CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

Customs Appeal No. 30188 of 2019

(Arising out of **Order-in-Appeal** No. VIZ-CUSTM-000-APP-050-18-19 dated 30.11.2018 passed by Commissioner (Appeals), Guntur)

Andhra Organics Ltd., .. **APPELLANT**
Plot No. 110, IDA,
Pydibhimavaram, Srikakulam,
Andhra Pradesh – 532 409.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

Appearance

Shri M. Rajendran, Advocate for the Appellant.
Shri A V L N Chari, Superintendent for the Respondent.

Coram: Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/31109/2020

Date of Hearing: 10.11.2020
Date of Decision: 10.11.2020

[ORDER PER: MR. P. VENKATA SUBBA RAO]

1. Heard both sides. This appeal is filed against Order-in-Appeal No. VIZ-CUSTM-000-APP-050-18-19 dated 30.11.2018. The facts of the case in brief are that the appellant imported Benzothiazole through Visakhapatnam Port declaring an assessable value of US$ 3.5 per Kg being the transaction value. The Assistant Commissioner enhanced it to 4.3523 per Kg. The appellant paid the enhanced duty under protest and appealed to Commissioner (Appeals) who set aside the enhancement. Thereafter the appellant filed an application for refund of the excess duty paid by them. The refund application was dated 02.12.2016 which was delivered to the department on 05.12.2016. The Assistant Commissioner rejected the refund claim and on appeal, the rejection of refund was upheld by Commissioner (Appeals). On further appeal, this Tribunal by Final Order No. A/30425/2018 dated 07.02.2018 allowed the refund along with interest.

2. The Assistant Commissioner sanctioned the refund but has not paid interest. On appeal Commissioner (Appeals), by the impugned order, held that the liability to pay interest arises only if the refund is not made within three months from the date of receipt of the Tribunal's Order. Since the refund has been paid within three months from the date of receipt of the Tribunal's order no interest is payable. Hence this appeal praying as follows:

(i) set aside the impugned order;

(ii) order payment of the unpaid interest Rs. 35,463/-; and

(iii) order payment of further interest on the unpaid interest from 30.10.2018, the date of payment of the refund, till the date of payment of the unpaid interest.

Learned Counsel for the appellant submits that it is a well settled principle of law that interest has to be paid if refund is not sanctioned within three months from the date of refund application. In this case the date of application was 05.12.2016 and interest has to be paid three months after that date. There is no provision in Section 27A of the Customs Act to reckon any other date including the date of Final Order of the CESTAT for calculation of interest on the refund amount. On a specific query from the Bench regarding legal provisions supporting the prayer in the appeal for payment of interest on the unpaid interest Learned Counsel said that he is not pressing this.

3. Learned Departmental Representative reiterates the findings of the impugned order.

4. I have gone through the records of the case and considered the arguments on both sides. Relevant portions of the impugned order are as follows:

> 5.1 I have gone through the records of the case and submissions made by the appellant in the grounds of appeal. The Hon'ble CESTAT, Regional Bench, Hyderabad in its order No. A/30425/2018 dated 07.02.2018 which is received by the department on 11.05.2018 as ascertained upon verification of case records clearly ordered for the refund of differential customs duty along with interest

paid by the appellant. The respondent, in obedience to judicial discipline, sanctioned the refund of differential Customs duty and the interest thereon vide impugned order dated 06.06.2018.

5.2 It is relevant to revisit the Section 27A of the Customs Act, 1962 to understand the issue in a better perspective.

Section 27A of the Customs Act, 1962: Interest on delayed refunds - If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five percent] and not exceeding thirty percent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], 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 :

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. — Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [National Tax Tribunal] or any court against an order of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

5.3 Section 27A of the Customs Act, 1962 provides for the payment on interest on delayed refunds. As per the provisions and explanation to the Section 27A of the Customs Act, 1962, it is obvious that the relevant order is Hon’ble CESTAT order A/30425/2018 dated 07.02.2018 and the relevant date is the date of receipt of Hon’ble CESTAT order which is 11.05.2018. If there is any delay in sanctioning the amount of refund, if any available to the appellant as per the Tribunal’s Order he can make a claim of the same from the Department. The respondent sanctioned the refund of Duty and Interest vide impugned order dated 06.06.2018 which is well within the time period of three months from the date of order of Hon’ble Appellate Tribunal. Hence the interest on delayed refund under the provisions of Section 27A of Customs Act, 1962 does not arise in the present case.

5. Evidently, the Learned Commissioner has taken the date of receipt of Final Order of the Tribunal as the relevant date for calculation of interest to be paid on the refunded amount. This is clearly contrary to the provisions of Section 27A which has only one date for calculation of interest which is the date of refund application. If the refund is not paid within three months from the date of receipt of refund application interest has to be paid.

6. In view of the above, I find that the appellant is entitled to interest on the delayed refunds from three months from the date of receipt of refund application till the date of which the refund has actually been paid and order the Department to pay the interest.

7. The appeal is allowed and disposed of as above.

(Order dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Jaya