CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Customs Appeal No. 86252 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1114/2018-19 dated 31.01.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Bharat Petroleum Corporation Ltd. **Appellant**
Bharat Bhavan II, 3rd Floor,
Taxation Department, 4 & 6 Currimbhoy Road,
Ballard Estate, Mumbai 400 001.

Vs.

Commissioner of Customs, ACC, Mumbai **Respondent**
Air Cargo Complex, Sahar,
Andheri (E), Mumbai 400 099.

AND

Customs Appeal No. 86253 of 2019

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1114/2018-19 dated 31.01.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Bharat Petroleum Corporation Ltd. **Appellant**
Bharat Bhavan II, 3rd Floor,
Taxation Department, 4 & 6 Currimbhoy Road,
Ballard Estate, Mumbai 400 001.

Vs.

Commissioner of Customs, ACC, Mumbai **Respondent**
Air Cargo Complex, Sahar,
Andheri (E), Mumbai 400 099.

Appearance:

Shri Kiran Chavan, Advocate, for the Appellant
Shri Bhushan Kamble, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing: 07.04.2022
Date of Decision: 07.04.2022

FINAL ORDER NO. 86311-86312/2022

These appeals are directed against the impugned order dated 31.01.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated, facts of the case are that the appellant herein had imported Analyzer System and filed Bill of Entry No. 7892547 dated 05.01.2015 before the jurisdictional Customs authorities for assessment. The appellant had paid customs duty amounting to Rs.12,14,066/- in respect of import of the said consignments. Subsequent to clearance of the goods for home consumption, the appellant had filed the application before the assessing authority, claiming refund of excess duty amount of Rs.2,52,422/-. The reason for filing of the refund claim was that they had obtained the Essentiality Certificate subsequent to clearance of the goods and since the actual duty liability was computed at Rs.9,61,644/-, the differential amount should be eligible for refund. The refund application filed by the appellant was adjudicated vide order dated 07.06.2017, wherein the original authority had rejected the same on the ground that the claim application has been filed beyond the stipulated time as provided under Section 27 of the Customs Act, 1962. On appeal against the said adjudication order, the learned Commissioner (Appeals) has also upheld the original order and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Heard both sides and perused the records.

4. Section 27 *ibid* deals with the provisions for claim of refund of any duty paid or borne by the person concerned. Sub-section (1) of Section 27 mandates that an application, claiming refund of the duty amount should be filed with the jurisdictional Customs authorities before the expiry of one year, from the date of payment of such duty or interest. The second proviso appended thereto provides that the limitation of one year shall not apply where any duty or interest amount has been paid under protest. It is an admitted fact on record that in the present case, the duty amount was paid by the appellant on 05.01.2015 and thereafter the refund application was filed before the Customs authorities on 27.04.2016. It is not the case of the appellant that the duty amount was paid by them under protest. Thus, under the unambiguous provisions of Section 27 *ibid*, the refund application has to be filed within one year from

the date of making payment of the duty amount, which has admittedly not been done by the appellant and the refund application was filed beyond such prescribed time limit. Since there is no ambiguity in the provisions of Section 27 *ibid* relating to the time limit for filing of the refund application, in my considered view, rejection of the refund application by the original authority and subsequently upheld by the learned Commissioner (Appeals) is in conformity with the statutory provisions.

5. Therefore, I do not find any merits in the appeals filed by the appellant. Accordingly the same are dismissed.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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