**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**MUMBAI**

WEST ZONAL BENCH, MUMBAI

**Customs Appeal No. 85740 of 2019**

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-843/2018-19 dated 13/12/2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.)

**M/s L'Oreal India Private Ltd.** ........Appellant
**A-Wing, 8th Floor, Marathon Futurex,**
**N.M. Joshi Marg, Lower Parel,**
**Mumbai – 400 013**

*VERSUS*

**Commissioner of Customs (General), Mumbai** ........Respondent
**New Customs House,**
**Ballard Estate, Mumbai,**
**Maharashtra – 400 001**

**APPERANCE:**

Shri Srinidhi Ganeshan, Advocate for the Appellant
Shri Manoj Das, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

**FINAL ORDER NO. A/87264 / 2021**

Date of Hearing: 14.10.2021
Date of Decision: 03.12.2021

Demand for payment of interest on Customs duty levied before final assessment and its confirmation by the Commissioner (Appeals) is assailed in this appeal.

2. Fact of the case, in brief, is that during pendency of dispute before the Hon'ble Delhi High Court in Writ Petition No. 3649/2014

filed by an Association in which appellant is a member, concerning application of Notification No. 16/2013-CE prescribing Tariff value for assessment of cosmetics which were not subjected to MRP/RSP, the import of cosmetics by the appellant was provisionally assessed on execution of PD Bond and Bank guarantee for 20% of differential duty payable. Subsequently, after final order was passed by the Hon'ble High Court, appellant paid the differential duty of Customs and sought for final assessment which was not done yet but appellant was demanded interest through a letter dated 01.02.2017 issued by Appraising Officer against which appellant preferred an appeal before the Commissioner of Customs (Appeals), Mumbai-III. Commissioner (Appeals) who hold a finding that the said letter is not an appealable order under Section 128 of the Customs Act but confirmed the interest which is being assailed by appellant in this appeal.

3. I have heard submissions from both the sides. Learned Counsel Mr. Srinidhi Ganeshan for the appellant submits that without final assessment made under Section 18(3) of the Customs Act, no interest is payable and placing reliance on the judgment of Hon'ble Bombay High Court passed in the case of *CEAT Ltd. Vs. Commissioner of Central Excise & Customs, Nashik [2015 (317) ELT 192 (Bom.)*, he also argued that since duty has been paid before finalisation, no interest is payable after the final assessment, which is yet to be done.

4. On the contrary learned Authorised Representative for the Respondent-Department Mr. Manoj Das, with reference to judicial decisions reported in *AIR 1955 Bom. 113 (1954) 56* in the case of *Mohandas Issardas and Ors. Vs. A.N. Sattanathan and Ors.,* argued that since the direction in the letter which was appeal against was not an appealable order, no finding concerning applicability of interest should have been given by the Commissioner (Appeals) and such a finding as has been given by him is a mere *obiter dicta* that could not qualify as an order to be appealed before this Tribunal.

5. I have gone through the case record and noticed that nowhere in the appeal memo or in the annexed documents, the date of provisional assessment and date of release of imported goods are reflected and both parties failed to place any provision of law that dictates that interest is payable from the date of import *vis-a-vis* assessment till the date of release of goods. Further, except Section 18(3) of the Customs Act which empowers the Respondent-Department to collect interest after final assessment, no provision of law is placed before this Tribunal to hold a finding that interest can be charged for the period between the date of import and the date of release upon provisional assessment, besides the fact that the order of the Commissioner (Appeals), which is supposed to be defended by the Respondent-Department, is being disputed by the Departmental Representative without a cross appeal as the same contradicts is own finding that the letter of Appraising Officer was not an appealable/adjudication order. Moreover, the legality of findings of

the Commissioner (Appeals) that such provisional assessment was a deemed final assessment in view of dismissal of WRIT by the Hon'ble Delhi High Court is unsupported by any provision of law and apparently based on imagination/surmises. Hence the order.

ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-III in Order-in-Appeal No. MUM-CUSTM-AMP-APP-843/2018-19 dated 13/12/2018 is here by set aside.

(Order pronounced in the open court on 03.12.2021)

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

*Prasad*