**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**<u>MUMBAI</u>**

WEST ZONAL BENCH, MUMBAI

**Customs Appeal No. 85443 of 2019**

(Arising out of Order-in-Appeal No. 81(CRC-I)/2018 (JNCH)/Appeal-I dated 29.06.2018 passed by the Commissioner of Customs (Appeals-II), JNCH, Nhava Sheva, Mumbai-II.)

**M/s Niranjan Paints Pvt. Ltd.** ........Appellant
**4/5 Shiv Plaza, Opp. Tel. Exch.**
**LBS Road, Ghatkopar (West),**
**Mumbai – 400 086**

*VERSUS*

**Commissioner of Customs, Nhava Sheva-III** ........Respondent
**JNPT, Customs House,**
**Nhava Sheva, Raigad,**
**Maharashtra – 400 707**

**<u>APPERANCE:</u>**

Shri V.M. Doiphode, Advocate for the Appellant

Shri Manoj Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/86718/2021**

Date of Hearing: 23.08.2021
Date of Decision: 23.08.2021

This appeal is heard today and taken up for orders.

2. Factual back drop of this case, in a nutshell, is that appellant-importer had filed advance bill of entry for import of paint, varnish

and other items as well as paid duty of Rs.7,76,542/- on 19.05.2014 but before clearance of the consignment, the container caught fire and the whole consignment was destroyed in that accident. Appellant filed refund claim under Section 23 of the Customs Act, 1962 that was rejected by the Assistant Commissioner of Customs, CRC-I/NS-III/JNCH, Nhava Sheva vide Order-in-Original dated 30.03.2017 against which appellant preferred appeal before the Commissioner of Customs (Appeals-II), JNCH, Nhava Sheva, Mumbai-II. The Commissioner (Appeals) vide his above referred order dated 29.06.2018 remanded the matter back to the original adjudicating authority with his observation for consideration of refund claim after production of CRC-I evidencing remission order. Appellant questions the legality of the said order before this Tribunal.

3. During the course of hearing of this appeal learned Counsel for the appellant Mr. V.M. Doiphode submitted that in the *de novo* proceeding initiated for refund, learned Assistant Commissioner of Customs, CRC-I has sanctioned refund on 07.05.2020 of the duty amount without any order for interest in due discharge of his duty under Section 27A. Learned Counsel for the appellant submitted a judgment of Hon'ble Supreme Court reported in *2017 (51) STR 214 (SC)* in the case of *Union of India Vs. Hamdard (Waqf) Laboratories* relating to refund under the Central Excise Act to support his stand.

4. Learned Authorised Representative Mr. Manoj Kumar, Assistant Commissioner objected to such submissions on the ground that *de*

*novo* adjudication was initiated after learned Commissioner (Appeals) passed his order on 29.06.2018 for which interest for the whole period exceeding three months beyond the date of receipt of application for refund on dated 28.08.2014 is not payable.

5. Before taking a decision on the issue of payment of interest, it is imperative to have a look at Section 27A of the Customs Act, 1962, the relevant portion of which reads:-

> *"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, [2][not below 5%] and not exceeding 30% per annum as is for the time being fixed [3][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."*

6. A close reading of the said provision would reveal that date of order for refund is immaterial, since interest is to be calculated after the expiry of three months from the date of receipt of such application and there is nothing mentioned in the Section to pass a separate order for interest on refund as an order under Section 27(2) would suffice for application of interest in view of use of word "shall be paid", if the refund is made beyond three months of receipt of application for such refund. Therefore, applicant is entitled to get the applicable rate of interest on the refunded duty amount to be calculated three months after the filing of refund application on 28.08.2014. Hence the order.

## ORDER

7. The appeal is allowed in part to the extent of granting of interest on the already refunded amount, as per observation in the preceding paragraph. The consequential relief sought in the appeal memo is confined to the interest component of the refunded duty to be paid within two months by the respondent-department from the date of receipt of this order.

(Dictated & pronounced in open Court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

*Prasad*