IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA
Court No.1

Customs Appeal No.76513 of 2024

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/AKR/198/2021 dated 24.02.2021 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Emars Mining & Construction Pvt. Ltd.
(New India Assurance Building,4, Lyons Range,6th Floor,Kolkata-700001)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

Appearance:
Shri Ajay Sanwaria & Ms.Tanima Ghosh,both Advocates for the Appellant
Shri A.K.Choudhary, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL, JUDICIAL MEMBER

DATE OF HEARING : 03 SEPTEMER 2025

DATE OF PRONOUNCEMENT : 16 SEPTEMBER 2025

FINAL ORDER NO.77414/2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a Private Limited Company, engaged in exportation of Iron Ore. A quantity of 20000 M.T. of Iron Ore Fines was to be exported to China and accordingly Shipping Bill No. 007301 dated 04.12.2008 was processed for shipment of said quantity per the vessel M.V.TU QIANG, Exp.Rot No. 13132/08.

2.1 The Appellant deposited the export duty and cess collectively of Rs.32,60,640/- against Custom House receipt No. E 09(AP) dtd. 04.12.2008. Thereafter, the shipment was to be effected at Haldia. However, the entire quantity as mentioned in the Shipping Bill No.007301 dt.04.12.2008 could not be made available for shipment and the shipping bill was not sent to Haldia for further pre-shipment formalities. Accordingly, the customs house agent of the appellant vide letter dated 11.12.2008 addressed to Assistant Commissioner, Export, inter alia, requested for cancelation of the subject Shipping Bill.

2.2 Since no shipment took place at all against the Shipping Bill the appellant submitted a claim application with the department on 26.06.2009 for refund of the duty and cess amounts.

2.3 The Adjudicating Authority vide Order-in-Original No.45/2010 dated 24.03.2010 rejected the refund claim on the purported ground that the claim was filed beyond six months and the same is time barred as per Section 27(1)(b) of the Customs Act, 1962. The Appellant appeal before the Ld. Commissioner of Customs (Appeals) got rejected on similar grounds.

2.4 Being aggrieved, the appellant preferred an appeal before the Tribunal. The Tribunal vide FO/75675/2017 dated 19.04.2017 remanded the matter before the adjudicating authority to decide afresh considering the facts and circumstances of the case.

2.5 The matter was re-adjudicated by the Assistant Commissioner (Export refund section). Vide O-I-O No.KOL/CUS/AC/3376/Export/18 dated 7.12.2018, the Adjudicating Authority allowed and sanctioned the refund claim of Rs.32,60,640/- filed by the appellant.

2.6 The said order was reviewed and challenged by the department by filing an appeal before the Ld. Commissioner (Appeals).

2.7 During the COVID pandemic hearing was granted, however, the appellant did not receive any notice of hearing. Thereafter, an ex-parte order bearing Order-in-Appeal No.KOL/CUS(Port)/AKR/198/2021 dated 24.02.2021 was passed allowing the appeal of the department and rejecting the refund claim of the appellant.

2.8 Being aggrieved by the said order of the Commissioner (Appeal), the appellant is in appeal before me.

3. The contentions of the ld.Counsel for the appellant are as under:

(i) That the said order is based on complete mis-appreciation of the relevant statutory provisions and is ex-facie erroneous, contrary to law, untenable and unsustainable.

(ii) That the Appellate authority erred in holding that the refund claim is time barred in terms of Section 27(1)(b) of the Customs Act. The Appellant states that it is a case where the goods were never been assessed and there was no finalisation of assessment hence the period of computing relevant date has not arrived in the instant case.

(iii) That the limitation of six months under Section 27(1)(b) of the Customs Act would be applicable only when custom duty has been paid. However, in the instant case the, no custom duty has been paid as it is in the nature of "deposits".

(iv) That from Section 17(1) and (2), it is evident that goods need to be examined and/ or tested before custom duty is levied. But in the instant case, the goods are not physically presented for examination/testing and the customs duty cannot be levied and collected. Hence, it is abundantly clear that payment made by the exporter cannot be termed as custom duty.

(v) That the Appellate Authority had completely misconstrued the provision of Section 17(4) of the Act by rejecting the claim of the Appellant. It is an admitted fact that the bill of export has never been assessed, hence under no circumstances the refund claim should have been rejected by the Appellate Authority.

(vi) That the taxable event occurs when the goods are brought into the Customs bonded area. From Section 12 of the Customs Act, it is clear that the duty can be levied only on "Exported Goods" and not on the "Goods meant for export". In the instant case no goods were presented for exports, hence the deposit made by the Appellant is not the Customs Duty for exported goods.

3.1 In support of his contention, he relies on the following decisions:

(i) Vedanta ltd. v/s Commissioner of Customs (Port), [2017 (345) E.L.T.577 (S.C.) ;

(ii) United News of India v/s Union of India [2004 (1) TMI 90 – High Court of Delhi] ;

(iii) ICI. India Ltd. v/s Collector of Customs [1991 (8) TMI 105 – Calcutta High Court] ;

(iv) DHL Express India Pvt Ltd v/s the Commissioner of Service Tax [2021 (4) TMI 598 - Karnataka High Court] ;

(v) Ranbaxy Laboratories Ltd v/s Union of India & Ors- [2011 (273) E.L.T. 3 (Supreme Court)] ;

3.2 The ld.Counsel for the appellant has contended that the refund claim is sanctioned to them along with interest after three months from the date of filing of refund claim at the rate of 12% per annum.

4. The ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

6. I find, it is the fact on record that in this case no export has taken place. Therefore, the issue arises whether in the facts and circumstances, the appellant is entitled for claim of refund of duty paid by the appellant or not ?

7. The said issue has been examined by the Hon'ble Apex Court in the case of Vedanta Ltd. Vs. Commissioner of Customs (Port) and Another reported in 2016 (12) TMI 266 –SC Order [2017 (345) ELT 577 (SC)], wherein the Hon'ble Apex Court has observed as under :

> *"**2.** The petitioner had paid the customs duty for export of goods in advance. However, the goods for export were short shipped. The petitioner has applied for refund of the amount of customs duty paid in excess.*
>
> ***3.** Learned counsel for the Commissioner of Customs (Port) states that the application for refund was made beyond the time prescribed.*
>
> ***4.** In our opinion, the provision of Section 27 of the Customs Act would clearly not apply to the present case on its plain language.*
>
> ***5.** Accordingly, the respondent should refund the excess customs duty paid within a period of four weeks from today."*

8. Further, in the case of United News of India Vs. Union of India reported in 2004 (1) TMI 90 High Court of Delhi [2004 (168) ELT 442 (Del.) , the facts of this case are as under :

> ***"2.****In a nutshell the facts are that the petitioner deposited an amount of money with the respondent on 19-1-1974 in anticipation of payment of duty as it was likely to receive goods, which were dispatched from United Kingdom. The petitioner was anticipating delivery of 69 bales of paper. However, only 51 bales were delivered to the petitioner. Thereafter, the petitioner approached the authority under the Customs Act for issuance of "short landing certificate", which was issued to the petitioner only on 11-6-1974. It is on the strength of this certificate that the petitioner submitted an application for refund of the excess amount on 9-9-1974. This application was submitted in respect of 18 bales, which he did not receive and for which "short landing certificate" was issued by the appropriate authority. There is no dispute with regard to the aforesaid aspects.*
>
> ***3.****The application of the petitioner came to be rejected on the ground that the claim for refund was received in the Customs House on 16-9-1974 while the duty was paid on 19-1-1974. In view of this, it was considered that the claim was made after the expiry of the time limit of six months prescribed in Section 27(4) of the Customs Act, 1962 (hereinafter referred to as "the Act"), and, the claim was rejected as being time barred."*

In this case, the Hon'ble Delhi High Court has observed as under :

> *"****22.****In the opinion of the Court, Section 27 of the Act will not apply in this case as the amount retained by the Union of India was not an amount by way of customs duty assessed in accordance with law. Moreover, presuming that it is "duty" even then the refund application is within the period stipulated, which we have discussed above. It is*

> *in these circumstances, that we direct the Union of India to make the payment to the petitioner with interest at the rate of 12% p.a. till the amount is paid. "*

9. Further, in the case of ICI India Limited Vs. Collector of Customs reported in 1991 (8) TMI 105-High Court at Calcutta [1992 (60) ELT 529 (Cal.)], wherein the facts of the case are as under :

> *"**2.** These facts are not in dispute. The goods that the petitioner wanted to import did not arrive at Calcutta Port. As such, there was no question of payment of any customs duty. The only trouble of the petitioner was that he had, in anticipation of arrival of the goods, paid the duty by filing the Bill of Entry.*
>
> ***3.** The case of the Customs Department is that under Section 27, a claim for refund of duty has to be made before the expiry of six months from the date of payment of duty. In the instant case, the petitioner had paid the duty on 28th June, 1982. Insurance survey took place on 12th November, 1982. There was undoubtedly some laches on the part of the petitioner and the petitioner applied only on 13th February, 1983 to the Assistant Collector of Customs for refund of Rs. 52,792.80. The Assistant Collector of Customs rejected the said application on 29th June, 1983. Thereafter the petitioner preferred an appeal to the Appellate Collector of Customs which was again dismissed. On further appeal on 18th December, 1989, the Customs, Excise and Gold (Control) Appellate Tribunal rejected the petitioner's claim observing that the relief prayed for by the petitioner could only be granted on a writ petition. The petitioner thereafter made this writ petition."*

In this case, the Hon'ble Calcutta High Court has observed as under :

> *"**7.** What has happened in this case is that the petitioner had paid certain amount of money by way of tax in anticipation of arrival of goods for which it had placed an*

order. When the container, which should have contained the goods, came it was found, on examination, that the goods ordered for had not arrived at all. The petitioner abandoned all claims in respect of the goods which had arrived by the container in broken pieces. Therefore, the goods for which the petitioner had placed an order did not arrive and cross the Customs barrier at all and no question of any customs levy arises. The petitioner's case do not come within the four corners of the Customs Act at all. The petitioner had paid the duty, in anticipation of arrival of certain goods, which did not arrive at all. The petitioner therefore became entitled to get refund of duty which was paid in mistaken anticipation. A case like this will not come strictly within the ambit of Section 27 of the Customs Act, as it stood, at the material time in the year 1982. The provisions of Section 27 apply in the case of any import made by an individual for his personal use or a Government or an educational research or a charitable institution or hospital under clause (a) of sub-section (1). In case of any other import, provisions of clause (b) of sub-section (1) of Section 27 will apply. But in this case, no import has taken place at all. In a case, where money was paid in advance on mistaken assumption, but no import actually took place, the Customs Authority cannot refuse refund of the money on the ground of limitation under Section 27 of the Act."

10. Further, in the case of DHL Express India Pvt. Limited Vs. The Commissioner of Service Tax, Bengaluru Sevice Tax I reported in 2021 (4) TMI 598-Karnataka High Court [2021 (377) ELT 594 (Kar.)], wherein the Hon'ble High Court has held as under :

*"**17.**In the light of the law laid down by the Hon'ble Supreme Court and the other High Courts keeping in view the peculiar facts and circumstances of the case, it is*

> *crystal clear that when the customs duty is paid in excess, the department is liable to refund the same and the limitation provided under Section 27 of the said Act of 1962 will not be applicable. Therefore, the Tribunal has erred in law and fact, solely relying on Section 27 of the said Act of 1962 while dismissing the application of the appellant-Company."*

11. It is an admitted facts that no export took place in this case whereas the appellant paid the export duty in anticipation of export by filing shipping bills. As no export took place, the whole of the demand paid by the appellant is refundable to the appellant.

12. They are also entitled for interest after three months from the date of filing of refund claim till its realization. The said issue has been examined by the Hon'ble Apex Court in the case of Ranbaxy Laboratories Limited Vs. Union of India reported in 2011 (273) ELT 3 (SC) wherein the Hon'ble Apex Court has observed as under :

> ***"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."*

13. Therefore, I hold that the appellant is entitled for claim of interest for delayed refund after three months from the date of filing of refund claim till its realization at the rate prescribed by this Tribunal in the case of Parle Agro Private Limited Vs. Commissioner of CGST &

Central Excise, Noida reported in 2022 (380) ELT 219 (Tri.-All.),wherein the Tribunal has held as under :

> *"**41.**In view for 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.*
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> ***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."*

14. In view of this, the appeal is disposed off.

(Pronounced in the open Court on **16.09.2025**)

(Ashok Jindal)
Member (Judicial)

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