

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76391 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/PORT/KS/451/2024 Dated 18.07.2024 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Vedanta Ltd.

(Formerly known as Sesa Sterlite Limited/Sesa Goa Limited)

(Sesa Ghor, 20 EDC Complex, Patto, Panji, Goa-403001) ... **Appellant**

VERSUS

Commissioner of Customs (Ports), Kolkata

(Customs House, Strand Road, Kolkata- 700 001) ... **Respondent**

APPEARANCE :

Present for the Appellant: CA Mr. Mukesh Laddha assisted by Ms. Nimita Shaneshah

Present for the Respondent: Mr. Subrata Debnath, Authorised Representative

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER NO. 75010/2025

Date of Hearing : 18 December 2024
Date of Pronouncement : 07/01/2025

PER R. MURALIDHAR:

The appellant Vedanta Ltd., was earlier known as Sesa Goa Ltd. Subsequent to, by changing the name of 'Sesa Goa Ltd.', the Company came to be known as 'Sesa Sterlite Ltd.' and then 'Vedanta Ltd.', as is evidenced by the ROC Certificate provided by the appellant.

2. The appellants have exported Iron Ore during the period 05.06.2007 to 17.03.2008, by way of 12 Shipping Bills. During this period, the Export Duty was payable @ Rs.300 PMT if the Fe content is more than 62% or @ Rs.50 PMT if the Fe content is 62% or less than 62%. The appellants at the time of clearance, have

indicated the DMT as 63.5% with moisture content of 9%, which would be less than 62% in WET MT, requiring to pay export duty of Rs.50 PMT. As per agreement with foreign customer, the Exported Iron Ore testing to be carried out and Test Report to be given by the accredited agencies, which again should be acceptable to the Customs. This is a time consuming process. In order to avoid delay in exports, they have paid Export Duty @ 300 PMT. On 18.05.2009 [acknowledged on 26.05.2009], they have submitted their letter individually for these Shipping Bills citing there with the relevant Supreme Court’s order and enclosing therewith the Final Invoice, Load Port Test Report from the accredited Testing Agency etc., requesting the Customs officials to Finalize the provisionally assessed Shipping Bills.

3. After this, the case had a chequered history, having travelled between Orders passed by the Departmental officials, High Court and Tribunal, finally with the Final Re-assessment cum Refund Order was passed on 05.09.2023, granting them the refund of differential Export Duty of Rs.6,93,69,000. However, no interest was granted for the excess Export Duty paid by the appellant at the time of export. Being aggrieved, the next round of litigation started, wherein the Adjudicating authority has rejected their claim for interest on the ground that the refund was granted within 8 weeks from the date of the Calcutta High Court’s order. On appeal, the Commissioner (Appeals) vide the impugned OIA No. KOL/CUS(PORT)/KS/451/2024 has held that the interest is to be calculated and is payable based on the CESTAT Final Order dated 28.07.2022. Being aggrieved the appellant has filed the present appeal. The Revenue has not filed any appeal against this OIA No. KOL/CUS(PORT)/KS/451/2024 dated 18.07.2024.

4. The Ld. Chartered Accountant, takes us through the chequered history of the case, by way of a Table showing the chronology of the events, which is reproduced below :

Sequence of Events and follow ups

S. No.	Particulars	Date	Remarks
1.	S/Bills Filing Date	June-2007 to March, 2008	Invoice Value, weight, Fe Contents, Moisture all are provisional
2.	Submitted all relevant docs- Final Invoice, Final Test Reports etc. for Final Assessment.	18.05.2009	To finalise based on Hon’ble Supreme Court Guidelines
3.	Request for Rectification under Section 154	01.10.2009	Assistant Commissioner

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S. No.	Particulars	Date	Remarks
4.	Representation to Commissioner of Customs for intervening and direct for Rectification / Provisional under Section 154	07.12.2009	To direct Assistant Commissioner for rectifying the S/Bills Assessments based on Hon'ble Supreme Court Guidelines
5.	Representation to Commissioner of Customs for intervening and direct for Rectification / Provisional under Section 154	15.02.2010	To direct Assistant Commissioner for rectifying the Assessment of S/Bills based on Hon'ble Supreme Court Guidelines
6.	Letter from Dy. Commissioner to re-submit all documents related to our request	05.05.2010	Doc submitted vide letter dated 26.05.2010
7.	Re-submission of Documents to Dy. Commissioner of Customs-Exports	26.05.2010	Documents resubmitted for all 12 S/Bills
8.	Reply from Dy. Commissioner of Customs-Exports	04.06.2010	Received on 25.06.2010, rejecting request of rectification.
9	Appeal to Commissioner Appeals	July. 2010	Against Rejection of rectification Order
10.	Order of the Commissioner Appeals	11.10.2010	Received on 18.10.2010, Remanded to Original Adjudicating Authority for re-examining rectification request,
11.	PH before Assistant Commissioner	12.06.2014	Made long follow up, submitted various judgments, CBIC Circular 04/2012-CUS dtd 17.02.2012 justifying rectification/assessment request with a request to allow benefit of Notification No. 62/2007 dt 03.05.2007.
12.	Representation by filing of CP Gram through PG Portal for non-issuing of Order after PH.	24.04.2015	CBOEC/E/2015/00893, for implementation of Comm Appeals order
13.	Order in Original dated 11.05.2015	11.05.2015	Received on 25.06.2015, rejected the request for Assessment / Re-assessment/ Rectification, dishonoring Hon'ble Supreme Court / CBIC direction issued vide Circular No. 04/2012 dated 17.02.2012
14.	Writ Before Hon'ble High Court for accepting the request of rectification	25.06.2015	for having efficacy of resolution.
15.	Rejection by High Court (Appeals)	10.09.2015	Hon'ble Court did not accept Writ petition and directed to go through normal process.
16.	Filing of Appeal again before The Commissioner (Appeals)	28.09.2015	Submitted by Hand
17.	PH before Commissioner (Appeals)	10.12.2015	Submitted all the justification for Assessment Finalisation and Rectifications
18.	Commissioner Appeals Order	13.05.2016	Rejected the request without quoting his findings.

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S. No.	Particulars	Date	Remarks
19.	Appeal before Hon'ble CESTAT	08.08.2016	Appeal filed against Order in Appeal
20.	Misc. Application for Early Hearing	28.01.2020	EH Application No.: C/MA(EH)75074/2020
21.	Acceptance of Early Hearing Request	16.06.2022	EH Order No.: 75173/2022 dtd 16.06.2022
22.	PH before Hon'ble CESTAT	26.07.2022	Heard both sides and order reserved
23.	CESTAT Kolkata issued Final Order	28.07.2022	Final Order No. No. 75404/2022 dated 28.07.2022, accepted the Appeal and set a side the Commissioner Appeals Order as well as Order in remanded the matter with direction to adjudicating Authority
24.	Request letter submitted to Asst. / Dy. Commissioner of Customs (Exp / Refund) alongwith refund claim in prescribed format	05.08.2022	also have submitted all the relevant documents like Copy of Shipping Bill, Proforma Invoice, Final Invoice, Final Test Report, Test Report at Discharge Port, Bank Realisation Certificate, Agreement copy etc. for each of S/Bill with a request to implement the Hon'ble CESTAT Final Order and release consequential refund
25.	Reminder to Asst./ Dy. Commissioner with copy to Commissioner & Chief Commissioner of Customs, Kolkata	04.11.2022	Reminder for implementing the Hon'ble CESTAT Final Order and disburse refunds.
26.	Filing of CP Gram for no action by Asst. / Dy. Commissioner- CBOEC/E/2022/08478	28.12.2022	As even after passing 3 months, no action has been taken to disposed off the refund claim application, the Ass Comm. To save his no action, rejected the refund claim after 5 months.
27.	The Asst. Commissioner of Customs issued order in Original for rejecting the refund claim	05.01.2023	vide his order KOL/CUS/DC/PORT/08/EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023, rejected the refund claim application while exceeding his authority and against to Hon'ble CESTAT order.
28.	Filing of CP Gram for no action by Asst. / Dy. Commissioner CBOEC/E/2023/0001067	14.02.2023	For Harassment and no action by Customs Kolkata, non-implementation of Hon'ble CESTAT Final order dated 28.07.22
29.	Appeal before Hon'ble High Court of Kolkata	17.01.2023	The office of Commissioner of Customs Export Kolkata, also field Appeal before Hon'ble High Court of Kolkata, which was registered vide Appeal No. CUSTA/2/2023, IA NO: GA/1/2023, on the grounds that the matter does not fall under rectification under Section 154 of the Customs Act, 1962
30.	The Hon'ble High Final Order	28.06.2023	The Departmental appeal is, dismissed. Consequently, the connected application also stands dismissed, basis not find any question of law, far less to speak of substantial question of law, involved in

S. No.	Particulars	Date	Remarks
			the instant appeal.
31.	Writ Petition before Hon’ble High Court, registered as WPO/636/2023	06.07.2023	Aggrieved by rejection order the Company have filed Writ Petition before Hon’ble High Court of Kolkata. The Hon’ble High Court of Kolkata has accepted the same and after going through facts and circumstances and hearing the both sides, vide its order dated 06.07.2023, set aside the said refund order while confirming that- <u>the adjudicating authority was bound to carry the aforesaid order of the Tribunal in its letter and spirit and the impugned order-in original is not only a factual error it is a jurisdictional error and error in law since it is contrary to the decision of the Supreme Court and...</u> <u>the aforesaid impugned order in original dated 5th January, 2023 is not sustainable in law and is set aside and the matter is remanded back to the adjudicating authority concerned to implement the aforesaid order of the Tribunal dated 28th July, 2022 strictly as per findings, observations and directions given by the learned Tribunal in the aforesaid order and particularly giving relief to the petitioner as per Notification No.62/2007-Cus dated 03.05.2007 as per paragraph 8 of the aforesaid order of the Tribunal, within a period of eight weeks from the date of communication of this order by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authority representative.</u>
32.	Request letter to Asst. Commissioner of Customs copy of Commissioner / Chief Commissioner / CBIC Chairman	24.07.2023	Vide letter Vedanta/HO/ICust/2023-24/014 dated 20.07.23, Requested to implement the Order of Hon’ble CESTAT as per directions of Hon’ble High Court
33.	Filing of CP Gram for directions to implement Hon’ble High Court decisions- CBOEC/E/2023/0004294	13.07.2023	For directing Customs to implement Hon’ble CESTAT order as directed by Hon’ble High Court
34.	Letter issued by office of Asst. / Dy. Commissioner (export)	17.08.2023	for submitting documents related to all 14 S/Bills for final assessment.
35.	Reply to Letter	17.08.2023	Submission of relevant documents vide letter Vedanta/HO/Cust/2023-24/015 dated 17.08.23
36.	Final Re-Assessment cum Refund Order	05.09.2023	The Asst. Comm. Vide OIO No. KOL/CUS/AC/PORT/EXPORT/489/2023 dtd 05.09.2023 for Rs. 6,93,69,000/-issued the re-assessment cum refund order allowing

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S. No.	Particulars	Date	Remarks
			refund of Rs. 6,93,69,000/-
37.	Receipt of Money	06.09.2023	Receipt of refund of excess payment of Rs. 6,93,69,000/-through online banking facilities.
38.	Interest Claim Request against delayed refund for more than 15 years	29.09.2023	Request Letter dated 13.09.2024 submitted to Assistant Commissioner copy to Commissioner for interest @12% against retaining illegally the huge money of Rs. 6.93 Crs for more than 15 years without authority of law.
39.	PH against the Interest Claim	18.10.2024	PH attended and submission made in justification of Interest Claim.
40.	Rejection of Interest Claim	08.12.2023	OIO No. KOL/CUS/AC/PORT/Export(REF)/638/2023 dated 28.11.2023 issued rejecting the in claim basis refund issued within 8 weeks from Hon'ble High Court Order as directed.
41.	Appeal before 1 st Appeal Authority	15.01.2023	Appeal against OIO dated 28.11.2023 filed before the Commissioner of Customs (Appeals) CUST/77/2024
42.	Personal Hearing before FAA	13.03.2024	PH attended describing justification over interest claim.
43.	Order in Appeal	28.07.2024	OIA No. KOL/CUS(PORT)/KS/451/2024 dated 18.07.24 is issued allowing interest treating prescribed time limit from date of CESTAT final Order i.e. 28.07.2022
44.	Request for implementation of OIA dated 18.07.2023	02.08.2024	Submission of request letter for implementation of OIA dated 18.07.2023 with copy of OIA.
45.	Appeal before Hon'ble CESTAT	19.10.2024	Appeal filed before CESTAT – C/76391/2024
46.	Misc Application for Early Hearing	10.12.2024	EHP Allowed vide order dated 12.12.2024
47.	Reminder Request for implementation of OIA dated 18.07.2023	12.12.2024	Reminder submitted with earlier letter copy and OIA.
48.	PH before Hon'ble CESTAT	18.12.2024	PH attended by CA Mukesh Laddha

5. The Ld CA submits that having no response whatsoever was received from the Dept. to their letter dated 18.05.2009, to finalize their assessment based on all the documents submitted therein. Then as a matter of abundant precaution, the appellant vide their letter dated 01.10.2009 [after 5 months from their initial letter dated 18.05.2009], Acknowledged on 20.10.2009, sought Rectification of Shipping Bills in terms of Section 154 of the Customs Act 1962. Having received no response from the concerned officials, they had filed their representation before the Jurisdictional Commissioner on 07.12.2009 and 15.02.2010, to issue direction to proper officer to carry out the necessary rectification / assessment in terms of the Hon'ble Supreme Court's judgement in the case of Gangadhar Narisngdas Agarwal -

1997 (89) ELT 19 (SC). Still no response was forthcoming and finally on 05.05.2010, i.e., after about one year from their letter seeking rectification, the Asst. Commissioner once again sought all the documents, which were provided vide letter dated 26.05.2010. Finally, the Dy. Commissioner Export vide his order F.No. S41(G)-21/10-EXP-(Misc.) dated 04.06.2010 has rejected the request of rectification. Being aggrieved the appellant filed their appeal before the Commissioner (Appeals). The learned Commissioner Appeals, vide his order in Appeal No. KOL/CUS/CKP/285/2010 dated 06.10.2010 issued on 11.10.2010 allowed the Appeal holding as under :

10. In the case of Bennet Coleman & Co. Ltd.(supra) the Tribunal has held that when the goods are assessed to higher customs duty on account of omission by the assessing officer to take note of the customs notification, the same cannot be corrected under section 154. So also, was the View of the Tribunal in the case of G.S. Metalica (supra). Thus in terms of the Court and the Tribunal decisions, where assessments have not been done properly, the same may be rectified by invoking powers under section 154. Thus the assessing officer was duty bound to correctly apply the law laid down by the Supreme Court and determine the Fe content based on the weight of the ore exported including the Weight of the moisture, all details of which were available in the stuffing bills/supporting documents, Since no such determination has been made by the assessing authority, the same shall be done. After setting aside the decision under the impugned letter, dated 4.6.2010, I order that the lower authority shall dispose of the representations of the appellant under various letters and to determine whether the case of the appellant fits in under: errors arising out of omissions. In doing so the lower authority should consider the ratio of the judgments referred to above and the meanings given to the term 'omission' in various dictionaries and thereafter pass order/give decision and after providing opportunity to the appellant.

11. The appeal is allowed on the above terms.

6. Even after the above clear order passed by the Commissioner (Appeals), no effort was made by the Department to complete the assessment proceedings. The Ld CA also submits that no further Appeal was filed against this OIA by the Revenue before the Tribunal. Thus the decision of the Commissioner (Appeals) had attained finality and the officials were bound to complete the rectification / assessment as per this

Order, which was not taken up for the next more than 3 and half years. Personal Hearing held on 12.06.2014, but no Order was passed. Then application was made through CPGRAM on 24.4.2015, for not having received the Order. Finally, an Order was passed on 11.05.2015, rejecting the request of rectification. Being aggrieved, the appellants filed a Writ Petition before the Calcutta High Court on 25.06.2015, which came to be dismissed on 10.09.2015, by the Hon'ble High Court for seeking alternate remedy. After rejection of the appeal by the Commissioner (Appeals), the Appeal was filed before the Tribunal on 08.08.2016.

7. The Tribunal, vide Final Order No.75404/2022 dated 28.07.2022, held that the error should have been rectified in terms of Section 154 as held by the predecessor Commissioner (Appeals) vide his order dated 06.10.2010. They also noted that the assessment remained as a provisional assessment only. The Hon'ble Tribunal directed the Adjudicating authority to pass a speaking order taking into consideration the Test Reports submitted and granting the benefit of Notification No.62/2007 Cus dated 3.5.2007, along with consequential benefits, as per law.

8. The Ld C A submits that even after the clear Final Order of the Tribunal, no further action was taken up by the Adjudicating authority. Request letters to take up the proceedings in terms of Tribunal's order were filed on 05.08.2022 and 04.11.2022. Having received no response, again CP GRAM was approached with the issue on 28.12.2012. Thereafter the Asst Commissioner vide Order No. KOL/CUS/DC/PORT/08/ EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023, without giving any opportunity of hearing, once again, rejected the refund claim.

9. Being aggrieved by the CESTAT's Final Order No75404/2022 dated 28.07.2022, on 17.01.2023, Revenue had filed their Appeal No. CUSTA/2/2023, IA NO: GA/1/2023 before the Calcutta High Court, on the grounds that the matter does not fall under rectification in terms of Section 154 of the Customs Act, 1962. This appeal came to be dismissed by the Hon'ble High Court on 28.06.2023.

10. Being aggrieved by the Asst Commissioner's Order No. KOL/CUS/DC/PORT/08/ EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023, rejecting the consequential refund, the appellant filed their Writ Petition before the Calcutta High Court. Vide Order dated 6.7.2023, the Hon'ble High Court held that the adjudicating authority was bound to carry the aforesaid order of the Tribunal in its letter and spirit and the impugned order-in original is not only a factual error it is a jurisdictional error and error in law since it is contrary to the decision of the Supreme Court. The High Court remanded back to the adjudicating authority concerned to implement the aforesaid order of the Tribunal dated 28th July, 2022 strictly as per findings, observations and directions given by the learned Tribunal in

the aforesaid order and particularly giving relief to the petitioner as per Notification No.62/2007-Cus dated 03.05.2007 as per paragraph 8 of the aforesaid order of the Tribunal, within a period of eight weeks from the date of communication of this order by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authority representative.

11. After the High Court's Order dated 6.7.2023, the appellant submitted follow up letters on 24.07.2023 and 13.07.2023. Thereafter on 17.08.2023 a letter was sent by the Asst Commissioner seeking the copies of documents, which was replied on the same date while submitting the requested documents. Thereafter Reassessment cum refund Order No. OIO No. KOL/CUS/AC/PORT/EXPORT/489/2023 dtd 05.09.2023 was passed, granting refund of Rs.6,93,69,000, without granting any relief on account of the interest on this amount. The Ld Consultant submits that the consequential relief mentioned in the CESTAT's Order dated 28.07.2022, would naturally include the interest for the amount of refund along with interest for all the years during which the Revenue kept the final assessment pending without finalising the same. The Asst Commissioner vide OIO No. KOL/CUS/AC/PORT/Export(REF)/638/2023 dated 28.11.2023 rejected the interest claim request basis the refund has been paid within 8 weeks as directed by High Court.

12. Since no interest was paid while the refund was granted, the appellants filed their appeal before the Commissioner (Appeals), who vide the impugned OIA has held that the interest is payable reckoning the date of the refund to start from the date of the Final Order passed by the Tribunal. The Ld Consultant submits that the Commissioner (Appeals) has failed to appreciate that the delayed finalization / rectification was only on account of the delay and dragging of the issue by the Revenue, with no evidence brought in by the Revenue to the effect that the delay was caused by the actions of the appellant. Hence, he submits that the Commissioner (Appeals) is in error in granting partial interest, which is required to be given on the refund amount treating as the same emanating from the date of deposit of the excess amount, as the same was not payable and the revenue has kept the money without authority of law.

13. He submits that as per the chronology of the event described above, the appellant has been following up for finalization /re-assessment / rectification right from 18.05.2009. Admittedly such finalization / re-assessment / rectification, would have resulted in the refund, as is undisputedly stands proved by the refund finally granted on 05.09.2023, after a delay of almost 14 years. All these years their amount of Rs.6,93,69,000 was blocked which resulted in the appellant resorting to borrowings with interest ranging between 15% to 18% at that period of time.

14. He strongly argues that the Commissioner (Appeals) way back on 11.10.2010 vide his OIA, has held that in the present case, rectification under Section 154 was permissible and has directed the Adjudicating authority to complete the procedure. But as explained above, no action was taken up for more than 3 and half years and only after the appellant's registering the issue under CPGRAM, the Adjudicating authority took the proceedings and has passed the order on 11.05.2015 [4 and half years after the OIA], completely ignoring the directions of his higher authority. Because of this, the issue had to travel to High Court, Commissioner (Appeals) and to CESTAT. This process took another more than 7 years, when the Tribunal passed the Final Order on 28.07.2022. Even thereafter, the Revenue still continued to ignore the directions of the Tribunal and rejected the consequential refund on 05.01.2023. The appellant had to once again approach High Court. The Hon'ble High Court passed the order on 6.7.2023, clearly stating that the Adjudicating authority is bound by the Final Order passed by the Tribunal. Only thereafter, on 05.09.2023, the appellant was granted the refund of Export Duty, without any consideration whatsoever to the interest part. This process has again taken 1 year 2 months from the date of the Tribunal's order, wherein in between an adverse order was also passed, ignoring the directions of the Tribunal. For the non-granting of consequential interest, the appellant had once again to approach the Commissioner (Appeals), who vide the impugned OIA dated 28.07.2024 has granted only partial interest. Almost one year has been lost in this process. He submits that, the documents submitted on 18.05.2009 towards finalization, were the documents based on which the present finalization / re-assessment has been completed by the Adjudicating authority. In spite of having these documents on that date itself, the same were called for several times and each time the appellant has provided the same. Therefore, it is not the case of the Dept. that the appellant has delayed the re-assessment / finalization in any way. The chronological details given above would show that the Revenue had put the issue in the cold-storage time and again without any reason and the appellant was regularly following up with them.

15. After making the submissions on factual details, the Ld Chartered Accountant submits that while the time-frame for finalization of assessment has not been specifically provided under the Section / Rules of the Customs Act / Rules, the Customs Manual specifies that the finalization is required to be completed within six months, except in case of project imports. In the present case, if the re-assessment / finalization was completed with a delay of 14 years, the Revenue cannot take the stand that in terms of Section 18(4), the interest would be payable only for the delay of more than 3 months from the date of finalization. Therefore, he prays the interest may be held as payable from 18.05.2009.

16. As an alternate argument, he makes further submission that the amount paid initially as Export Duty was always contested as being paid provisionally and now when the assessment / re assessment has been done, the differential excess duty paid by him is to be treated as paid in the course of investigation when the appellant had to export the goods without having to wait to get all the details of Test Report checked so as to pay lesser Export Duty. Now since Test Reports have been accepted and it has been held that the appellant is eligible for the refund of the excess Export Duty paid, the same is required to be paid along with interest. He relies on the case of **Ranabaxy Laboratories Ltd Vs UOI – Judgement dated 21st October 2011**, wherein it has been held that amount paid in the course of investigation is required to be refunded along with interest.

17. He relies on the following case laws, wherein it has been held that the interest is required to be paid @ 12 per cent per annum :

The Judgement of in the case of SONY PICTURES NETWORKS INDIA PVT. LTD.,
In Writ Petition No.39089 of 2016 – Judgement dated 4th April 2017

Parle Agro Pvt. Ltd. Vs CCGST Noida
Final Order No. 70180-70181 / 2021

Commissioner of Central Excise, Panchkula Vs Riba Textiles Limited
CEA No.8 of 2022 (O&M), Date of Decision : March 14, 2022

Sandvik Asia Ltd. Vs Commissioner of Income Tax-I, Pune & Ors.
DATE OF JUDGMENT: 27/01/2006

18. In view of the above submissions, he prays the appeal may be allowed holding that the interest @ 12% per annum is payable from 18.05.2009.

19. The Ld AR appearing on behalf of the Revenue, reiterates the findings of the lower authorities. He makes submits makes the following submissions :

- (a) As per the Dept's contention, the assessment was never provisional and it was final for all purposes. Therefore, having paid the Export Duty, without filing any letter to the effect that they are opting for Provisional assessment, the appellant cannot claim that assessment has not been completed.
- (b) Having not indicated that he is opting for provisional assessment, in case he was aggrieved, he should have filed an appeal within the time specified

challenging the final assessment.

- (c) The present assessment is only in terms of Section 154 as per the directions of the High Court / Tribunal. Hence, in this case, there being no provision to seek any interest, the same cannot be paid to the appellant.
- (d) On the other hand, even if it is taken that the provisional assessment has been finalized now, still no interest is required to be paid as Section 18(4) mandates payment of interest only if the refund is delayed beyond 3 months from the date of final assessment.

20. Therefore, the Ld AR justifies the orders passed by the lower authorities and prays that the appeals may be dismissed.

21. Heard both sides. Perused in detail, the appeal papers and documentary submissions made by both the sides.

22. The issue to be decided in the present case can be summarized as under :

- (a) Whether the assessment is Provisional, as is being claimed by the appellant or is Final, as is being claimed by the Revenue ?
- (b) Whether this is a case of Section 154 – Rectification of the Finally assessed order as is being claimed by the Revenue or is a case of finalization of assessment as is being claimed by the appellant?
- (c) Whether any interest is payable to the appellant in either of the above cases (a) and (b)
- (d) If they are found to be eligible to interest, what would be the relevant date of interest? The Commissioner (Appeals) has held that they are eligible for interest from 28.07.2022 [three months from this date] whereas the appellant is claiming that the interest is to be paid from date of deposit of excess amount or max treating 26.08.2009 [three months from this date of submission of letter dated 18.05.2009]
- (e) If the interest is payable what would be the rate of interest to be paid?

23. In order to come to a conclusion in respect of the above issues, it would be important to go through the important factual matrix of the case. They are summarized below :

- (1) The details of 12 consignments exported as per the following Table :

Vessel Details		Loading From Haldia Port			Declared in S/Bills			Load Port Test Reports		
SI No	Vessel Name	Shipping Bill No	Shipping Bill Date	Qty (WMT)	Fe % (DMT)	Moisture %	Fe % (WMT)	Fe % (DMT)	Moisture %	Fe % (WMT)
1	2	3	4	5	4	5	6	7	8	9
1	MV Shen Nong Feng	1803	05.06.2007	25000	63.5	9	57.79	63.85	8.52	58.41
2	MV REA	3161	20.07.2007	28000	63.5	9	57.79	63.94	7.98	58.84
3	MV Alba	4771	12.09.2007	25000	63.5	9	57.79	63.87	8.62	58.36
4	MV You Xuan	6481	20.11.2007	25000	63.5	9	57.79	63.95	8.05	58.80
5	MV Prabhu Jivesh	6347	14.11.2007	25000	63.5	9	57.79	63.95	8.36	58.60
6	MV Good Light	3810	13.08.2007	25000	63.5	9	57.79	63.85	8.5	58.42
7	MV Five Stars Pioneer	8764	05.02.2008	25000	63.5	9	57.79	63.66	7.87	58.65
8	MV Themera	8979	13.02.2008	25000	63.5	9	57.79	63.82	7.64	58.94
9	MV Tharsyvovlos	9389	29.02.2008	25000	63.5	9	57.79	63.76	6.2	59.81
10	MV Good Purpose	7096	12.12.2007	25000	63.5	9	57.79	63.85	7.07	59.34
11	MV Prabhu Daya	7083	10.12.2007	25000	63.5	9	57.79	63.85	7.44	59.10
12	MV Captain George II	9898	17.03.2008	22000	63.5	9	57.79	63.86	5.73	60.20
	Total Qty			300000						

- (2) From the above table, it is seen that the appellant has uniformly claimed Fe content on WMT basis showing the same as 63.5% and moisture content of 9% in all the cases. When the same is compared with the Load Port Test Reports, it is seen that no two moisture content figures or two WMT figures would be same. Thus it gets clarified that from consignment to consignment the moisture content and resultant WMT would be different.
- (3) The very basis for levying the Export duty is the Fe content. If the process of proving the Fe content before exporting, as the Iron ore is required to be tested and its result is to be accepted by the Customs, this would be a time-consuming affair. Therefore, in order not to miss the delivery schedule and to save the cost of demurrage charges, generally the exporters carry out the exports by paying the full Export Duty.
- (4) During the period under consideration, as to what formula / procedure to be adopted to arrive at the Fe content was also a matter of interpretation but was already decided by the Apex Court in the case of Gangdhar Narisingdas case cited supra.
- (5) The appellant has filed their full documents including the Test Report, Export Invoices, Shipping Bills and requested for finalization of the Shipping Bills. Sample copy of their request letter dated 18.05.2009 [submitted on 26.05.2009], is reproduced below :

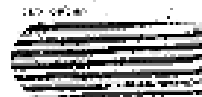


EXHIBIT - 6
SESA GOA

SESA GOA LIMITED

Sesa Chem.
20 DTC Complex, Pitha
Kojim, Goa-405 021
Tel : 0831-832 2450500
Fax : 0831-832 2450500

RECEIVED

Report of the
Inspector General of Customs

May 18, 2009

To,

The Assistant Commissioner of Customs,
Office of the Commissioner of Customs (Port),
Export Department,
Customs House,
Kolkata - 700001.

Sir,

Sub: Request for finalization of provisional assessment
(PD assessment) and consequential refund of
excess duty paid- regarding.

You are aware that we have exported Iron ore under the following Shipping
Bills and paid export duty on the same.

Shipping Bills No. 001603 dated 05.06.2007, Duty paid Rs.75,00,000/-.

At the time of assessment of the above Shipping Bills, assessment was made
provisional as may be seen from the endorsement made in the Shipping
Bills. Though Bonds were not executed from the endorsements made in the
Shipping Bills it may be seen that the assessment was provisional. The
provisional assessment was necessary for the reasons that import was
subject to restriction of Foreign Trade Policy as import of iron ore beyond
certain percentage in Ferrous content was restricted, the duty on export of
iron ore should not be charged on the weight of moisture content in the ore
as per the following decisions

- 1) 1980 (26) EMT 918 in the case of Gangadhar Narsinghadas Agarwal Vs
U.O.I.
- 2) 1988 (33) ELT 673 (Bom.) in the case Union of India Vs Gangadhar
Narsinghadas Agarwal as upheld by Apex Court in 1997 (89) ELT 19
(SC).
- 3) 1987 (30) ELT 686 (Guz) in the case of Sociedade de Fomento
Industrial P Ltd Vs K.C. Lahiri.
- 4) Decisions taken recently by Commissioner of Customs (Appeal) in
Order-in-appeal dated 18.9.2008 in respect of exports effected from
Kolkata.

Thus the issue regarding payment of custom duty only on iron content is
thus settled and whatever excess duty paid by us on moisture content based
on Analysis Report enclosed) is to be refunded to us.

SESA GOA LIMITED

Continuation Sheet No.

Date :

It is our submission that assessment made provisional on any aspect or ground will be treated as provisional for all aspects and no formal order of finalization of provisional assessment has been issued to us:

In the decision in the case of Collector of CE Madras Vs IOC Ltd 2002 (141) ELT 334 (Mad) the Hon'ble High Court held that if an assessment is provisional, it is provisional for all purposes and cannot be treated as final in respect of a matter not considered.

Since in the instant cases, the issue regarding payment of customs duties on moisture content in the iron ore has not been considered yet, the assessment made is not final and, therefore, we request you to consider the same and order refund of excess duty paid. Since assessment was provisional in terms of Section 18 of CA 1962, refund, if any, arising should be granted *suo motto* to us. We enclose herewith copies of following documents to enable you to process the finalization of provisional assessment from the above aspect.

- a. Copy of Shipping Bill - (Annexure - I)
- b. Copies of Export Invoices - (Annexure - II)
- c. Copy of Analysis Report - (Annexure - III)
- d. Calculation sheet showing differential duty, excess paid to be refunded - (Annexure - IV)

We may state here as refund of custom duties is related to exports, provisions of unjust enrichment is not applicable. If any other documents are required same way kindly be called for.

Thanking you,

Yours faithfully,
for SESA GOA LIMITED



RUI PRAZERES
ASSOCIATE GENERAL MANAGER-LOGISTICS

Encl. : as above

- (6) Not having received any response from the Dept, the appellants have filed their Rectification request letter dated 1st October 2009 [submitted on 20.10.2009]

EXHIBIT - 7

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SESA GDA LIMITED

Secretary,
2A, Durgam Cheruvu, Andhra Pradesh,
Hyderabad, 500 001
Tel: 0800-123456789
Fax: 0800-1234567

RECEIVED
22/10/2019
OFFICE OF THE ASSISTANT COMMISSIONER
OF CUSTOMS

October 1, 2019

The Assistant Commissioner of Customs,
Office of the Commissioner of Customs (Port),
Export Department,
Customs House,
Kolkata - 700001.

Subj: Application under Section 154 of Customs Act, 1962 for
correction of error arising from omission to apply law laid down
by the Hon'ble Supreme Court in the case of Gangadhar
Narsinghdas Agarwal reported in 1997 (80) ECT 19 (SC).

Dear Sir,

We are regular exporters of Iron Ore fines from the Haldia Port. These
Iron Ore fines are exported in their natural form.

2. We submit that by the Finance Act, 2007 export duty on Iron Ores and
Concentrates of all sorts was increased to Rs. 300/- per tonne. However,
Customs Notification No.62/2007-Cus dated 09.05.2007 exempted Iron Ore
fines of Fe content 62% and below from export duty in excess of the amount
calculated at the rate of Rs.50/- per tonne.

3. In respect of the Iron Ore fines exported under the annexed shipping
bills, export duty has been levied at the rate of Rs.300/- PWT, even though the
Fe content in respect of the same was less than 62%. This fact is evident from
the various test results of the samples which were drawn at the time of export
of the said goods. Copies of the test results are annexed as Exhibit 'A' to this
letter. However, while assessing the shipping bills, Fe content on dry weight,
i.e. after excluding moisture content was considered for levying export duty
as against Fe content of Iron Ore fines in their natural form, which was to be
taken into account. The law in this regard stands settled by the Hon'ble
Supreme Court judgment in the case of UOI vs Gangadhar Narsinghdas
Agarwal reported in 1997 (80) ECT 19 (SC).

4. Your goodself will appreciate that Articles 101 and 144 of the
Constitution of India provide that the law declared by the Hon'ble Supreme
Court shall be binding on all Courts and that all authorities, civil and judicial
in the Territory of India, shall not only be bound by it, but also apply and
enforce the law declared by the Hon'ble Supreme Court.

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SPSA 004107777

Continuation Sheet No.

17/0001

5. In the present case, the shipping bills have been assessed by crediting to the law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narasingdas Agarwal, which clearly is an error in assessment. Section 154 of the Customs Act, 1962 vests in your goodself the power to correct, at any time such an error/omission in the assessment. The said section in fact empowers even the successor in office to correct such an error/omission in your humble submission, since the assessing officer had, while assessing the Shipping Bills, omitted to apply the law laid down by the Hon'ble Supreme Court, the said error made in such assessment is required to be corrected by your goodself in exercise of powers conferred under Section 154 of the Customs Act, 1962 and export duty at the correct rate be worked out and consequent relief, in accordance with the law, be extended to us.

6. We also wish to draw your goodself's attention to the decision of the Hon'ble Bombay High Court in the case of Hero Cycle Ltd vs UOI reported in 2005 (241) ITR 490, wherein, in a similar kind of situation where benefit of exemption was not extended due to omission, the Hon'ble High Court directed the assessing officer to reassess the Bill of Entry after holding that it was the duty of the proper officer to have recovered duty only in accordance with law and that the power to reassess was implicitly coupled with a duty to reassess the duty in accordance with law.

7. Since the levy of export duty in our case is not in accordance with law laid down by the Hon'ble Supreme Court, we would request your goodself to correct the error/omission in the assessment in exercise of powers under Section 154 of Customs Act, 1962 and oblige.

8. We would also request you to grant us a personal hearing in the matter, in case any clarification is required.

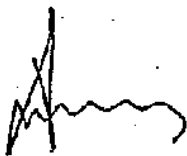
Thanking you,

Yours faithfully,
Per Beta Gan Ltd

[Signature]
Rajeshwar
Associate C.M. Bangalore

HALDIA SHIPMENTS FOR THE YEAR 2007-08

Sr. No.	Vessel Name	S.B. NO	S.B. date
1	Shen Nong Feng	001803	05.06.2007
2	Rea.	003161	20.07.2007
3	Good Light	003810	28.08.2007
4	Alba	004771	12.09.2007
5	You Xuan	006481	20.11.2007
6	Prabhu Jivesh	006347	14.11.2007
7	Good Purpose	007096	12.12.2007
8	Prabhu Daya	007083	10.12.2007
9	Five Stars Pioneer	008764	05.02.2008
10	Themera	008979	13.02.2008
11	Thrasylvolous V	009389	29.02.2008
12	Captain George II	009898	17.03.2008



- (7) When no response was received even for the rectification seeking letter, they have filed their representations with the Commissioner / Chief Commissioner, as is evidenced by the following extracts :



SESA GOA LIMITED

Sec. 61,
20 EOC Complex, Para,
Pune, Goa 403 001
Tel. : +91 822 2455003
CIN: 2604003

SESA GOA
Commissioner of Customs
Kolkata
Date: 4/12/2009
Kolkata

SESA GOA



The Commissioner of Customs (Port),
Custom House,
Kolkata 700001.

Ref: Our letter dated 1st October 2009 addressed to the Asst.
Commissioner of Customs- Request for correction of
error/omission in terms of Section 154 of the Customs Act, 1962

Dear Sir,

We wish to bring to your kind attention that we are regular exporters of Iron Ore Fines from the Haldia port. These Iron Ore Fines are exported in their natural form.

2. With effect from 01.4.2007, export duty was re-introduced on export of Iron Ore Fines. As stated above, the Iron Ore Fines are exported by us in their natural form and have considerable content of moisture in them. At the time of assessing the 12 Shipping Bills in question, the Fe content in the Iron Ore Fines was considered on a dry weight basis as against the law laid down by the Hon'ble Supreme Court in the case of UOI vs Gangadhar Naransinghdas Agarwal-1997 (89) ELT 19, to the effect that for the purpose of levy of export duty, Fe content has to be considered in the Iron Ore Fine in the natural form in which it is being exported and not on a dry weight basis. Hereto annexed and marked Exhibit 'A' is the summary of the said shipping bills in question.
3. Your goodself is aware that by virtue of Article 141 and 142 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all part and all authorities, civil and judicial in the territory of India who are not only bound by it but also but have to apply and enforce the same.
4. In respect of the aforesaid 12 shipping bills, assessments were made without considering the aforesaid law laid down by the Hon'ble Supreme Court. The omission to consider the law declared by the Hon'ble Supreme Court is an error in assessment which error/omission can be corrected by the proper officer in exercise of powers conferred under Section 154 of the Customs Act, 1962. In fact the said section empowers even a successor in office to correct such error/omission.

SESA GOA LIMITED

Continuation Sheet No.

2

Date :

5. We had brought the aforesaid facts to the notice of the Asstt. Commissioner under cover of our letter dated 1st October, 2009 wherein, we had also drawn his attention to the decision of Hon'ble Bombay High Court in the case of Hero Cycles Ltd vs UOI, reported in 2009 (240) ELT 490 and had accordingly requested the proper officer to correct the error/omission in the assessment on the 12 Shipping Bills in question. (copy of the said letter enclosed as Exhibit 'B')

6. Despite the aforesaid, the proper officer has not taken any action on the request made by us. In view of the same we are constrained to approach your goodself to issue suitable directions to the proper authority to enforce the law laid down by the Hon'ble Supreme Court.

Thanking you,

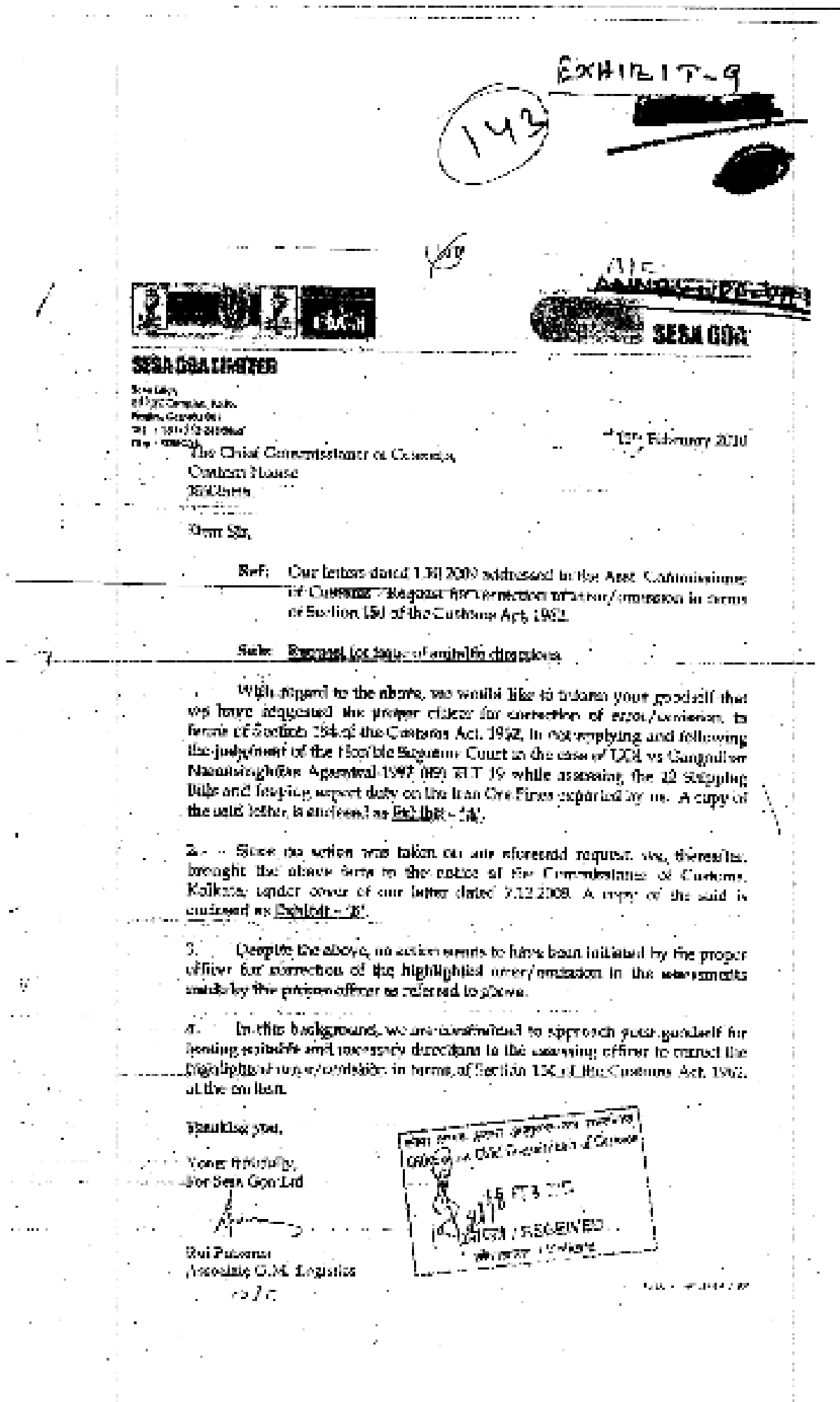
Yours faithfully,
For Sesa Goa Ltd


Rui Prazeres
Associate G.M.-Logistics

Exhibit - A

HALDIA SHIPMENTS FOR THE YEAR 2007-08

Sr. No.	Vessel Name	S.B. NO	S.B. date
1	Shen Nong Feng	001803	05.06.2007
2	Rea	003161	20.07.2007
3	Good Light	003810	28.08.2007
4	Alba	004771	12.09.2007
5	You Xuan	006481	20.11.2007
6	Prabhu Jivesh	006347	14.11.2007
7	Good Purpose	007096	12.12.2007
8	Prabhu Daya	007083	10.12.2007
9	Five Stars Pioneer	008764	05.02.2008
10	Themera	008979	13.02.2008
11	Thrasyvolous V	009389	29.02.2008
12	Captain George II	009898	17.03.2008



(8) The appellants have submitted the documents called for :

EXHIBIT-10

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1/23

ANNEXURE-5



SESA GOA

SESA GOA LIMITED

SESA GOA,
20th Floor, 1st
Phase, Connaught
Place, Mumbai
400 008

Report Date:
Touching Sea 10th
May 2010

May 26, 2010

Deputy Commissioner of Customs (Exports)
Export Department
13th, Strand Road, Customs House
Kolkata - 700 011.

Dear Sir,

Sub: Application under Section 54 of the Customs Act, 1962, Reg

Reference to your letter F. No.541(DI-2010) FCP (India) dated 03.05.2010, as requested please find enclosed herewith copies of Shipping Bills and Customs signed invoices in respect of the following vessels:

Sl. No.	Name of the Vessel	Shipping Bill No.	Shipping Bill Date
1	Shree Mangi Frey	001623	12.12.2007
2	Shree	003151	23.07.2007
3	Shree Light	000816	25.08.2007
4	Shree	000771	12.06.2007
5	Shree	000481	25.11.2007
6	Prabha Shree	000842	14.11.2007
7	Prabha Shree	001085	15.12.2007
8	Prabha Shree	001015	10.12.2007
9	Prabha Shree	001774	06.02.2008
10	Prabha	003079	15.02.2008
11	Prabha Shree V	007707	20.02.2008
12	Prabha Shree II	004008	17.03.2008

Trusting you,
Yours faithfully,
For SESA GOA LIMITED

RITE PRAZERES
ASSOCIATE GENERAL MANAGER-LOGISTICS

- (9) The Adjudicating authority rejected their request for rectification by Order 4.6.2010, against which the appellants have filed their Appeal before the Commissioner (Appeals), who has passed the OIA No. KOL/CUS/CKP/285/200 dated 11.10.2010, holding as under :

8. Section 154 of the Customs Act, 1962 reads as under-

"Correction of clerical errors etc.- Clerical or arithmetical mistakes in any decision or order passed by the Central Government or any other officer of customs under this Act. or errors arising therein from any accidental slip or omission' may at any time be corrected by the Central Government the Board or such officer of customs or the successor in officer of such officer as the case may be."

9. The Kerela High Court in Aluminium Industries Ltd (Supra) has in para 6 of the judgment held that four types of errors are mentioned in this section 154 for invoking power under it (i) clerical mistake (ii) arithmetic mistakes (iii) error arising in accidental slips (iv) error arising from accidental omissions. The lower authority while deciding and conveying in the letter dated 4.6.10 has referred to only the first two types of error under section 154, namely, (i) clerical mistake (ii) arithmetic The lower authority has not rendered any decision whether the case of the appellant is covered by error arising from accidental slips and errors arising from accidental omissions. The lower authority is thus required to render decision on this as well.

10. In the case of Bennet Coleman & Co. Ltd.(supra) the Tribunal has held that when the goods are assessed to higher customs duty on account of omission by the assessing officer to take note of the customs notification, the same cannot be corrected under section 154. So also, was the View of the Tribunal in the case of G.S. Metalica (supra). Thus in terms of the Court and the Tribunal decisions, where assessments have not been done properly, the same may be rectified by invoking powers under section 154. Thus the assessing officer was duty bound to correctly apply the law laid down by the Supreme Court and determine the Fe content based on the weight of the ore exported including the Weight of the moisture, all details of which were available in the stuffing bills/supporting documents, Since no such determination has been made by the

assessing authority, the same shall be done. After setting aside the decision under the impugned letter, dated 4.6.2010, I order that the lower authority shall dispose of the representations of the appellant under various letters and to determine whether the case of the appellant fits in under: errors arising out of omissions. In doing so the lower authority should consider the ratio of the judgments referred to above and the meanings given to the term 'omission' in various dictionaries and thereafter pass order/give decision and after providing opportunity to the appellant.

(10) No appeal was preferred by the Revenue against this OIA passed by the Commissioner (Appeals) on 11.10.2010. Thus this Order has reached finality deciding the issue that it is a matter that could be rectified in terms of Section 154. Then it was a bounden duty of the Adjudicating authority, who is a sub-ordinate official, to follow the directions of the Commissioner (Appeals), particularly when it is clear that no appeal was preferred against this OIA. He cannot take any defence on this count, since he has taken more than 4 and 1/2 years to pass his order. In this Order, he has sat as a reviewing authority of the Order passed by the higher authority, for which he neither has the jurisdiction nor any power to do so.

(11) The Apex Court in the case of **Union of India Vs. Kamlakshi Finance Corporation Ltd. - 1991(55) ELT 433 (SC)**, it has been held as under :

6.....The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.

7.....In the light of these amended provisions, there can be no justification for any Asstt. Collector or Collector refusing to follow the order of the Appellate Collector or Appellate Tribunal, as the case may be, even when he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct

once it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail."

8.....We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the Adjudicating Authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them. "

- (12) Unfortunately, when this OIO was agitated before the Commissioner (Appeals), he has ignored the fact that the Adjudicating authority has gone on his own tangent without following the directions of the Commissioner (Appeals). Thus the OIO, which should been held as void ab initio got a legal sanction by the order passed by the Commissioner (Appeals) vide OIA No. Kol/Cus(Port)/SS/132/2016 dated 13.05.2016
- (13) This lead to the appellant having to approach the Tribunal to get the issue sorted out. This was sorted out by this Bench vide Final Order NO.75404 2022 dated 28.07.2022, holding as under :

4. We have considered the rival contentions and we have also perused the various orders of the lower authorities as well as the documents placed before us. *In the Order-in-Original dated 11.05.2015 passed consequent to the order of the First Appellant Authority dated 06.10.2010, the Assistant Commissioner has recorded the observations of the Commissioner (Appeals) and it is relevant to reproduce the same for the sake of convenience*

8.

(i) ****

(i).

(ii) That the Ld. Commissioner of Customs (Appeals) has clearly observed that:-

(a) In terms of the Supreme Court's decision in the case of M/s Gangadhar Narsingdas Agarwal (supra) the Fe content is required to be determined on the basis of the exported weight of Iron Ore Fines which would include the weight of the moisture in it.

(b) The Assessing Office has assessed the duty not on the basis of the gross weight (i.e. including the weight of the moisture) and hereby determined the Fe content but by taking the Fe content on the dry wet basis of the Iron Ore Fines. *This is contrary to the ratio of the Supreme Court's decision in the case of Gangadhar Narsindas Agarwal (supra).*

(c) Assessment should have been done by first determining the Fe content as above based on the ratio of Supreme Court's decision and thereafter duty leviable should be determined.

(d) The Lower Authority did not make any decision whether the issue in question is covered under by error arising from accidental slips and errors arising from accidental omissions.

(e) In terms of the Court and Tribunal's decision, where assessment have not been done properly, the same be rectified by invoking powers under Section 154.

(f) The Assessing Officer was duty bound to correctly apply the law laid down by the Supreme Court and determine the Fe content based on the weight of the Ore exported including the weight of the moisture, all details of which were available in the stuffing bills/ supporting documents.

5. From the above observations of the Commissioner (Appeals), *it emerges that the rejection of the rectification application by the Assistant Commissioner was not in order and that the decision of the Hon'ble Apex Court in the case of Union of India Vs. Gangadhar Narsingdas Aggarwal reported in 1997 (89) ELT 19 (S.C.) was to be applied to determine Fe content on the basis of exported weight of Iron Ore Fines, which would include the weight of the moisture in The it. Commissioner (Appeals) had categorically observed that the assessing officer had assessed the duty not on the basis of gross weight (including the weight of the moisture), but had determined the Fe content on dry/wet basis. This itself clearly indicates that the order of Assistant Commissioner was not in order and that the same was rectifiable within the meaning of Section 154 ibid. In the said Order-in- Original dated 11.05.2015, the Assistant Commissioner has himself observed at Paragraph 7 that as per record, the Department did not file any appeal against the said order of the Commissioner (Appeals).*

6. The only take-away from the above is that the correct Fe content was required to be determined on the basis of the guidelines contained in the judgement of the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra). The same having not been done here, in the case on hand, it is clear to us that the order of First Appellate Authority dated 06.10.2010 is correct. It is the settled position of law that not following the order of the Hon'ble High Court or the Hon'ble Apex Court would amount to mistake/error which is rectifiable under the provisions of Section 154 ibid. It is strange that in the second round and in the impugned order, the First Appellate Authority has ignored its own earlier order which has attained finality and thereby sustained a tangential order of lower authority.

7. Further, as claimed by the appellant the provisional assessments have remained as provisional only, which are required to be assessed finally and hence, we are of the clear view that the impugned order has to be set aside with a direction to the lower authority to finalise the assessments adhering to the guidelines of the Hon 'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra).

8. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority with a direction to pass a speaking order, finalizing the assessments. It is also directed that relief as per Notification No.62/2007-Cus dated 03.05.2007 be given taking into account the test reports; needless to reiterate that consequential benefits, if any, be given to the appellant, as per law.

- (14) The Revenue [Adjudicating authority], having already overstepped his power of review of the orders of the Commissioner (Appeals) earlier, has once again vehemently and adamantly gone against the Tribunal's Order itself. Even Final Order No.75404/2022 dated 28.07.2022 has expressly discussed the subject matter with clear directions, the Adjudicating authority passed the OIO No. KOL/CUS/DC/PORT/08/ EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023, rejecting the refund claim arising out of rectification / re-assessment. This is a clear case of contempt of the jurisdictional Tribunal. His passing of the Order also has been noted by the Hon'ble Calcutta High Court in their Order dated 28.06.2023, wherein it has been held as under :

At the outset, Mr. Maiti, learned advocate appearing for the appellant, has fairly and concededly submitted that in terms of the final order passed by the Customs, Excise and Service Tax Appellate Tribunal, against which the instant appeal has been filed, the original authority has decided the issue and in technical term, the instant appeal has virtually become infructuous.

2.....Mr. Maity is very much critical on the observations of the Tribunal to the extent of applicability of the ratio laid down therein as, according to him, the scope and powers of the authority vested under Section 154 of the said Act do not permit each and every kind of omission or error arising from an accidental slip to re-visit the order of assessment passed by the competent officer but must be restricted to such error as envisaged by legislatures while legislating the said Act. According to Mr. Maity, both the appellate authority on earlier occasion as well as the Tribunal have exceeded the jurisdiction and/or expanded the definition of 'omission' which runs counter to the spirit and soul of the said Section and, therefore, there is no impediment on the part of the department to agitate the said point in the instant appeal.

Though the submissions advanced by Mr. Maiti at the first blush appear attractive, but after going through the orders passed in the proceedings which is pending for more than a decade, we could not persuade ourselves to agree with the argument advanced by Mr. Maity for the reasons indicated hereinbelow.

The respondents exported iron ore fines and iron (fe) and submitted 12 shipping bills with the authority. Since the said goods attract Customs duty, the concerned officer assessed the same at Rs.300/- per MT which appeared to the respondents an error and/or omission on the part of the authority in not correctly assessing and/or following the procedure required in this regard and thereafter they applied for rectification and/or correction of such omission and/or error under Section 154 of the Act. The said order could not be sustained by the appellate authority upon noticing the judgment of the Apex Court rendered in the case of Gangadhar Narsingdas (supra). Several judgments were cited by the respondents of the different High Courts as well as the Supreme Court on interpretation of the word 'omission' and it was sought to be contended by the respondents that such an error or the omission committed by the concerned officer in assessing the Customs duty comes within the purview of Section 154 of the Act. The appellate authority reversed the order of the concerned authority and directed reconsideration of the representation filed by the respondents with clear stipulation that the same comes within the purview of the error arising out of an omission in the light of the ratio of the judgments referred therein. The department did not challenge the said order of remand passed by the appellate authority; rather proceeded to accept the observations made therein and the first authority again decided the case rejecting the claim of the respondents. The appellate authority concurred the view of the original authority and the matter travelled before the Tribunal and by the impugned order, the matter was further relegated to the original authority.

So far as the scope and the powers to be exercised by the authority under Section 154 of the Act are concerned, the appellate authority in the order of remand considered the same and found that there has been a departure from the ratio of law laid down by the Supreme Court in ascertaining the content of 'fe' and therefore if the authority has adopted a method contrary to the decision of the Supreme Court, it must be regarded as an error or omission arising in the decision. The 'error' arising therein from accidental slip or omission has to be construed in a proper perspective and should not be squeezed in a narrow compass. The error is perceived from the omission or the accidental slip and therefore, the word 'omission' should not be given a restrictive meaning but should be expanded to imbibe within itself an error occurred because of such omission.

We do not delve to go much deep into the above aspect for the simple reason that the authorities have accepted the order of remand passed by the appellate authority on the first occasion and proceeded thereupon and therefore, it is too late in the day to take such a plea at an advance stage of the litigation which, in our opinion, is practically a second round of litigation, though commenced from the original cause.

The appeal is, thus, dismissed. Consequently, the connected application also stands dismissed.

- (15) Against the. OIO No. KOL/CUS/DC/PORT/08/ EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023 issued for rejecting the refund claim, the appellants had to knock the doors of High Court again. The Hon'ble High Court vide their Order dated 6th July 2023 held as under :

It appears from record that the respondent Customs Authority being not satisfied with the aforesaid order of the Tribunal had challenged the same before the Division Bench of this Court by way of appeal being Custa 2 of 2023 and Hon'ble Division Bench which has dismissed the said appeal by order dated 28th June, 2023 by making the detailed discussion and by also taking into consideration one of the submissions of Mr. Maiti, learned advocate appearing for the appellate department in the said appeal that in order to give effect to the aforesaid of the Tribunal the adjudicating authority has passed a fresh order in original. But on perusal of the aforesaid order of the Division Bench I find that the appeal of the appellant department was not dismissed solely on the ground that in the meantime fresh order in original has been passed order of remand of the appeal rather the Hon'ble Division Bench made discussion and observation on both facts and law and facts remain admittedly that the order, findings and directions made in the aforesaid order of the Tribunal dated 28th July, 2022 attains its finality since the same was neither reversed nor set aside by the Appeal court in the appeal filed by the respondent Customs Authority. As such, the observations, findings and direction in the aforesaid order of the Tribunal is binding on the adjudicating authority which the subordinate authority.

Considering the aforesaid factual and legal position as appears from record now the question arises as to whether the adjudicating authority in passing the impugned order in original dated 5th January, 2023, on remand, has acted strictly as per observations, findings and directions given by the Tribunal its remand order and particularly in paragraphs 6, 7 and 8 of the said order and on perusal of the aforesaid impugned order in original I find that the adjudicating authority has not acted strictly as per findings, observations and directions given by the Tribunal rather it has given its own reason and opinion and has not implemented the

aforesaid order of the Tribunal in its letter and spirit. Though Mr. Maiti very vehemently argues that since the order-in-original is an appealable order under the statute before the first appellate authority, this Court should not interfere with the same on the ground of availability of alternative remedy which is not convincing and acceptable to this Court for the exceptional reason that aforesaid order of the Tribunal which has attained its finality after the order of the Division Bench of this Court by neither interfering with nor setting aside the same, the adjudicating authority was bound to carry the aforesaid order of the Tribunal in its letter and spirit and the impugned order-in-original is not only a factual error it is a jurisdictional error and error in law since it is contrary to the decision of the Supreme Court upon which even the first appellate authority in the first round has relied and held in favour of the petitioner and for the same reasoning the Tribunal has remanded the matter back by its aforesaid order.

Considering the facts and circumstances of the case and the discussion made above, I am of the considered view that the aforesaid impugned order in original dated 5th January, 2023 is not sustainable in law and is set aside and the matter is remanded back to the adjudicating authority concerned to implement the aforesaid order of the Tribunal dated 28th July, 2022 strictly as per findings, observations and directions given by the learned Tribunal in the aforesaid order and particularly giving relief to the petitioner as per Notification No.62/2007-Cus dated 03.05.2007 as per paragraph 8 of the aforesaid order of the Tribunal, within a period of eight weeks from the date of communication of this order by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authority representative.

With these observations and directions, this writ petition being WPO 636 of 2023 stands disposed of.

- (16) We find that this Order of the High Court, which finally clarified to the Revenue that they cannot get away time and again by ignoring the orders of higher forum and continue to commit contempt of the Appellate authority and Tribunal. This High Court's Order finally made them to take up the re-assessment / finalization. After taking into account the Load Port Test Reports submitted by the appellants way back on 18.09.2009 [submitted on 26.09.2009], applying the formula worked out by the Hon'ble Supreme Court, the re-assessment was completed and the consequent refund was granted. But the Revenue, now has gone on a different tangent so as to deny the interest on the amount initially paid to the appellant, vide the re-assessment Order dated 05.01.2023.

- (17) The Adjudicating authority vide Re-Assessment-curn-Refund Order

Order-in-Original No. KOL/CUS/AC/PORT/EXPORT/ 489/2023 dated 05.09.2023, passed the order granting the refund the excess Export duty of Rs.6,93,69,000. The relevant portions of the OIO read as under :

15. Meanwhile, the exporter had filed a refund application in proper Form No. 102 on 05.08.2022 praying for refund of Rs 6,93,69,000.00 on the ground that on implementation of the direction as given by the Hon'ble tribunal in its Final Order-dated 28/07/2022.

19. Accordingly, a letter-dated 17.08.2023 was issued, by this office, to the exporter with the request to submit all the connecting documents/records for the purpose of re-assessment of the aforesaid shipping bills and also for the purpose of ascertainment of consequential relief including sanction of refund, if any. In response to the same, the exporter has submitted the following self-certified documents/records;

- Self Certified Copies of all 12(twelve) Shipping Bills
- Self Certified Copies of all the respective Proforma Invoice,
- Self Certified Copies of all the respective Final Invoices,
- Self Certified Copies of all the respective Bills of Lading,
- Self Certified Copies of all the Bank Realization Certificates (BRCs)
- Self Certified Copies of all the Load Port Test Reports CLPTRs] • Self Certified Copies of Discharge Port Test Reports [total 05 Nos.]
- Self Certified Copies of all the Contracts

24. On examination of all the 12(twelve) impugned Shipping Bills, it is seen that the exporter had self-declared therein, the Fe contents as 63.50% on dry basis with moisture content @ 9%. But the assessing officer, while determining in which category the iron ore fines (under exportation) would fall, had ignored the declared moisture content and had only considered the declared Fe content as 63.50% and in this way, had assessed the full rate of duty i.e. @ Rs. 300.00 per MT on the Gross/total weight. Here, it is on record that the declared Fe content @ 63.50% was excluding moisture and was in no way related to the total weight/gross weight (inclusive of moisture) exported on which duty was charged.

25. But as per the prescription of the Hon'ble apex court as made in the case of Gangadhar Narshingdas Aggarwal, such declared moisture content was to be duly considered and Net Fe content on Wet Metric Ton basis [i.e. on Gross/Total weight basis-inclusive of moisture] was to be calculated for the purpose of

determination in which category the iron ore fines (under exportation) would fall, as duty was relatable to the gross weight/total weight exported at the relevant point of time.

26. Thus, it is seen that the observations/guidelines/directons of the Hon'ble apex court were not followed by the proper officer in assessing the impugned 12 shipping bills and the act of such not-following the directions of the Hon'ble apex court has been described by the Hon'ble tribunal as 'errors' on the part of the proper officer and has been declared the same as 'rectifiable' under the provisions of Section 154 ibid. The Hon'ble High Court has also echoed such findings of the Hon'ble tribunal and the same has already reached at its finality and thus, is binding on me in the instant proceeding.

29. It is also on record that the exporter had drawn samples of the goods under exportation during the shipment from the port of loading i.e. Haidia Port and got analyzed the same from a government approved laboratory. The overseas buyer had also drawn samples of the subject goods during clearance from the Port of discharge, in case of as many as 05(five) consignments. As per such Test Reports vis-à-vis the conditions as prescribed in the respective Contracts, the exporter had also raised Final Commercial Invoices to the overseas buyers and then, had received the export proceeds through bank.

30. Vide letters-dated 18.05.2009, the exporter had submitted all the LPTRs, DPTRs, Final Commercial Invoices, Bank Realization Certificates etc to the department and had requested to finalize the impugned shipping bills based on such documents and to refund the excess duty paid thereon. Again, vide letter-dated 01.10.2009, the exporter had requested for correction of errors as happened in the impugned shipping bills regarding the applicable rate of duty, in terms of the provisions of Section 154 of the Customs Act, based on such Test Reports. Later on 05.08.2022, the exporter had filed a formal Refund application praying for refund of Rs. 6,93,69,000 on account of such excess payment on the contention that they were eligible for reduced rate of duty to the tune of Rs. 50.00 per MT as prescribed under Notification No. 62/2007-Customs,

37. Section 27 of the Customs Act, 1962 prescribes that;

- (1) Any person claiming refund of any duty or interest, (a) paid by him; or
 - (b) borne by him, may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest

39. So far the issue of unjust-enrichment as prescribed in sub-section (IA) of Section 27 of the Customs Act, 1962 is concerned; the exporter has already submitted Certificates from Independent Chartered Accountant to the effect that the incidence of such amount of excess duty paid has not been passed on by the exporter to any

person. Further, it is a case of payment of export duty.

42. In view of the discussions and observations as detailed in the preceding paras, I find the following:

- (a) There were errors in the assessments of the impugned shipping bills in so far as full rate of export duty @ Rs. 300.00 per WMT was charged therein without following the judgment of the Hon'ble Supreme Court in the case of Gangadhar Narshingdas Aggarwal.
- (b) Considering the Fe content so calculated on WMT basis as per the guidelines as prescribed in the aforesaid Judgment of the Honble Supreme Court [which was subsequent/y echoed by the Board's Circular No. 04/2012-Customs dated 17/02/2012], the exporter is found to be eligible for reduced rate of duty @ Rs. 50.00 per MT, as prescribed in the exemption Notification No. 62/2007-Customs dated 03/05/2007, in all the cases.
- (c) The exporter had paid excess duty to the tune of Rs. 250.00 per WMT [i.e. Gross/Total Weight including moisture], owing to such errors, in all the 12(twelve) cases.
- (d) The impugned shipping bills are required to re-assessment, in terms of provisions of Section 154 ibid, by way of correcting the aforesaid errors in the impugned assessments made.
- (e) Consequent excess export duty so calculated due to such reassessments is also liable to be refunded to the exporter.

24. The Adjudicating authority after considering the Tribunal's no uncertain order, recorded the entire chronological event and took the stand that the appellant has filed the refund claim on 05.08.2022. In a carefully drafted order, he holds that the appellant has not opted for Provisional Assessment because of which no sample was drawn nor was any test conducted. Therefore, as per him, it is a case of Final Assessment. Thus, for all purposes, it is a mere case of rectification in view of the decision of the Tribunal and also to follow the procedure of Gangdhar Supreme Court ruling and the CBIC's circular 04/2012 Cus dated 17.2.2012.

25. Therefore, the refund has been granted after verifying all the documentary evidence and procedure as specified by the Supreme Court and Circular of CBIC. He has cited the provisions of Section 27 of the Customs Act 1962. However, he concedes that the time limit set therein is not attracted and the 'Unjust Enrichment clause' is not attracted since the Chartered Accountant has certified to the effect that the Duty liability has been borne by the appellant and has not been passed on to the overseas buyers.

26. Some points which have been observed by us are as under :

- (a) On going through this letter dated 05.08.2022 submitted by the appellant, we find that vide this letter the appellant has only requested for implementation of the Tribunal's order. It is not in the nature of refund claim filed under any refund format "Application for refund of duty/interest PART-A", addressed to The Assistant Commissioner of Customs.
- (b) We find that their letter No. Vedanta/HO/Cust/2022-23/ Date: 05/08/2022 reads as under :
- Sub: Request to implement Hon'ble CESTAT, Kolkata Final Order No. 75404/2022 dated 28.07.2022 and disbursement of pending refunds of Rs. 6,93,69,000/-.
- (c) The formal Form 102, filed by the appellant along with this covering letter, is not even required to be filed, since the refund is only a consequential action after the rectification is carried out. Therefore, the Adjudicating authority is in error in taking this date 05.08.2022 as the date of formal filing of Refund claim, ignoring their very first letter dated 18.05.2009 submitted on 26.05.2009, seeking assessment based on the Test Reports and other documents and refund of the excess duty paid / collected.
- (d) The Adjudicating authority in his order OIO dated 05.09.2023 himself holds at Para 24 that the assessing officer has ignored the moisture content. At para 26 he observes that the assessing officer has not followed the decision of the Supreme Court in the case of Gangadhar to consider the moisture content. While he cites the Tribunal and High Court about their holding that Section 154 would be applicable, he conveniently ignores the identical noting / decision by the Commissioner (Appeals) vide his OIA dated 11.10.2010. It has also been clearly observed by both the Tribunal and the High Court that this OIA has reached finality since no further appeal was preferred by the Revenue against the same.
- (e) From Para 37, it gets clarified that he treats the issue as refund to be granted in terms of Section 27 of the Customs Act 1962.
- (f) In Para 39, he dwells into 'unjust enrichment' clause and comes to a conclusion that the Export Duty liability has not been passed on by the appellant.

- (g) At Para 42 (a) he admits that errors were there in the assessment carried out on account of non-following of Gangadhar judgement of the Hon'ble Supreme Court.
- (h) At Para 42 (c), he admits that excess Export Duty @ 250 PMT has been paid by the appellant at the time of exports, in case of all the 12 Shipping Bills.
- (i) It is on record that the appellant treated the assessment as Provisional and filed their letter dated 18.05.2009 [filed on 26.05.2009]. For this letter, neither any response was sent nor any action was taken. If as per the Adjudicating Authority in the Order dated 05.01.2023, the assessment was already Final, the Dept was required to respond to the letter dated 18.05.2009 stating that the assessment was already Final. This was never done.
- (j) Subsequently when the appellant sought rectification vide their letter 01.10.2009, under Section 154, no reply whatsoever was given and only after regular follow up the Order was passed on 04.06.2010.
- (k) The Commissioner (Appeals) passed the OIA on 11.10.2010, holding that rectification under Section 154 is required to be taken up. But no action was taken for the next more than 4 and 1/2 years. Thereafter, the OIO was passed rejecting the request. This actually amounts to non-following of the orders of the higher fora and such acts are held to be legally not sustainable by the Supreme Court in the case of Kamalakshi referred to supra.

27. The above observations would help us to come to a conclusion about the nature of the re-assessment / finalization. We find that the Tribunal and High Court have laid emphasis on Section 154, although the Tribunal has also noted the point about the Provisional Assessment for which direction has been given to finalize the assessment.

28. Since lot of discussion has taken place and Tribunal and High Court have held that it is a case of '*omission*' and the rectification is required to be carried out, we take the view that it is a case of Section 154. Since the rectification was required to be carried out for the period 2007-2008 and all the documents were available with the Revenue by May 2009 itself, the Rectification should have been carried

out based on the request made on 01.10.2009. No attempt was made to take up this request. Even after this matter reached the Commissioner (Appeals) and it was held by him that the issue will call for rectification under Section 154, his order was not followed.

29. From the detailed analysis of the OIO No. KOL/CUS/AC/PORT/EXPORT/489/2023 dtd 05.09.2023, we find that the Adjudicating authority has also gone on to decide the issue in terms of Section 154 and has cited the provisions of Section 27 while granting the refund.
30. After careful analysis of the entire factual matrix, considering the chronological events, finally culminating with the appellant getting the refund, we find that the appellant's letter dated 18.05.2009 [submitted on 26.05.2009], attains the status of the refund claiming letter. After much follow up the request for 'rectification' was rejected on 26.05.2010. On Appeal, the Commissioner (Appeals) vide OIA No. KOL/CUS/CKP/285/2010 dated 6.10.2010, held that the 'rectification' in terms of Section 154 is required to be carried out. Only for this purpose, the matter was remanded to the Adjudicating authority. As has been repeatedly observed above, neither any further appeal was preferred by the Revenue, nor the 'rectification' as directed was taken up. The very first act was taken up after about 4 and ½ years. The last act after multiple interventions of the Hon'ble High Court and Tribunal was only completed vide re-assessment Order NO. KOL/CUS/DC/PORT/08/EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023.
31. We also find that no Appeal has been preferred by the Revenue against this OIO No. KOL/CUS/DC/PORT/08/EXPORT(REF)/2023, Refund order No 01/2023 dated 05.01.2023, which would go on to clarify that the Revenue is not agitated by any of the findings or the order of the Adjudicating authority.
32. It is only the appellant, who being agitated by the fact of non-granting of the interest has filed their appeal before the Commissioner (Appeals)
33. The Commissioner (Appeals), vide the impugned OIA No. KOL/CUS(PORT)/KS/451/2024 dated 18.07.24 has allowed the appeal partly by holding that interest is to be granted as per the prescribed time limit from date of CESTAT final Order i.e. 28.07.2022. Again, it is the appellant who has filed his appeal before the Tribunal being agitated by this OIA. The Revenue has not filed any Appeal against this OIA, which was affirmed by the Ld AR, during the Hearing. Hence, it can be safely taken that the Revenue is not aggrieved with the impugned OIA.
34. Since, we have come to a conclusion that the amount has been refunded in terms of Section 27, it would be important to go through the Supreme Court's

judgement in the case of **Ranbaxy Laboratories Ltd vs Union Of India & Ors** vide Order dated 21 October, 2011. The relevant portions of this judgement are extracted below:

The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short "the Act"). In short, the question is whether the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made?

The appellant filed certain claims for rebate of duty, amounting to Rs.4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate

Section 11BB, the pivotal provision, reads thus:

"11BB. Interest on delayed refunds.- If any duty ordered to be refunded under sub- section (2) of section 11B to any 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 per cent and not exceeding thirty per cent 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 11B 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 or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, 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 the said sub-section (2) for the purposes of this section."

9. It is manifest from the afore-extracted provisions that [Section 11BB](#) of the Act comes into play only after an order for refund has been made under [Section 11B](#) of the Act. [Section 11BB](#) of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of [Section 11B](#) of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of [Section 11B](#) of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under [Section 11BB](#) of the Act. Manifestly, interest under [Section 11BB](#) of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of [Section 11B](#) of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under [Section 11BB](#) of the Act becomes payable.

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of [Section 11BB](#) of the Act. Significantly, the Board has stressed that the provisions of [Section 11BB](#) of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus:

"Circular No.670/61/2002-CX, dated 1-10-2002 F.No.268/51/2002-CX.8
Government of India Ministry of Finance (Department of Revenue) Central

Board of Excise & Customs, New Delhi Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding I am directed to invite your attention to provisions of [section 11BB](#) of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra).

In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

"Heard both the parties. In our view the law laid down by the Rajasthan High Court succinctly in the case of [J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs](#) reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub- section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

14. At this stage, reference may be made to the decision of this Court in [Shreeji Colour Chem Industries](#) (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under [Section 11BB](#) of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, [the said decision](#) is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under [Section 11BB](#) of the Act commences from the date of expiry of three months from the date of receipt of application for refund under [Section 11B\(1\)](#) of the Act and not on the expiry of the said period from the date on which order of refund is made.

35. The above judgement of the Hon'ble Supreme Court has been rendered in respect of the refund claimed under Section 11B and interest under Section 11BB of the Central Excise Act 1944. It would be important to go through the relevant portions of Customs Act 1962, as it existed during the period under litigation, with regard interest, which is extracted below :

27A. Interest on delayed refunds. *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]-* 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 per cent.][and not exceeding thirty per cent. per annum as is for the time being fixed [by the Central Government, by notification in the Official Gazette] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]*, [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 or any Court against an order of the [Assistant Commissioner of

Customs or Deputy Commissioner of Customs] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]*under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]* 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.]

36.A careful reading of Section 11BB of the CEA 1944 and 27B of the Customs Act 1962, clarifies that they are *para materia*.

37. Reverting to the factual matrix of this case, the important dates in the entire case would be as under :

Event	Period / Date	Delay from 26.05.2009
Export Duty paid @ Rs.300 PMT	05.06.2007 to 17.03.2008	NIL
Request for Finalization	18.05.2009 /26.05.2009	NIL
Request for rectification u/s 154	01.10.2009/ 20.10.2009	NIL
Rejection of Rectification request	04.06.2010	1 Year
OIA allowing rectification/ remanding	11.10.2010	1 Year
P H before AC	12.06.2014	5 Years
Order In Original rejecting rectification	11.05.2015	6 Years
OIA rejecting rectification	13.05.2016	7 Years
CESTAT Order allowing rectification	28.07.2022	13 Years
OIO rejecting the rectification	05.01.2023	13 & ½ years
HC upholding CESTAT Order	06.07.2023	14 years
OIO granting refund	05.09.2023	14 & ½ years

38. Again has been observed time and again by High Court and Tribunal, the Revenue failed to follow the directions of the Commissioner (Appeals) contained in the OIA dated 11.10.2010. Again Revenue failed follow the directions of the Tribunal, when the Final Order was passed on 28.07.2022. Thus, it is observed that the excess Export Duty @ Rs.250 PMT has been retained by the Revenue without any explicable reason for a very long time, making the appellant run from pillar to post and to make regular follow up. This has resulted in holding back of substantial amount, putting financial pressure on the appellant. Admittedly, due to this inordinate delay, the appellant would have been compelled to borrow from banks on payment of interest.

39. Therefore, we hold that the Ranbaxy judgement of the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. This is a case where the erroneously excess Export Duty was collected from the appellant during the period 2007-2008. After following up from 2009 onwards for proper rectification of the assessment order and litigation at various forum, finally the refund was granted on 5.9.2024. In terms of Ranbaxy judgement, the appellant would be eligible interest on the refund amount granted to them.

40. It would also be relevant to refer to the Apex Court's judgement in the case of **Sandvik Asia Ltd vs Commissioner Of Income Tax-I, Pune & Ors - Order dated 27 January, 2006**

The Hon'ble Supreme Court framed the following questions :

A. Whether in view of binding decisions of this Court the respondents are estopped from urging that compensation as claimed by the appellant is not payable by them? And therefore whether the Bombay High Court erred in allowing them to urge such a contention in the impugned judgment?

B. Assuming for the sake of argument that there is no provision in the [Income-tax Act, 1961](#) ("the Act") for grant of such compensation, this Court had upheld the view of the Gujarat & Madhya Pradesh High Courts that compensation should be granted (whether called interest or otherwise) and hence the impugned judgment was contrary to a decision of this Court and ought to be reversed?

E. Whether the High Court ought to have held that [sections 240](#) and [244](#) of the Act refer to 'refund of any amount', which phrase clearly includes any amount (including interest) due by the Income Tax department to the assessee, and hence the appellant was entitled to interest on the delay in the payment of amounts due from the Income-tax department ?

Provisions of Income Tax Act :

243. Interest on delayed refunds.

(1) If the Income-tax Officer does not grant the refund

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded

from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation : If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

244. Interest on refund where no claim is needed. (1) Where a refund is due to the assessee in pursuance of an order referred to in [section 240](#) and the Income-tax Officer does not grant the refund within a period of [three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [twelve] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [three] months aforesaid to the date on which the refund is granted.

We have given our anxious and thoughtful consideration on the elaborate submissions made by counsel appearing on either side. In our opinion, the High Court has failed to notice that in view of the express provisions of the Act an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to the law by the Department for an inordinate long period of up to 17 years.

In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable' withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that [Section 237](#) of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that [section 240](#) of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under [Sections 214](#) and [244](#) of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and

30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay.

It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

41. In the present case, as has been observed in the earlier paragraphs, the delay in taking up the issue for re-assessment by the Revenue was to the tune of more than 14 years. Hence, we hold that the decision of the Hon'ble Supreme Cour in the cited case of Sandvik Asia is squarely applicable.

42. Now that we have come to a conclusion that the appellant would be entitled to interest on the refunded amount, the next question to be answered would be as to from what date would they be entitled.

43. At Para 37 above, we have gone into the important landmark dates. It is seen that the appellant has filed their first letter seeking the finalization of assessment on 26.05.2009 for the Export Duty paid during 2007-2008. They have subsequently requested for 'rectification' in terms of Section 154 on 01.10.2009. The refund has been given to the appellant only after the rectification under Section 154 has been carried out, as can be observed from the OIO dated 5.9.2023. Such rectification was first ordered by the Commissioner (Appeals) vide OIA No. KOL/CUS/CKP/285/2010 dated 06.10.2010. The High Court in all their Orders and Tribunal in their order have

taken cognizance of this OIA and have made specific reference that no further appeal was preferred by the Revenue against this OIA and in fact after about 5 years from this OIA, an OIO was passed. The subsequent events resulting in the High Court Orders and Tribunal orders holding that 'rectification' under Section 154 also emanate basically from this OIA dated 11.10.2010. Therefore, we hold that 11.10.2010 should be taken as the date on which the 'consequential refund' would accrue. Since the supporting documents were already available with the Revenue on 26.05.2009 [when the first letter was filed] and on 01.10.2009 [when the rectification request letter was filed], the Revenue could have completed the rectification/re-assessment within 3 months from 11.10.2010 [OIA order date]. After allowing the 3 months from 11.10.2010, the interest would be payable from 11.01.2011. We direct the Revenue to pay the interest from 11.01.2011 till 05/06.09.2023, the date on which the refund was paid.

44. The next question to be addressed is as to what would be the rate of interest. In the present case, the Export Duty was paid at the time of Exports and the excess Export Duty paid remained with the Revenue till it was refunded. In the OIO, it has been held that the appellant was not required to pay the Export Duty @ Rs.300 PMT and was required to pay the same @ Rs.50 PMT only. Thus the amount retained by the Revenue would be akin to the appellant making the payment during the course of investigation. Hence, we have considered the following case laws :

**2022 (380) E.L.T. 219 (Tri. - All.)
PARLE AGRO PVT. LTD. Vs COMMISSIONER, CGST, NOIDA**

39. In this connection reference can also be made to the decisions of the Allahabad High Court in *Pace Marketing Specialities* and *Ebiz.Com Private Limited*, wherein after making reference to the decision of the Supreme Court in *Sandvik Asia Ltd.*, the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40. In *Riba Textiles*, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41. In view of the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.

42. Thus, for the reason stated above, *Excise Appeal No. 70628 of 2019* is allowed and the order dated 28-5-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment. *Excise Appeal*

No. 70674 of 2019 filed by the Principal Commissioner for setting aside the order dated 28-5-2019, passed by the Commissioner (Appeals) is dismissed.

(62) G.S.T.L. 136 (P & H)
COMMISSIONER OF CENTRAL EXCISE, PANCHKULA
Vs RIBA TEXTILES LTD.

9. While deciding the issue of interest, Ld. Tribunal has relied upon the law laid down by the Apex Court in *Sandvik Asia Ltd. v. CIT, Pune* - [2007 \(8\) S.T.R. 193](#) (S.C.) wherein it was held that :-

xxxxx

9. It is not disputed that the provisions of Income-tax Act, 1961 and Central Excise Act, 1944 are *pari materia* and, therefore, law laid down by the Supreme Court in the case of *Sandvik Asia Ltd.* (supra) shall be applicable to the present case.

10. Ld. Counsel for the appellant is not in a position to deny the proposition of law laid down in the case of *Sandvik Asia Ltd.* (supra) and the applicability thereof to the facts of the present case

Churchit Interntional Vs CC (Export)
Customs Appeal No. 51301 of 2023 [SM]
Final Order No.58537/2024 dated 6.9.2024

The Delhi Tribunal has held as under :

The Appellant was made to deposit Rs.50,00,000/- involuntarily under threat of arrest during investigation on 18.03.2014.

Thereafter, Assistant Commissioner of Customs (Refund) vide Order-in-Original No.045/2021 dated 24/12/2021 allowed the refund of Rs. 50,00,000/- but had not granted interest on the said amount.

5. Having heard both the parties and after perusing the record it is worth noting that amount of Rs.50,00,000/- was deposited much before issuance of show cause notice and adjudication order did not confirm any demand against the appellant and thus the said amount was never appropriated against any demand. There was no demand against the appellant and accordingly such collection of amount was without authority of law.

7. These observations when seen in the light of above quoted decisions, it is clear that Section 11B/11BB of Central Excise Act is not applicable to the given set of circumstances. This Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, GST (supra), wherein following findings have also been endorsed:

“30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate interest has not been prescribed, when revenue deposit is required to be refunded.”

The Tribunal in the said case had allowed the interest at the rate of 12% on the refund amount from the date of deposit till the date of payment thereof.

15. This Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida (vice- Versa) reported as 2021 (5) TMI 870 – CESTAT ALLHABAD has held that in the light of the above discussed notifications the grant of interest at the rate of 12% per annum seems to be appropriate. Tribunal Delhi (CESTAT) also in the case of Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex., Cus. & CGST, Delhi reported as 2021 (378) ELT 293 (Tri.-Del.) wherein the adjudicating authority was ordered to grant interest @ 12% per annum from the date of deposit till the date of refund. The relevant Para is reproduced as under:

“I further take notice that Division Bench of this Tribunal in Parle Agro (P) Ltd. Vs. Commissioner, CGST - 2021-TIOL-306-CESTATALL, wherein interest on pre-deposit (made during investigation) have been enhanced from 6% to 12%, following the ruling of the Apex Court in Sandvik Asia Ltd. Vs. Commissioner – 2006 (196) E.L.T. 257 (S.C.). I further direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the date of refund. Such interest should be granted within a period of two months from the date of receipt or service of the copy of this order.”

16. Similar view was taken in case of Pr. Commr. of CGST, New Delhi Vs. Emmar Mgf Construction Pvt. Ltd. reported as 2021 (55) GSTL 311 (Tri.-Del.) wherein it was held that amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the

assessee being successful in appeal, from the date of deposit till the date of refund. Further, it is directed that the adjudicating authority shall disburse the amount of interest @ 12% per annum forthwith.

“8. Considering the rival contentions, this appeal by the Revenue is dismissed. Further, it is directed that the Adjudicating Authority shall disburse the amount of interest @12% per annum forthwith, within a period of 45 days from the date of receipt of the copy of this order, as held by Division Bench of this Tribunal in Parle Agro (P) Ltd., (supra).”

19. Consequent to the entire above discussion, the findings of the order under challenge are upheld with respect to holding appellant entitled for getting refund of the amount along with interest. However, it is held that the appellant is entitled to have interest on the amount of refund sanctioned at the rate of 12% per annum to be calculated from the date of the deposit of the amount till the date refund thereof. Resultantly, the present appeal is hereby allowed.

45. As per the ratio laid down in the above case laws, we hold that the appellant is eligible to get the interest @ 12% per annum from 11.01.2011 to 5/6.09.2023

46.To summarize our decision :

- (a) Whether the assessment is Provisional, as is being claimed by the appellant or is Final, as is being claimed by the Revenue ?

Though the appellant has claimed this to be a case of Provisional Assessment, duly finalized on 5.9.2023, we are unable to accept their view, since there is nothing to indicate that they have opted for Provisional Assessment. After filing their letter on 18.05.2009 [26.05.2009] seeking Finalization of Provisional Assessment, they themselves have requested for 'rectification' in terms of Section 154. This request has been considered and endorsed by the High Court and Tribunal.

- (b) Whether this is a case of Section 154 – Rectification of the Finally assessed order as is being claimed by the Revenue or is a case of finalization of assessment as is being claimed by the appellant?

We hold that it is the case of rectification being carried out by the Revenue, in terms of Section 154 of Customs Act 1962, as directed by the Hon'ble High Court, resulting in re-assessment Order being passed by the Adjudicating authority on 05.09.2023.

- (c) Whether any interest is eligible to the appellant in either of the above cases (a) and (b)

The case falls under the category (b) and the provisions of Section 27A are attracted and accordingly, interest is required to be paid. For this we are placing reliance on the Supreme Court decisions in the case of Ranbaxy and Sandvik Asia and other case laws.

- (d) If they are found to be eligible to interest, what would be the relevant date of interest? The Commissioner (Appeals) has held that they are eligible for interest from 28.07.2022 [three months from this date] whereas the appellant is claiming that the interest is to be paid from date of deposit of excess amount or max treating 18/26.05.2009 [three months from this date]

As per our detailed discussions in the preceding paragraphs, the date of filing of the refund claim is being taken as 11.10.2010, when the OIA has been passed directing the Adjudicating authority to carry out the necessary 'rectification'. After giving three months' time from this date, the interest is payable from 11.01.2011 till 5/6.09.2023 when the refund amount was finally paid.

- (e) If the interest is payable what would be the rate of interest to be paid?

Relying on the Riba, Parle and Churchit case laws, we hold that the interest is payable @ 12 p.a.

- (f) Since the issue has been lingering for more than a decade, we direct that the interest should be paid within 8 weeks from the date of communication of this order.

47.The appeal is allowed as per the above terms.

(Pronounced in the open court on 07/01/2025.)

Sd/-

(R. Muralidhar)

Member (Judicial)

Sd/-

(K. Anpazhakan)

Member (Technical)