a mode, which is not in existence. Further, placing reliance on the ruling of this Tribunal, in Final Order No.50438/2020 dated 24.02.2020, in the case of **Commissioner of**

**Customs & Excise Vs. M/s. Artex Textile Pvt. Ltd.,** ld. Commissioner was pleased to allow the appeal in part, directing refund of the amount in cash. However, as regards the claim of interest as per provisions of Section 27 A, the same was rejected, observing that the original order of refund had been issued on 30.09.2020/06.06.2019, whereas the appeal for interest has been filed in December, 2019 and the same is hit by limitation under Section 128 of the Customs Act.

6. Ld. Counsel for the appellant assailing the impugned order urges that the ld. Commissioner (Appeals) has erred in referring to wrong section, which is a general section of limitation for filing of appeal before him. Such finding is wholly against the provisions of law, as part of the cause of action regarding refund is found okay, and balance part regarding interest, the same is held barred by limitation.

7. He further draws attention to the provisions of Section 27 A, which provides that, " where a refund is not granted within three months from the date of receipt of the application, that shall be paid to the applicant with interest at such rate, as notified, on such duty, from the date immediately after the expiry of three months, from the date of receipt of such application, till the date of refund of such duty. Thus, the statute provides for mandatory payment of interest, and there is no discretionary power with the Revenue Authority in the matter of interest. Accordingly, he prays for grant of interest, as per Statute.

8. Ld. Departmental Representative for the respondent/Department relies on the impugned order.

9. Having considered the rival contentions, I find that the ld. Commissioner (Appeals) has mis-conceived the issue of interest by rejecting

the same by referring to the provisions of Section 128 of the Customs Act. I hold that the appellant is entitled to interest from the end of three months from the date of refund application before the Adjudicating Authority, till the date of grant of refund in cash. I further direct the Adjudicating Authority to disburse the interest within a period of 45 days from the date of receipt/service of copy of this order.

10. Appeal is allowed.

(Order dictated & pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp