

TELEGRAM : CEGCANAL

Website : www.cestat.gov.in

REGISTERED / AD

Email : delhi@cestat.gov.in

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

Appeal No. C/799 /2005 - CU[DB]

Date 17/11/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NINO CHAKA (P) LTD
A-2/142, SAFDARJUNG ENCLAVE,
NEW DELHI - 110 029

M/S NINO CHAKA (P) LTD

Appellant

THE COMMISSIONER OF CUSTOMS (GENERAL),
NEW DELHI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/598

2008 CU[DB] dated 11.11.08

passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax



Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF CUSTOMS (GENERAL),
NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI - 110 037

2. Adv. / Consult MR.A.K.JAIN, ADV., "ABHINANDAN FARM"
BEHIND CHIRANJIV BHARTI SCHOOL PALAM VIHAR,
GURGAON(HARYANA),122017

3 S.D.R

4 J.C.D.R.

5 Bar association, CESTAT, New Delhi

6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT. U.P.

10 Raghuraman's publications, I.P.Estate, new Delhi

11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd, 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15 Office Copy

16 Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:11.11.2008

Customs Appeal No.799 of 2005

Arising out of the order in appeal No.CC(A)/278/ACU/Delhi I/2005 dated 30.6.05 passed by the Commissioner (Appeals), Customs, Delhi I.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. P.K. Das, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant

M/s Nino Chaka (P) Ltd.

vs.

Respondent

C.C.(General),
New Delhi

Appearance:

Shri A.K. Jain, Advocate for the appellant

Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. C/598/08

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. CC(A)/278/ACU/Delhi I/2005 dated 30.6.05.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

V.

a) The appellant imported consignments covered by 10 bills of entry and got cleared during the period April, 1996 to February 1998. Subsequently, the Department on the basis of investigation issued a show cause notice dated 4.4.2001 and by the order in original dated 29.4.2002 confirmed demand of duty, imposition of penalty etc. was issued.

b) In the meanwhile, during the course of investigation, a sum of Rs.10 lakhs was paid on 11.3.98, Rs.14,76,000/- on 12.5.98 and Rs.4,00,578/- on 13.5.98.

c) On an appeal to the Tribunal against the order of the Commissioner dated 29.4.02, the Tribunal vide order dated 20.11.2003 decided the issue in favour of the appellant and the appellant became entitled to the refund consequently.

d) The appellant vide letter dated 5th December 2003 claimed the amount deposited by them during March and May 1998 which stands refunded vide cheque dated 14.5.2004.

e) The appellant claims interest for the amounts deposited in March, 1998 and May 1998 which were refunded to them in pursuance of the Tribunal's order dated 20.11.2003 from the date of deposits.

3.1 Learned Advocate took us through judgments of the High Courts which have held that interest is payable in respect of money retained illegally. For example, in the case of B. Arun Kumar & Co. vs. C.C. - 2005 (180) ELT 152 (Cal.), the Calcutta High Court held that CEGAT can exercise its powers not only to cancel action of the authority concerned but must reconstitute also the person affected and accordingly, upheld that the CEGAT's decision granting interest on redemption fine. He also draws our attention to the judgments of Gujarat High Court and the decision of the Supreme Court wherein interest was granted on various amounts like DCRG, compensation etc. paid after delay under various enactments.

3.2 Learned Advocate submits that the interest is payable even in situations not covered Section 27A of the Customs Act. Such interest can be granted not only by the Court but also by the Tribunal inasmuch as in the Interest Act, 1978 defines the Court to include a Tribunal and an arbitrator

3.3 He submits that the decision of the Tribunal dated 20.11.2003 that there is no undervaluation will be valid during the period when the amount was forcibly collected by the Department from the appellant; and that as no duty was leviable on the dates the amounts were collected, the entire amount collected should be treated as other than the duty and interest should be paid. In this connection, he refers to the definition of 'duty' as mentioned in Section 2(15) of the Customs Act.

4.1 Learned DR submits that what was paid by the appellant was in relation to the goods imported and they are only deposits of duties. Commissioner held that from the date of order of the original authority which appropriated deposited amounts, the same should be treated as payment of duty. This decision should also be held valid for the period March, 1998 and May 1998 when the amounts were actually paid by them.

4.2 He also relies on the decision of the Hon'ble Supreme Court in the case of C.C.E., Hyderabad vs. ITC Ltd. reported in 2005 (179) ELT 15 (SC) wherein it has been held that in consequential refunds arising out of the appeal, interest shall be paid in respect of delayed refund beyond 90 days. He also submits that the other decisions of the High Courts and the Supreme Court relied by the appellant relate to the period when Section 27A was not in force and therefore, the decision in the case of ITC Ltd. which was directly on the subject should be relied upon.

5.1 We have carefully considered the submissions from both sides. The sanction of interest for delayed payment of amounts by the High Courts or Supreme Court has been ordered in exercise of the powers under Article 226 and the like. The decision of the Hon'ble Supreme Court in the case of ITC Ltd. is relevant to the present case. We reproduce the relevant portion from the said judgment:

"The issue in this appeal and in several other appeals is whether the pre-deposit made as a pre-condition for the hearing of the appeal under the Central Excise Act, 1985 was, on the assessee being ultimately successful, refundable to the assessee with interest. The learned Solicitor General has taken instructions and has stated before this Court that the Central Board of Excise & Customs proposes to issue a circular in connection with the payment of interests on all

such pre-deposits. A draft copy of the proposed circular has been handed over to this Court. Having regard to the contents of the draft circular we direct compliance with the final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to and the contents form part of this order. The appeal is disposed of. In view of this order any judgment of any High Court holding to the contrary will be no longer be good law.

2.

3. *Leave granted. Following the order in CA No.4443/2001 the appeal is disposed of by modifying the impugned order and directing payment of interest on the pre-deposit commencing from three months after the final disposal of the dispute between the parties on merits in terms of the draft circular."*

5.2 We, however, do not agree with the submissions made by the learned DR that in pursuance of the order of the Tribunal dated 20.11.2003, the claim was sanctioned within 90 days but the actual payment was delayed due to reason like non-production of pre-receipt by the appellant. Therefore, we hold that interest shall be payable on the pre-deposited amounts commencing from three months after final disposal of the dispute by the Tribunal vide order dated 20.11.2003.

6. The appeal is disposed of as above.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K.Das)
Member (Judicial)

scd/