

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

REGIONAL BENCH - COURT NO. I

Customs Stay Application No. 85222 of 2020

In

Customs Appeal No. 85583 of 2020

(Arising out of Order-in-Appeal No. MUM-CUS-JSN-IMP-89/2019-20 dated 03.01.2020 passed by the Commissioner of Customs (Appeals), New Custom House, Mumbai Zone-I)

Commissioner of Customs, Mumbai Import-II Appellant

New Custom House, Ballard Estate,
Mumbai - 400 001.

Versus

Forever Living Imports (India) Pvt. Ltd. Respondent

501, Sharyansh Centre, 5th Floor,
Above Lijjat Papad, Opp. Bandra Railway Station,
Bandra (West), Mumbai - 400 050.

Appearance:

Shri Manoj Kumar, Authorized Representative for the Appellant
Shri T. Vishwanathan a/w Ms. Srinidhi Ganeshan, Advocates for the
Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87248/2023

Date of Hearing: 16.06.2023

Date of Decision: 15.12.2023

Per: M.M. PARTHIBAN

This appeal has been filed by the Commissioner of Customs, Import-II, New Custom House, Ballard Estate, Mumbai Customs Zone-I, Mumbai (herein after, referred to in short as 'the appellant') assailing against Order-in-Appeal No. MUM-CUS-JSN-IMP-89/2019-20 dated 03.01.2020 (referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals), Mumbai Zone-I, New Custom House, Ballard Estate, Mumbai.

2.1 Briefly stated, the facts of the case are that M/s Forever Living Imports (India) Private Limited, Mumbai (herein after, referred to as 'the respondent importer') were carrying on the business of health, nutrition and beauty products and had imported inter-alia, dietary supplements by classifying it under Customs Tariff Heading (CTH) 21.06 and paid applicable duties of Customs. In an dispute regarding payment of additional duties of Customs (CVD) upon availing concessional duty applicable vide entry at Sl. No.10(i) of notification No.02/2011-Central Excise dated 01.03.2011, the respondent importer had claimed concessional CVD of 5% for the imported dietary supplements as "Ready to Eat Packaged Food". Disputing such a claim, the department had denied the benefit of concessional CVD by initiating show cause proceedings demanding merit rate of CVD at 10%/12%, in a separate litigation, which had attained finality at the level of appellate proceedings held before the Commissioner of Customs (Appeals). As the respondent importer had initially paid the higher amount of CVD at merit rate, they had filed refund application with the department claiming refund of CVD paid over and above the concessional rate of CVD. Upon finalisation of provisional assessments in respect of such imports, the department had paid refunds to the respondent importer by sanctioning refund of Rs.3,83,54,263/- and Rs. 50,97,056/- vide order dated 05.10.2016 and order dated 30.05.2018 respectively, under Section 27 of the Customs Act, 1962. The respondent importer had represented before the AC, CRARS section claiming that the department did not pay interest on such refund, as it had been delayed beyond the prescribed period. On this, the department vide office letter dated 31.08.2018 had replied that the effective date of receipt of refund claims in respect of above said two orders begin from 30.08.2016 and 27.03.2018, and as such the refunds have been sanctioned vide the above said two orders within the stipulated period of 3 months i.e., on 05.10.2016 and 30.05.2018, respectively, and thus the interest on delayed refunds does not arise. The importer having aggrieved with the aforesaid letter dated 31.08.2018, had filed an appeal before the Commissioner of Customs (Appeals). The learned Commissioner of Customs (Appeals) had allowed the appeal filed by the importer in the impugned Order by setting aside the order of lower authority in letter dated 31.08.2018. Feeling aggrieved with the impugned order, the appellant department i.e., Commissioner of Customs had filed this appeal before the Tribunal.

2.2 In order to understand the factual matrix of the issue, whether interest is payable or not in the above dispute, it is essential that the background of facts relating to the earlier dispute regarding concessional CVD applicable on the imported dietary supplements, sanction of refunds arising from such earlier dispute are perused in detail for better appreciation of the present dispute before us. The details of the same are brought on record as follows. The importer respondent in carrying on the business of health, nutrition and beauty products had imported dietary supplements, tablets and shakes, juices, cosmetics, Aloe Vera products etc., from their parent company M/s. Aloe Vera of America Inc. USA vide 'Purchase, Warehouse and Distribution Agreement' dated 15.02.2011. The jurisdictional customs authority for Special Valuation Branch (SVB) i.e., GATT valuation cell, Commissionerate of Customs (Imports), New Custom House, Mumbai having found that *prima facie* the importer is a 100% subsidiary company of the supplier, from whom the imported goods are purchased; and as these are related party transactions, had registered the importer under a centralised DOV registration No.006769 dated 13.06.2011 for ascertaining the valuation of the imported goods in terms of the provisions of Section 14 of the Customs Act, 1962 read with the rules made thereunder, by assessing the imported goods under provisional assessment of duty under Section 18 *ibid*. Further, the importer was also asked to submit various documents along with requisite details in terms of the questionnaire prescribed by CBEC circular No.11/2011-Cus. dated 23.02.2011. In reply to the said questionnaire the importer had submitted vide their letter dated 27.06.2011, a number of documents including Trademark and Marketing Agreement; Management Service Agreement; Purchase, Warehouse and Distribution agreement dated 15.02.2011 and stated that one of the non-resident director in the importer's company is also an executive in the supplier's company. After examining the documents submitted by the importer, the Deputy Commissioner of Customs, GATT Cell, Mumbai vide Order-in-Original No. 630/DC/SVB/AK/2012-13 dated 13.09.2012 (SVB Order), had determined that the transactions between the importer and the supplier M/s. Aloe Vera of America Inc. USA are related in terms of Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; and the declared value of imported goods were enhanced in proportion to the license fees paid by the importer to the supplier for grant of exclusive rights to import and sell the patented products, which constitute as a condition of sale under

Rule 10(1)(c) *ibid*. The percentage of enhancement in declared value on account of proportionate license fees paid by importer to the supplier, for the period of April to October, 2011; November to December 2011; January to March, 2012; and April to July 2012 was determined as 1.53%; 0.75%; 0.80% and 2.39% respectively, in the said SVB order. While finalising the provisional assessment in terms of the above enhancement in declared value for the period upto 31.07.2012, it was also stated that on expiry of 3 years period in following the above method of enhancement of value in proportion to the license fees paid/payable to the supplier, and in case of no further renewal of SVB order, payment of Extra Duty Deposit (EDD) at 1% of assessable value under provisional assessment would be resorted to by the Customs Assessment Group. On the above basis, 68 provisionally assessed Bills of Entry (B/Es) were finally assessed by the Assistant Commissioner of Customs, Assessment Group-I, New Custom House, Mumbai in terms of Sub-Section (2)(a) of Section 18 *ibid*, adjusting an amount of Rs.27,62,889/- from the revenue deposit/EDD of Rs. 68,24,902/- paid by the importers and ordering refund of the balance amount of Rs.40,62,013/- to the importers by cancelling the 68 Provisional Duty (PD) bonds executed by them vide Order-in-Original dated 13.08.2013. The statement in the said SVB Order showing the calculation of assessable value after SVB loading percentage and the amount refundable after adjustment of duty payable on such enhanced value, with 1% EDP paid in respect of 68 B/Es also included 15 B/Es at Sr. No. 47, 51, 52, 53, 54, 56, 57, 58, 61, 62, 63, 64, 66, 67 & 68 which also corresponds to Bills of Entry referred to in the Order sanctioning refunds for the same 15 B/Es on account of differential CVD paid in excess i.e., over and above the concessional CVD in a separate proceedings under Sr. No. 1, 6, 9, 11, 12, 7, 10, 8, 13, 14, 15, 16, 2, 5 & 4 in the table at paragraph 4 of refund order dated 05.10.2016.

2.3 The facts of the case also reveal that in import of dietary supplements classified under CTH 2106 9099, the importers have claimed the benefit of concessional additional duties of customs (CVD) under Sl. No.10(i) notification No.02/2011-Central Excise dated 01.03.2011 applicable to "Ready to eat packaged food". The Department interpreted that dietary supplements cannot be considered as food and does not fall in the category of ready to eat packaged food, thus initiated SIIB investigation which culminated into issue of show cause proceedings

vide SCN dated 28.08.2012, which was adjudicated by an order dated 28.03.2013, denying the benefit of exemption vide Sl. No.10(i) of notification No.02/2011-C.E. dated 01.03.2011. On the above basis, an Order-in-assessment dated 29.03.2013 was issued denying the concessional CVD in the aforesaid notification. Being aggrieved with the both the above orders, the importer had filed an appeal before the Commissioner of Customs (Appeals), who after examining the legal provisions under the Food Safety and Standards Act, 2006, had passed an order holding that the imported goods of description 'dietary supplements' is "food" in terms of the definition given under clause (i) of Section 3 *ibid*. Accordingly, both the orders passed by the authorities below were annulled and the adjudicating authority was directed to determine eligibility to notification benefit after verification with regard to twin issues discussed by him i.e., whether or not the imported dietary supplements are in "ready to eat" condition and whether or not they are "packaged". On the basis of such order remanding the matter for further action by the original authority, an Order-in-Original dated 15.01.2015 was passed in respect of dietary supplements imported during the period 01.04.2011 to 31.03.2012 by the importer. In the said re-assessment order passed under Section 17 *ibid*, the original authority extended benefit of concessional CVD of 5% under Sl. No.10(i) notification No.02/2011-Central Excise dated 01.03.2011 as the imported dietary supplements undoubtedly are "Ready to Eat Packaged Food".

2.4 The importer had claimed that they had filed an application for refund of duty by letter dated 02.04.2014 which was acknowledged as received in CRARS section of the Custom House, Mumbai with the condition that 'this is not a receipt for completeness of the refund application'. The Assistant Commissioner of Customs (AC), CRARS section vide its office letter dated 11.05.2016 had requested the Deputy Commissioner of Customs (DC) in charge of Assessment Group-I, to inform whether 32 Bills of Entry (B/Es) mentioned in the list enclosed were assessed finally or otherwise and also requested to quantify the amount so that the claim for refund can be processed at the CRARS section. In reply to this, the DC, Group-I had pointed out that out of 31 B/Es, only one B/E No.6424172 dated 31.03.2012 falls within the period for which order dated 15.01.2015 have been passed extending the benefit of notification No.02/2011-Central Excise dated 01.03.2011; rest of 30 B/Es is in respect of the period 17.05.2012 to 18.02.2013. For this

reason and inasmuch as the issue of classification was not the subject matter of the said order dated 15.01.2015, he expressed that the Assessment Group may not be able to finalise the said 31 B/Es. However, subsequently the next incumbent AC, Group-I vide letter dated 01.08.2016 had re-assessed finally the 28 B/Es extending the concessional CVD of 6% as against the duty initially paid at 12%, resulting into a total refundable amount of Rs.3,83,54,263/-. It is also stated by him that in respect of 2 B/Es viz., 9338974 & 9338978 both dated 18.02.2013 due to some technical problem in the system, re-assessment could not be completed. Later, the next AC, Group-I vide letter dated 27.03.2018 had re-assessed finally this remaining 2 B/Es viz., 9338974 & 9338978 both dated 18.02.2013. On the basis of the above facts, and after examining requisite compliances under Section 27 *ibid*, the DC, CRARS section had sanctioned the refund of Rs.3,83,54,263/- and Rs. 50,97,056/- vide order dated 05.10.2016 and order dated 30.05.2018, respectively. The aforesaid refund was also received by the importer on 17.10.2016 and 05.06.2018, respectively. As the importer's claim for interest on delayed payment of refund had not been considered in the aforesaid 2 orders, they had taken up the matter with AC, CRARS section and subsequently in appeal before the Commissioner of Customs (Appeals), whose order has been appealed by the department in the present appeal before us.

3.1 Learned Advocate appearing for the appellants had submitted that the respondent importer's claim for interest on delayed refund is governed under Section 27A of the Customs Act, 1962 and not under Section 18 *ibid*, because on the date of applying for refund on 08.04.2014, all the 30 B/Es were finally assessed. Therefore, the basis of the appellant department's appeal is incorrect and he claimed that the appeal is liable to be dismissed. On behalf of respondent importer, Shri.Pravin Bhelkar, Director had filed a written affidavit dated 27.06.2023 reconfirming the same details submitted by him earlier on 07.02.2020 before this Tribunal. The said affidavit filed on 27.06.2023 reconfirming the same details submitted by him earlier on 07.02.2020 before this Tribunal. The said affidavit filed on 27.06.2023, duly deposed before the Notary Public, states that there are in total 30 B/Es covering the period 31.03.2012 to 18.02.2013, for which they have claimed interest on delayed refund. The chronological details of the case for claiming interest on refunds already sanctioned to them was submitted

by the respondent importer in a tabular format. The gist of relevant entries is as given below:

Sl. No.	Date/Period	Particulars in gist
1.	(Period-I) 01.04.2011 to 31.03.2012	Imported goods in 30 B/Es were cleared claiming the benefit of concessional CVD under notification No.02/2011-CE dt.01.03.2011. Respondent importer only paid concessional CVD
2.	(Period-II) 31.03.2012 to 13.09.2012	Imported goods in 16 B/Es were not allowed for clearance under concessional CVD, as the Department denied benefit of exemption provided in notification No.02/2011-CE dt.01.03.2011. 16 B/Es were provisionally assessed for SVB purposes.
3.	(Period-III) 13.09.2012 to 18.02.2013	Imported goods in 14 B/Es were not allowed benefit of exemption provided in notification No.02/2011-CE dt.01.03.2011 by the Department. 16 B/Es were finally assessed as SVB Order dt.13.09.2012, had already been issued.
4.	28.08.2012	SCN was issued for imports made during period-I, proposing to deny the conditional CVD extended in respect of goods imported by them.
5.	28.03.2013	Order-in-Original was passed confirming the proposals made in the SCN dated 28.08.2012.
6.	29.03.2013	Assessment orders were passed for 3 B/Es denying the benefit of conditional CVD, which are not part of the present dispute
7.	09.10.2014	Commissioner (Appeals) held that the imported goods are 'food' and remanded both the appeals against order dated 28.03.2013 & 29.03.2013 to the lower authority for examining the issues, as these are not examined earlier.
8.	15.01.2015	Order passed by original authority i.e., Assistant Commissioner of Customs, Appraising Group-I for assessment of goods, holding that the imported goods are 'ready to eat packaged food' and are thus eligible for concessional CVD.
9.	08.04.2014	Respondent importer submitted refund claim of excess CVD paid for imports undertaken in period-II (16 B/Es) and period-III (14 B/Es) amounting to Rs.4,34,51,319/- (though the refund application mentioned 31 B/Es, as 1 B/E is pertaining to JNCH, it does not form part of the present proceedings)
10.	25.03.2016 & 30.03.2016	Respondent importer re-submitted documents pertaining to the refund claim as the Department could not trace the original file
11.	02.05.2016	Representation for re-assessment of B/Es in accordance with the principle laid down by the Commissioner of Customs (Appeals) in his order dt.09.10.2014
12.	17.06.2014	Respondent importer requested the Assessing Group for finalisation of 30 B/Es.
13.	05.10.2016	Refund of Rs.3,83,54,263/- in respect of 28 B/Es was sanctioned
14.	17.10.2016	Amount of refund Rs.3,83,54,263/- was received by the respondent importer
15.	30.05.2018	Refund of Rs.50,97,056/- in respect of 2 B/Es was sanctioned

Sl. No.	Date/Period	Particulars in gist
16.	05.06.2018	Amount of refund Rs. 50,97,056/- was received by the respondent importer
17.	19.06.2018	Respondent importer requested for payment of interest on the refund granted by the Department
18.	02.07.2018	Personal hearing was granted to the respondent importer
19.	12.07.2018	Respondent justified its claim for interest
20.	29.08.2018	Reminder letter for grant of interest sent by the respondent
21.	31.08.2018	Department rejected the claim for interest on the refund sanctioned
22.	09.01.2020	Appeal filed by the respondent was disposed by Commissioner (Appeals) holding that interest for the period starting from the expiry of 3 months from the date of filing of refund claim is payable
23.	24.06.2020	Department filed an appeal before the Tribunal

3.2 Further, the respondent importer had also stated in the said affidavit that the following details submitted by the appellant Department are incorrect:

- (i) All 30 B/Es were provisionally assessed;
- (ii) The assessment of 28 B/Es was finalized on 01.08.2016
- (iii) The assessment of 2 B/Es was finalized on 27.03.2018
- (iv) The refund was sanctioned within 3 months of the finalization of the assessment.

He further submitted that out of 30 B/Es, 14 B/Es were assessed finally at the initial stage itself and the remaining 16 B/Es were initially assessed provisionally, owing to SVB proceedings. However, these assessments were subsequently finalized on 10.05.2013, pursuant to the SVB Order dt. 13.09.2012. He stated that this is evident from the endorsements of the date of finalization on the B/Es, as well as from Order dated 13.08.2013 which also confirmed the finalization of assessment of 68 B/Es, which included 16 of the present B/Es in dispute. Thus, the contention of the Appellant department, that the assessments were finalized only in 2016 and 2018, and refund was sanctioned within 3 months of the same, is incorrect. The Respondent's claim for interest is governed under Section 27A of the Customs Act and not under Section 18, because on the date of applying for refund in 2014, all the 30 B/Es were finally assessed. Therefore, learned Advocate stated that the basis on which the Appellant department has filed their appeal is incorrect and thus it must be dismissed.

3.3 It is also submitted by the learned Advocate that the letters filed by the respondent in 2016 seeking "finalization" of assessments were letters requesting for reassessment to reflect the benefit of exemption

notification No. 2/2011-C.E. He also stated that when the refund application was filed on 08.04.2014, all 30 B/Es concerned had already been finally assessed. The letters filed by the Respondent in 2016 merely sought the reassessment of the B/Es to reflect the benefit of exemption Notification No. 2/2001-C.E., so that refund is granted at the earliest. These letters cannot be relied upon to state that assessments were provisional when the refund application was filed.

3.4 He also stated that as evident from the Copies of the B/Es, the assessments were either final at the time of import itself, or were finalized on 10.05.2013. Once the B/Es are finalized, the same cannot be finalized again. Given the same, the Respondent's letters filed post filing of the refund application must merely be treated as letters seeking early reassessment and grant of refund. Reassessment must not be confused with finalization of provisional assessment. Finalization of provisional assessment (if applicable) took place on 2013 itself. Thus, the Respondent is rightly entitled for interest on the refund sanctioned. In light of the above, it is submitted by the learned Advocate that the Order of the Commissioner (Appeals) should be upheld.

4.1 Learned Authorized Representative (AR) appearing for the Appellant department had reiterated the grounds made in the appeal and stated that the impugned order has not taken into account the facts with respect of refund claims filed by the respondent importer and have been passed on the basis of incorrect details. The impugned order has failed to take note of the fact about the correct dates of submission of refund claim, inasmuch as the respondent importer submitted complete details in respect of the refunds claims filed by them only on 30.08.2016 for refund sanctioned in order dated 06.10.2016, and only on 27.04.2018 in respect of refund sanctioned in order dated 30.05.2018. Thus on this ground alone, the impugned order is liable to be set aside.

4.2 Learned AR further submitted that in the instant matter, one of the lapses involved is that for the importation of goods made by respondent importer relating to the period 30.03.2012 to 12.02.2013 under 30 B/Es, the decision taken during previous period 01.04.2011 to 31.03.2012, in Order-in-Original dated 15.01.2015 was claimed as a basis for settling the issue of the eligibility to concessional CVD and for extending such benefit, thus claiming refund of higher duty paid and the interest claimed on account of delayed refund. Learned AR reiterated the Revenue's

submission that 30 B/Es were provisionally assessed and the respondent importer paid the merit rate of CVD provisionally. Though some of these B/Es, whose provisional assessment were finalised for valuation aspect in respect of SVB angle on the basis SVB order vide assessment order dated 13.09.2012, these B/Es along with other B/Es not connected with the said SVB order were finally assessed by the Appraising Group and sent to CRARS seeking for refund in respect of 28 B/Es on 01.08.2016 & 2 B/Es on 27.03.2018. Hence, learned AR stated that in the light of the order passed by this Tribunal in the case of *Commissioner of Central Excise & Customs , Nashik Vs. Motor Industries Co. Ltd.* reported in 2010 (261) E.L.T. 668 (Tri.-Mumbai), the question of refund would arise only after the final assessment of these B/Es. The relevant date in the instant the matter was submitted by him in the format as given below:

Period of import	From 30.03.2012 to 18.02.2013
Finalisation of assessment in respect of 28 B/Es	01.08.2016
Date of sanction of refund in respect of 28 B/Es	05.10.2016
Finalisation of assessment in respect of 2 B/Es	27.03.2018
Date of sanction of refund in respect of 2 B/Es	30.05.2018

On the above basis, the learned AR submitted that the refunds were sanctioned within the period of 3 months from the date of final assessment as prescribed under Section 18(4) *ibid.* He further submitted that even if the date is to be reckoned under Section 27, the period of limitation for filing refund application is to be computed from the date of final assessment or re-assessment only under Section 27 (1B)(c) *ibid.* In this case, no refund application was filed after final assessment, but the refund was granted within 3 months from the date of final assessment as per the provisions of sub-section (2) and (4) of section 18 of the Act. The Learned AR also vehemently argued that the respondent importer's eligibility to concessional CVD is first decided by the Commissioner (Appeals) in part, vide order 09.10.2014 by way of remand to Lower Authority for examination of twin issues and the Original Authority extended concessional CVD benefit by an Order-in-Original dated 15.01.2015. Hence, he stated that the claim of the respondent importer that refund application dated 08.04.2014 is for refund of duty paid in excess of concessional CVD is misplaced. The said refund is only in respect of refund of Extra Duty Deposit payable to them after adjustment

of SVB loading, as evidential from paragraph 3 of the refund application letter received on 08.04.2014. Furthermore, he stated that the appellate authority had failed to assess the eligibility for refund claim in the instant case considering the status of bill of entry and the eligibility of refund which was ascertainable only after finalisation of provisional assessment. Thus, they claimed that the Revenue's appeal is maintainable.

5. Heard both sides and perused the case records. We have also considered the additional written submissions given in the form of paper books by learned Advocates for the respondent as well as Authorised Representative for the Revenue.

6. In the present appeal before us, the short question for decision before us is as follows:

(i) whether interest is payable by the department to the respondent importer, in respect of refunds sanctioned to them for an amount of Rs.3,83,54,263/- paid on 05.10.2016 and Rs.50,97,056/- paid on 30.05.2018; and

(ii) If the interest is payable in the above case, then for what duration/period such interest is payable to the respondent importer.

In the appeal papers filed by the Revenue, they had sought relief on the ground that the refund claims arising in the instant case is only on account of finalization of provision of assessments of 30 B/Es, and that the complete details in respect of the refund claims were submitted by the respondent importer at later stage as recorded in the respective order-in-original sanctioning refund and not at the initial date of filing of refund claim on 08.04.2014. Further, Revenue also contended that the order passed by the learned Commissioner of Customs (Appeals) in the impugned Order dated 03.01.2020 is factually incorrect in allowing the claim of interest to be paid in respect of the delayed refunds, by applying the provisions of Section 27A *ibid* and on the basis of incorrect details.

7.1 Firstly, on the factual matrix of the case, we would like to refer the impugned order of the learned Commissioner of Customs (Appeals) in allowing the appeal filed by the importer in Order-in-Appeal No. MUM-CUS-JSN-IMP-89/2019-20 dated 03.01.2020. The relevant portion of the said order dated 03.01.2020 is given below, for ease of reference:

"7.4. Further, I observe that the refund in the instant case had arisen after the Commissioner (Appeals) vide OIA No.MUM-CUSTM-SMP-67-68/2014-15 dated 09.10.2014, had allowed the concessional notification benefits to the appellant. After the acceptance of the OIA on 19.11.2014,

an Order-in-Original No. CAO/1213/AC/PK/2014-15 dated 15.01.2015 was also passed to settle the issue that concessional rate of CVD under the said notification must be extended to the goods dietary supplements as they are "ready to a packaged food". I find when the notification benefits were allowed by the appellate authority and further the issue was settled by passing an order, the date of the order of the appellate authority automatically becomes the date of receipt of the refund application as per explanation to Section 27A of the Customs Act, 1962, which is stated as under:

"Section 27A. Interest on delayed refunds. -

Explanation . - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal 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."

7.5. I find that though the refund claim was filed on 08.04.2014, but it was sanctioned and the appellate authority decided the issue in favour of the appellant on 09.10.2014 vide OIA No.MUM-CUSTOM-SMP-67-68/2014-15. Further, the interest under section 27 of the Customs Act, 1962 is admissible from the date immediately after the expiry of three months from the filing of refund claim.

8. In view of the above, I set aside the Order in letter F. No. 25/Prov/CRARS/2016-17 dated 31.08.2018 passed by the Assistant Commissioner of Customs, CRARS (I), NCH, Mumbai as far as it rejects the interest claim of the appellant and allow the appeal in above terms."

7.2 From the plain reading of aforesaid operative portion of the impugned order at paragraph 7.4, it is seen that the facts have been misplaced to the extent that Order-in-Appeal (OIA) No.MUM-CUSTOM-SMP-67-68/ 2014-15 dated 09.10.2014 did not extend the concessional benefit of CVD on the imported dietary supplements, but only held that the imported dietary supplements are 'food'. In fact, the said OIA directed the original adjudicating authority to determine the eligibility to the said notification benefit after necessary verification with regard to the twin issues discussed in that order viz., (i) the goods should be ready to eat (ii) the goods should be packaged. The relevant paragraph of the said OIA dated 09.10.2014, is extracted below:

"10. On perusal of findings reproduced above, it is observed that the adjudicating authority has denied the benefit of notification based entirely on his erroneous conclusion that the said goods imported by the appellants do not fall in category of foods. The factual position concerning other two aspects – whether or not the said dietary supplements are in "ready to eat" condition and whether or not they are "packaged" – has not at all been examined. As a result, there are no findings and therefore no dispute concerning these two aspects in matters before me.

*11. In view of the above, the goods described as "dietary supplements" are held to be food. The impugned orders are annulled and the **adjudicating authority is directed to determine eligibility to notification benefit after necessary verification with regard to the twin issues discussed above.**"*

(Emphasis supplied)

Hence, we find that the impugned order is factually incorrect in stating that notification benefits were allowed by the appellate authority.

7.3 Further, the issue of extending the concessional CVD of 5% under Sl. No.10(i) notification No.02/2011-Central Excise dated 01.03.2011 in respect of the imported dietary supplements, was passed by the original authority in terms of Section 17 of the Customs Act, 1962. The operative portion of the said order dated 15.01.2015 is extracted below:

"ORDER

26. I order that the concessional CVD at 5% under Notfn. No.02/2011-C.E. under Serial No.10(i) must be extended to the goods dietary supplements under Section 17 of the Customs Act, 1962 as they undoubtedly are 'Ready to Eat Packaged Food'."

Inasmuch as the aforesaid order, in finally extending the benefit of concessional CVD, does not fall within the category of an order passed under sub-section (2) to Section 27 *ibid*, it is clear that the finding of the Commissioner of Customs (Appeals) stating the date of the order of the appellate authority automatically becomes the date of receipt of the refund application as per explanation to Section 27A, is factually incorrect. In other words, the aforesaid order is an assessment order issued under Section 17 *ibid*, and is not refund order passed under Section 27(2) *ibid*, for applying the provisions of Section 27A *ibid*, for grant of interest. Thus, we find that on this aspect also, the impugned order is factually incorrect.

8.1 Further, in order to examine the various legal points raised by the Revenue in the appeal, and the counter arguments submitted by the learned Advocate for the respondent importer, we find that it is necessary to peruse the legal provisions of section 17, 18 and 27, 27A of the Customs Act, 1962 and Rules/Regulations made thereunder as well as the factual matrix of the case. The relevant legal provisions of the Customs Act, 1962, are extracted below:

"Section 27A. Interest on delayed refunds. -

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 percent. and not exceeding thirty percent 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 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, National Tax Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal 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.

Section 27. Claim for refund of duty. -

(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:

PROVIDED that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

PROVIDED further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

PROVIDED also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.

Explanation. - For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence including the documents referred to in section 28C as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

PROVIDED that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

(g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where-

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

PROVIDED FURTHER that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

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Customs Refund Application (Form) Regulations, 1995:**2. Form and manner of filing application for refund.-**

(1) An application for refund shall be made in the prescribed Form appended to these regulations in duplicate to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, having jurisdiction over the Customs port, Customs airport, land customs station or the warehouse where the duty of customs was paid.

(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.

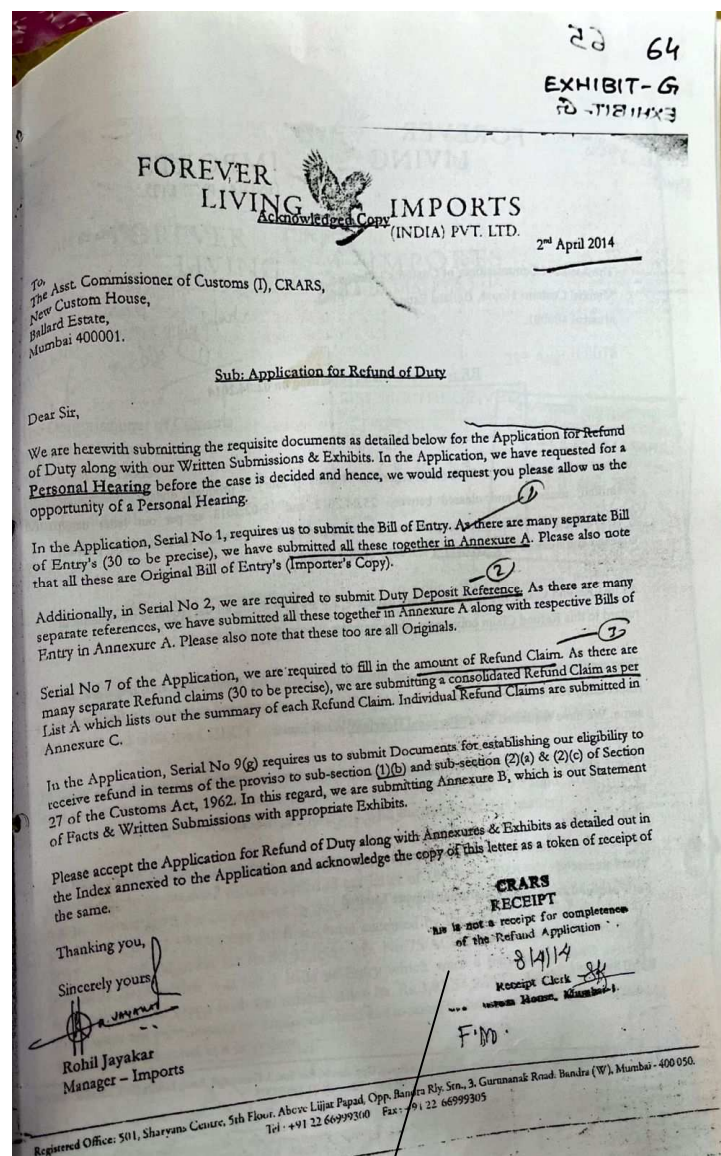
(3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies, for scrutiny.

Explanation. - For the purposes of payment of interest under section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Officer, has been made.

8.2 Legal provisions of Section 27(1) *ibid*, deal with the claim for refund of duty and interest. As provided therein, refund of duty and interest can be claimed either by a person who has paid the duty in pursuance to an order of assessment or a person who has borne the duty. In the present case, since the importer respondent has paid the duty and claimed the refund of excess duty paid, he is required to file a refund application along with such documentary or other evidence including the documents evidencing the grounds on which refund has been claimed. The form and manner of refund application which is required to be filed has been prescribed in the Customs Refund Application (Form) Regulations, 1995. It has also been made abundantly clear in these legal provisions by a specific '*Explanation*' clause that for the purposes of payment of interest under section 27A *ibid*, the refund application shall be deemed to have been received only on the date on which a complete application is filed by the applicant.

8.3 In the context of the above legal provisions, we proceed examine the factual matrix of the case for deciding whether interest is payable or not, in the case before us. Documents placed in this case, reflect that the refund application was claimed to have been filed by the importer respondent vide their letter dated 02.04.2014 which is stamped with receipt seal of CRARS section of the New Custom House, Mumbai dated 08.04.2014. It is also a fact evident from the record that importer

respondent vide their letter of 25.03.2016 addressed to Assistant Commissioner of Customs, CRARS section, Mumbai Custom House had stated that the refund application filed by them in respect of 31 B/Es during the period 25.04.2012 to 19.02.2013 is presently not traceable, and thus they are submitting all the requisite documents in regard to that refund claim once again, along with their written submissions. In order to examine the factual position, we had scanned and placed below the respondent importer's refund letter dated 02.04.2014.



**CRARS
RECEIPT**

*This is not a receipt for completeness
of the Refund Application
08/04/2014
Receipt Clerk (sd./)
New Custom House, Mumbai-1*

Perusal of the above letter of the importer respondent dated 02.04.2014 reveals that it was received in CRARS Section on 08.04.2014, and it is

titled on the subject of 'Application for Refund of Duty.' The said letter mentions at paragraph 2 that as per Application Serial No. 1, they are submitting 30 B/Es in original copy/importer's copy as Annexure-A. Further, in paragraph 3 of the refund letter, the respondent importer, as an applicant to the refunds who is required to submit 'Duly Deposit Reference' have furnished the said details in Serial No. 2, as documents in original. Furthermore, in paragraph 4 of the said letter the respondent importer had also stated that against serial no.7 of the application for indicating the amount of Refund claim, they had mentioned that they are submitting a consolidated refund claim and individual refund claim details has been given in Annexure-C. As the original application for refund in the letter dated 02.04.2014 and the evidential documents were not available with the respondent importer as well as the department, the copy of the same were submitted as notarized annexure by learned Advocate for the importer vide his letter dated 29.06.2023.

8.4 It is also intriguing to know the factual position as to how the respondent importer had filed the refund application, allegedly filed for refund of excess CVD paid by the respondent importer, along with all evidencing documents vide their letter dated 02.04.2014 received in CRARS Section 08.04.2014, when the Order-in-Appeal dated 09.10.2014 and the final assessment order dated 15.01.2015 granting the benefit of concessional CVD itself has been issued subsequent to such filing of refund claim. In this regard we find from the notarized additional documents submitted by the respondent importer, which *inter-alia* contained the "Application for Refund of Duty/Interest". Part 'A' is of three pages. The scanned copy of the said application for refund is placed below extract.

7/1

APPLICATION FOR REFUND OF DUTY / INTEREST

PART - A

To

The Assistant Commissioner of Customs,
Group I, New Custom House,
Ballard Estate, Mumbai - 400 038.

I/We wish to lodge this claim for refund of customs duty / interest which has been paid in excess by me / us as per details given below:

1. Import / Export document (Bill of Entry, Shipping Bill etc.) / Purchase-Invoice Number & Date

As per List A

2. Duty Deposit reference (Cash No./ Deposit No.) & Date

As per List B

3. Description of goods

As per List C
Ready to Eat Packaged Food Product of CTH 2106

4. Name & Address of the

a. Importer

Forever Living Imports (India) Private Limited
307-310 Guruvadya CHS Ltd., 98A Hill Road,
Bandra West, Mumbai 400050

b. Customs House Agent

Eastern Clearing & Forwarding Agency
Miha Mansion, 2nd floor, Opp. Fort Market,
319 S. B. Singh Road, Mumbai 400001

c. Applicant

Forever Living Imports (India) Private Limited
501, Sharyans Centre, 5th floor, Above Lijad Papad,
Opp. Bandra Railway Station, 3, Gurunank Road,
Bandra West, Mumbai 400050

5. Refund Claim under

Sec 27 (1) (a) / Sec 27 (1) (b) & Sec 27 (2) (a) & (c) of the Act

6. Grounds of Claim
(Specify with details whether the claim is on account of reassessment of rates of duty / valuation / shortage short-landing, pilferage, appellate order, arithmetical / clerical error, any other ground specify)

1) By mistake of Law
2) Contravention of Article 265 of the Constitution
3) In Accordance with Section 72 of the Contract Act
4) In accordance with Settled Law

7. Amount of refund claim

Rs. 4,46,48,538/-
Rupees Four Crores Forty Six Lakhs Forty Eight Thousand Five Hundred Thirty Eight Only

8. Amount of Modvat credit availed of from the additional duty of customs paid and now covered by the refund claim

N.A.

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Enclosures (in original) in support of refund claim

a. Letter of authorisation from the importer / buyer in case the applicant is an agent.

☐ N.A.

b. Triplicate copy of Bill of Entry / Post-paid-Weigher/Shipping Bill/Baggage-receipt or the Purchase-Invoice.

☒ Annexure A - Originals Enclosed (Importers Copy)

c. Duty Challan / Other Document as evidence of duty payment.

☒ Annexure B - Originals Enclosed

d. Signed working sheet for the amount of refund claimed.

☒ Annexure C

e. Customs attested invoice

☒ Annexure A

f. Customs attested packing list

☒ Annexure A

g. Documents for establishing the applicant's eligibility to receive the refund amount in terms of the proviso to sub section (2) of Sec 27 of the Act, and documents for the purposes of Sec 28C & 28D of the Act.

☒ Annexure D - Statement of Facts & Written Submissions

h. Contract and Purchase Order

☐ N.A.

i. Modvat credit certificate from Central Excise authorities

☐ N.A.

j. Order in Original / in revision / in Appeal / any other Order

☐ N.A.

k. Short Delivery Certificate from Custodian.

☐ N.A.

l. Short Shipment Certificate from Supplier.

☐ N.A.

m. Survey Report

☐ N.A.

n. Insurance claim settlement certificate

☐ N.A.

o. Catalogue / Technical write-up / Literature

☐ N.A.

p. Bills for Freight / Insurance / Other Charges

☐ N.A.

q. Certificate of Origin

☐ N.A.

r. Any other document considered necessary in support of the claim (specify)

☐ N.A.

s. Total number of documents enclosed

4 (Four)

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Any further details deemed necessary and relevant to the refund claim : N.A.

11. Whether any other refund claim filed/pending against the same Import/Export document (Bill of Entry, Shipping Bill etc) if yes, give details : Yes / No

12. Whether personal hearing required or not before the case is decided : Yes / No

13. a) Whether the duty has been paid under protest : Yes / No

b) If yes, Custom House protest registration no. : N.A.

DECLARATION

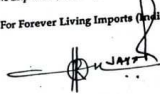
I/We Forever Living Imports (India) Private Limited hereby declare that :-

a) the contents of the refund claim as per form above are true and correct to the best of my / our information and belief.

b) the amount and the ground for which this refund claim has been filed has not been previously claimed and paid, and

c) the excess duty claimed as refund has not been passed on to any other person by the importer / the buyer.

For Forever Living Imports (India) Private Limited


Signature of the Applicant

Date : 10th January 2014



8.5 From the plain reading of the above application, it transpires that even though for Sr. No. 1, the details have been provided as List-A, containing Bills of Entry and similarly for Sr. No.2 the Duty Deposit reference has been given as List-B. The amount of refund claim is indicated as Rs.4,46,48,538/- on the grounds that it is (1) by mistake of law; (2) contravention of Article 265 of the Constitution; (3) in accordance with Section 72 of the Contract Act; and (4) in accordance with Settled Law. Even though by calculation of the total amount of actual refunds sanctioned later for Rs.3,83,54,263/- (for 28 B/Es) and Rs.50,97,056/- (for 2 B/Es), and the one B/E relating to JNCH, Nhava Sheva which is under different Customs Jurisdiction for Rs.11,97,219/- (1B/E), we are able to understand that the total amount could have been indicated as Rs.4,46,48,538/-, however, we are unable to be convinced about the fact that how the said application dated 10.01.2014 submitted to "The Assistant Commissioner of Customs, Group-I, New Custom House, Ballard Estate, Mumbai-400 038" can be taken as a part of the refund application submitted much later on 08.04.2014, that too addressed to a different authority viz. "The Assistant Commissioner of Customs (I), CRARS, New Custom House, Ballard Estate, Mumbai-400

001.” Thus, we find that on these facts also the said refund application vide letter dated 02.04.2014 submitted by the respondent importer cannot be taken as the refund application with complete documents evidencing that they are eligible to make a claim for refund of excess CVD paid in respect of imported dietary supplements/ready to eat packaged food, i.e., CVD paid over and above the concessional CVD available under Sr. No. 10(i) of the Notification No. 02/2011-C.E. dated 01.03.2011, in terms of Section 27 *ibid*.

8.6 Furthermore, it is not the question of unconstitutional levy as contemplated in the jurisprudence and the refund claimed on account of certain exemption provided through a notification which was not extended, would not amount to unconstitutionality. The Hon’ble Supreme Court had clearly held in the nine judges Bench decision in the case of *Mafatlal Industries Ltd. Vs. Union of India*- 1997(89) E.L.T. (S.C.), about what constitutes unconstitutional levy and about the nature of cases for which Section 72 of the Customs Act would apply. The extent of the relevant paragraph of the above judgment is given below.

“112. I perused the draft judgment prepared by my learned brother Jeevan Reddy, J. wherein on the main question, he has held that if the person claiming the refund has passed on the burden of duty to another and has not really suffered any loss or prejudice, there is no question of reimbursing him and he cannot successfully sustain an action for restitution, based on Section 72 of the Indian Contract Act. With great respect, I fully concur with the aforesaid conclusion of my learned brother.”

Further, in the case of the *SRF Ltd. Vs. Assistant Collector of C. EX., Trichy* reported in 2001 (134) E.L.T 324 (S.C.), it was held by the Hon’ble Supreme Court that refund claimed in that case on the ground that it is not ‘goods’ within the meaning of Central Excise Act, 1944 is not a case of unconstitutional levy. The relevant paragraphs of the said judgment is extracted and given below:

“4. The respondent issued to the appellant a show cause notice dated January 6, 1992 calling upon it to show cause why the amount of refund claimed by the appellant should not be credited to the consumer welfare fund in terms of Section 11B read with Section 12C. The appellant filed a reply to the show cause notice. The respondent, however, by order dated March 25, 1994 directed that the sum of Rs. 5,41,499/- be credited to the consumer welfare fund under Section 12C of the Act. This order was challenged by the appellant by filing a writ petition in the High Court which was dismissed by the judgment and order under appeal.

5. *The questions involved in the appeal are no more res integra after the decision of nine judges' bench in Mafatlal Industries Ltd. & Ors. v. Union of India & Ors., [(1997) 5 SCC 536]. Learned Counsel for the appellant has, however, contended that the present case was outside the provisions of the Act as the RF solution was not 'goods' within the meaning of the Act that having been finally decided in appellant's favour in terms of the order of the Tribunal dated September 25, 1990, and, therefore, the receipt and retention of the amount of the excise duty was totally without the authority of law and without jurisdiction. Such a claim of refund, it was contended, can be entertained as held in Mafatlal Industries case in paragraph 108(ii) in the following words :*

"Where, however, a refund is claimed on the ground that the provision of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition."

6. *For more than one reason we find it difficult to accept the contention. Firstly the present is not a case of an unconstitutional levy as contemplated by the nine judges' bench decision. That is where a provision of the Act under which tax is levied is struck down as unconstitutional for transgressing constitutional limitations. It is this class of cases where the claim for refund was held to be outside the purview of the Act which for sake of convenience it was called as 'unconstitutional levy' in Mafatlal Industries case.*

7. *Secondly, assuming it to be a case of unconstitutional levy still the appellant would not be entitled to refund in terms of law settled by the Mafatlal Industries, case. Even in that eventuality it has to be established that incidence of duty has not been passed on to others. It has been held that whether the claim for restitution is treated as a constitutional imperative or as a statutory requirement, it is neither an absolute right nor an unconditional obligation but is subject to the requirement that the burden of duty has not been passed on to others. It was not submitted before us that this requirement had been fulfilled by the appellant. Thus looking from any angle, the appellant is not entitled to refund."*

The above discussion clearly brings to the conclusion that the refund claims filed by the respondent importer on 08.01.2014 is not proper from the angle of completion of documents. Further, such refund claim is also pre-mature in nature, as the assessment finally providing the concessional CVD was extended to the impugned goods on the basis of earlier decision passed in order dated 15.01.2015, by finally assessing the 28 B/Es on 27.03.2018. Further, the angle of unjust enrichment in respect of such refund claims was also examined after the respondent importer submitted additional documents on 30.08.2016. Similarly, in the case of other 2 B/Es, the additional documents were submitted on 27.03.2018 and on 27.04.2018 for completing the submission of proper refund claim. Thus, from these factual evidence also it can be concluded that there is no case of delayed payment of refunds in this case.

8.7 We further find that the refund order dated 05.10.2016 sanctioning refund in respect of 28 B/Es out of the total 30 B/Es, has mentioned that the agreements entered into between the supplier abroad & importer respondent and that between the importer & it's distributor, sale invoices of the subject goods were submitted on 30.08.2016. Upon analysis of such documents submitted by the importer respondent, the original authority had come to the conclusion that the burden of differential CVD paid by the importer respondent was not passed on to any other person, and thus the refund of duty paid in excess, are eligible to be paid to the importer respondent. These specific facts in respect of the refund application, dealt by it before sanction of refund clearly prove that the complete documents in respect of the refund claim was submitted by the importer respondent only on 30.08.2016. The extract of the relevant paragraphs of the order dated 05.10.2016 are as follows:

"13. From the record, I find that similar imports of the importer during the period between 01.04.2011 to 31.03.2012 which were assessed by providing the notification benefit, were ordered to be investigated by SIIB(I). This case was adjudicated vide Order-in-Original No.1168/AC/PC/2012-13 Dtd. 28.03.2013 wherein the importer was ordered to pay differential duty of Rs. 2,52,78,106/- with interest. However, the importer got relief from Commissioner of Customs (Appeals) where vide Order-in-Appeal No.MUM-CUSTOM-SMP-67-68/14-15 Dated 09.10.2014, the appellate authority extended the benefit of above notification. The order-in-appeal was accepted by the Committee of Commissioners on 19.11.2014. The findings of the Commissioner of Customs (Appeals) were reiterated in a subsequent Order-in-Original No.CAO/1213/AC/PK/2014-15 Dtd.15.01.2015 ordering that concessional rate of CVD under Not. No. 002/2011 under Sl. No. 10(i) must be extended to the goods.

14. I have perused CA certificate from M/s Mohammad Y. Wagh, Membership No.105935 on unjust enrichment.....

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*17. To examine above claims and explanations by the CA, the copies of **agreements between the supplier and importer and that between the importer and distributor and sale invoices of the subject goods were called for and the same were submitted on 30.08.2016.** The agreements were found to be in force when the imports were undertaken against subject B/Es.*

18. I find that the agreement dated 15.02.2011 between the supplier M/s Aloe Vera of America Inc.(AVA) and M/s Forever Living Imports (India) Pvt. Ltd. (FLII) states that the prices for FLP (tradenname) products will be agreed to between the parties from time to time. A Memo dated 15.02.2011 issued and signed by AVA and received by FLLI it is also submitted along with agreement stating that in consideration of grant of rights as defined in the agreement dated 15.02.2011, the Suggested Retail Price (SRP) for the products to be sold by the FLLI will be as listed out in the pricelist attached to the Memo. The CA in their Certificate has explained that the Suggested

Retail Price (SRP) provided by AVA for its products in actuality is the Maximum Retail Price (MRP) which is paid by the end user. The Memo covers items imported vide subject B/Es.

19. Likewise, the agreement dated 25/03/2011 between the importer M/s Forever Living Imports (India) Pvt. Ltd. (FLII) and Distributor M/s Forever Living Trading (India) Pvt. Ltd. (FLTI) states that the prices for the FLP products will be agreed to between parties from time to time.

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24. From the above discussion and facts, I find that the importer has not passed on the burden of the extra CVD to others and therefore fulfills the requirements of principles of unjust enrichment and that if refund is granted, will not be enriched unjustly.

25. I find therefore the party has met all requirements of section 27 of Customs Act and seems to be eligible for refund as claimed by them.”
(Emphasis Supplied)

8.8 Similarly, we also find that the refund order dated 30.05.2018 sanctioning refund in respect of remaining 2 B/Es out of the total 30 B/Es, have mentioned the following specific facts in respect of the refund application dealt by it. Additionally, in the refund relating to two B/Es, the importer respondent had supplied the indemnity bond as prescribed only on 27.04.2018. The extract of the relevant paragraphs in the said order are as follows:

“16. I find that as the B/Es were provisionally assessed and now vide letter F.No.S/26-Misc.-15/2016-17 Gr.-I dated 27.03.2018, AC/Gr-I has informed that the 02 Bills of Entry No.9338974 and 9338978 both dated 18.02.2013 which were not finally assessed due to system error (para 12 of O-in-O) are now assessed finally i.e. on 27.03.2018.

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*22. To examine above claims and explanations by the CA, the copies of **agreements between the supplier and importer and that between the importer and distributor and sale invoices of the subject goods were called for and the same were submitted on 30.08.2016.** The agreements were found to be in force when the imports were undertaken against subject B/Es.*

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*25. The **importer submitted a letter dated 01.09.2016 enclosing their CA’s explanation on non-inclusion of refund amount in the balance-sheet,** explanation of amount shown in Sl. No. 16 (Trade Receivables) of the Financial Statement submitted earlier and also CA certified copies of Director’s Report and Financial Statement referred above.*

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31. I also find there is no delay from the section (CRARS) end as the merit of the claim arisen after finalisation of the subject 02 Bills of Entry and completeness of documents from the Importer’s end on 27.04.2018 finally for completion of the present refund application.

*It is evident that the **importer has furnished the Indemnity Bond on 27.04.2018 against Bills of Entry No.9338974 and 9338978 both***

dated 18.02.2013 and TR-6 Challan no. 205573989 and 205573993 both dated 19.12.13. Hence, the refund claim has attained completeness on 27.04.2018 and the claim has been taken up for consideration within the prescribed period stipulated under section 27 of the Customs Act, 1962.

32. From the above discussions, I find that the present claim of refund amounting to Rs.50,97,056/- arisen on finalisation of two Bills of Entry No.9338974 and 9338978 both dated 18.02.2013. Therefore, the merit of the claim begins from 27.03.2018 and consequent upon fulfilment of the required documents as per Refund Regulations 1995."

8.9 In view of the above facts, we are of the considered view that in terms of the provisions of Section 27 *ibid*, read with Customs Refund Application (Form) Regulations, 1995 framed thereunder, the complete refund application was submitted by the Respondent importer only after all the requisite documents evidencing the payment of differential duty, relevant agreements and the sale invoices for the products were produced before the Customs authorities, to demonstrate that the burden of differential duty paid by the importer respondent was not passed on to any other person. Hence, on the factual matrix of the case, it cannot be considered that the refund application in the present case was submitted on 08.04.2014, as claimed by the importer respondent.

8.10 Thus we also do not find it necessary to go into the details of other points put forth by Revenue and learned Advocate for discussing the issue of whether payment of interest on delayed refund arises in this case and for coming to the conclusion about the date of receipt of complete refund application.

9.1 The extract of Section 17 & 18 *ibid*, are as follows:

Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the ²[the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon,

the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 18. Provisional assessment of duty. -

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 and section 50,-

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the

case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally¹³ [or re-assessment of duty, as the case may be,] there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to:

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

9.2 From the perusal of above legal provisions of the Customs Act, 1962, it transpires that Section 17 of the Customs Act, 1962 provides that an importer entering any imported goods under section 46 by filing a Bill of Entry (B/E) shall self-assess the customs duty payable on imported goods. Thus, the provisions makes it clear that under self-assessment, it is the importer who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc. in respect of the imported goods while presenting Bill of Entry. The declaration filed by the importer may be verified on the basis of risk assessment by the Risk Management Systems (RMS), which not only provides assured facilitation to those importers having a good track record of compliance but also ensures that on the basis of certain rules,

intervention, etc., high risk consignments are interdicted for detailed verification before the Customs clearance, either by verification of assessment or conducting examination of the imported goods or both. If the self-assessment is found incorrect, the duty may be reassessed. In cases where there is no interdiction by RMS or non existence of any other factor, there will be no cause for the declaration filed by the importer to be taken up for verification, and such Bills of Entry will straightaway be facilitated for clearance without assessment and examination, on payment of applicable duty, if any. Further, in cases, where the importer is not able to determine the duty liability or make self-assessment for any reason, a request shall be made to the proper officer for provisional assessment of duty under Section 18 (1)(a) *ibid*. In such a situation an option is available to the proper officer to resort to provisional assessment of duty by asking the importer to furnish security as deemed fit for payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed. CBIC has also issued comprehensive guidelines for provisional assessment vide Circular No. 38/2016-Customs dated 22.08.2016. These instructions have been revised from time to time and the latest standing CBIC Circular prescribing guidelines for provisional assessment are provided in Circular 19/2021-Customs dated 16.08.2021. Accordingly, the provisional assessments should be finalized expeditiously in terms of Customs (Finalisation of Provisional Assessment) Regulations, 2018, which prescribe the timelines and manner for finalization of provisional assessments.

9.3 Furthermore, in terms of determining the value of goods in accordance with the provisions of Section 14(1) *ibid*, read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, transaction value of import goods shall be applied for determining the appropriate customs duty payable on the value of imported goods. These would also include any additional amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf. CBIC had prescribed certain procedure for determining the value of imported goods which involve related party transactions and for finalization of provisional assessment in such cases vide Circular No.11/2001-Customs,

dated 23.2.2001, as amended by Circular No. 5/2016-Customs 09.02.2016. In terms of the such procedure, in respect of imports involving related party transactions, the importer is required to fill a questionnaire and furnish a list of documents so that it can be ascertained after due examination, whether the said case requires investigation by Special Valuation Branch (SVB) or not. If the import transaction requires investigation to be conducted by SVB, then all the import transactions of such importer, irrespective of the port of import shall be decided by the SVB branch of the concerned Customs House, where they registered for such detailed valuation by SVB. Earlier there was a provision of taking Extra Duty Deposit (EDD) @ 1% of declared assessable value for four months, during which the importer is supposed to submit requisite documents and information to SVB as per CBIC circular dated 23.2.2011, but subsequently it was withdrawn in order to reduce the transaction cost, as per the revised circular dated 09.02.2016. However, if the importer fails to provide the documents and information required for SVB inquiries, within 60 days of such requisition, then there is a requirement of security deposit at a rate of 5% of the declared assessable value for a period not exceeding the next three months. Upon completing investigations, the SVB shall submit the findings in the form of an Investigation Report (IR) incorporating all relevant facts, submissions made by the importer, investigative findings, grounds for acceptance or rejection of transaction value, and the extent of influence on declared transaction value, if any. The IR shall include all relied upon documents and shall be communicated to the referring customs station/appraising group and such other stations where imports have been provisionally assessed. Upon receipt of the IR from the SVB, the customs stations/Customs appraising group where provisional assessments have been undertaken shall immediately proceed to finalize the same.

9.4 The factual matrix of the case, indicate that the importer respondent had registered itself under a centralised DOV registration No.006769 dated 13.06.2011 for ascertaining the valuation of the imported goods in terms of the provisions of Section 14 of the Customs Act, 1962 read with the rules made thereunder, as they had imported the goods from their parent company M/s. Aloe Vera of America Inc. USA, who is 'related' as per Rule 2(2) *ibid*. Initially for this purpose the assessment of imported goods were made 'provisional' by the Customs authorities. After examining the documents submitted by the importer,

the Deputy Commissioner of Customs, GATT Cell (SVB), Mumbai vide Order-in-Original dated 13.09.2012, had finalized the values prescribing the percentage of enhancement in declared value on account of proportionate license fees paid by importer to the supplier at abroad. On the above basis, 68 provisionally assessed B/Es were finally assessed by the Assistant Commissioner of Customs, Assessment Group-I, New Custom House, Mumbai in terms of Sub-Section (2)(a) of Section 18 ibid, adjusting an amount of Rs.27,62,889/- from the revenue deposit/EDD of Rs. 68,24,902/- paid by the importers and ordering refund of the balance amount of Rs.40,62,013/- to the importers by cancelling the 68 Provisional Duty (PD) bonds executed by them vide Order-in-Original dated 13.08.2013. The relevant B/Es in which the provisional assessments were claimed to have been finalized by the importer respondent carry only an endorsement to the effect that 'B/Entry assessed finally as per SVB Order No.630/DC/SVB/AK/2012-13 Dt.13.09.2012 vide File No.5/9/-98/Gatt/2011-GVC duly signed by the A.O and A.C. of Group-I'. The above documents and the Order-in-Original No. 501/2013-14/GR.I/AC/MPS dated 13.08.2013 also indicate that the provisional assessments were finalized to the limited extent of finalising the valuation of goods in terms of the SVB order indicated above. In the said order, it is made very clear that the decision has been taken on the basis of solemn affirmation and written submission made by the importer and any change, technical error/omission should be brought to the notice of the department without delay by the importer respondent. Thus, the SVB order is limited to the extent of finalizing the assessments in respect of valuation of goods among the related parties and does not cover the dispute relating to the availment of concessional CVD by the importer respondent. The list of 68 B/Es finalized for sanction of refund of the balance amount of EDD, over and above the enhancement made by SVB order, also contained few B/Es which are referred to in the refund claims filed by the importer respondent later on account of concessional CVD claimed by them, which is narrated in the last sentence of paragraph 2.2 of this order. However, the facts indicate that the dispute regarding concessional CVD claimed in respect of dietary supplement had arisen from a separate proceedings initiated by SIIB by issue of SCN dated 28.08.2012. Thus, we find that the assessments in finalizing the SVB transaction do not impinge upon the issue of concessional CVD claimed by the importer respondent.

10.1 We also find from the facts germane to the issue of sanction of refunds on which the present appeal relating to payment of interest arises, that the cause of action for sanction of refund has arisen from final assessment of the CVD payable on the import of dietary supplements. We also find that such an order of final assessment which paved the way for sanction of refund has been provided to the importer respondent in the two Orders-in-Original dated 05.10.2016 and 30.05.2018 issued by the Department. The assessment order passed under Section 17 *ibid*, relates to the import of dietary supplement during the period 01.04.2011 to 30.03.2012; whereas the import of dietary supplements for which refunds has been claimed and sanctioned relates to the subsequent period viz., 31.03.2012 to 18.02.2013. Hence, the above facts clearly prove that the assessment order dated 15.01.2015 finalizing the benefit of concessional rate of CVD cannot form the direct basis for claiming consequential refund sanctioned through orders dated 05.10.2016 and 30.05.2018.

10.2 We have also considered the show cause notice dated 28.08.2012 issued denying the benefit of concessional CVD for the imports covered during the period 27.05.2011 to 31.03.2012, on the ground that the imported dietary supplement is not 'Food' and thus are not covered by the specified entry at Sl. No.10(i) of the notification No.02/2011-C.E. dated 01.03.2011. Though the dispute initially arose with respect to determination of whether the imported dietary supplement is covered under the scope of 'Food', and the order passed by the original authority had also limited its finding to this extent, the subsequent order passed by the Commissioner of Customs (Appeals) had clearly examined the scope of exemption for considering whether the imported dietary supplement is eligible for concession CVD or not, and had given its findings on one particular issue and remanded the case to the original authority for deciding on the other two issues. Thus, we are of the considered view that the stand taken by the learned Advocate that there was no dispute in respect of the twin issues determined by original authority, and the dispute is limited to only the point of determining whether the imported dietary supplement is a food or not, cannot be accepted. It is also a fact that the importer respondent did not object to the order dated passed by the Commissioner of Customs (Appeals) by filing an appeal, on the above stand. Hence the same cannot be agitated at this stage. For the same reason, the finding given in the impugned order that the dispute in respect of extending concessional benefit of CVD was finalized by the

Commissioner of Customs (Appeals) in his order dated 09.10.2014 is also factually incorrect. Hence, we find no merits in the grounds argued by the learned Advocate on this point.

11. We also find that the matter regarding interest payable on delayed refunds have been dealt by the Hon'ble High Court of Karnataka in the case of *Commissioner of Customs, Mangaluru Customs Vs. JSW Steel Ltd.*, reported in 2022 (379) E.L.T. 451 (Kar.) The relevant paragraphs of the aforesaid judgement is extracted below:

"3.The facts leading to the case are as under :

The respondent is a manufacturer of iron and steel products and had imported 12 consignments of coking coal/PCI coal/steam coal during the period from 6-5-2014 to 20-4-2015 from M/s. JSW International Tradecorp. Pvt. Ltd. The importer claimed refund of 1% of Extra Duty Deposit (for short "EDD") paid after issue of Special Valuation Branch (for short "SVB"). However, the claim of the importer was rejected vide order dated 12-7-2016 on the ground that assessment was not finalized as contemplated under Section 18 of the Customs Act, 1962 (for short "Act, 1962") and therefore, the authority was of the view that the claim of refund was premature.

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9. Heard the Learned Counsel appearing for the appellant and Learned Counsel appearing for the respondent. Perused the grounds urged in the appeal. We have also given our anxious consideration to the order passed by the authorities as well as Appellate Tribunal.

10. The respondent-importer is seeking refund with interest on the ground that the Department has failed to finalize the assessment immediately and therefore, are liable to pay interest in terms of Section 27A of the Act, 1962 for the delay in refund of EDD. On meticulous examination of the order passed by the Original Authority as per Annexure-C, we would find that respondent-importer had not produced all required documents and this compelled the Department to issue a show cause notice on 7-7-2017 notifying the importer that the claim of refund will be rejected for non-submission of the documents. Pursuant to the show cause notice, the importer has furnished 11 duplicate copies of bills of entries and four original copies of capital TR-6 challans. We would find that the importer has produced these documents duly certified by Chartered Accountant only on 11-10-2017. The Department has sanctioned refund only after due verification of documents.

11. The importer preferred an appeal before the Appellate Authority questioning the order passed by the Original Authority. The Appellate Authority having verified the documents and also having given its due consideration to the reasons assigned by the Original Authority concurred and affirmed the reasons assigned by the Original Authority. The Appellate Authority was also of the view that the refund is sanctioned well within the time of three months from the date of receipt of last document from the importer and therefore, question of awarding interest will not arise.

12. On perusal of the order passed by the CESTAT however, we would find that the Tribunal has placed reliance on the judgments of the Apex Court and by plainly relying on the judgments has come to the conclusion that if the amount is not refunded within three months from the date of application, the department is bound to pay interest in terms of Section 27A of the Act, 1962. On meticulous examination of the reasons and conclusions arrived at by the Tribunal, we would find that the Tribunal has not examined the findings arrived at by the Original Authority as well as the Appellate Authority. In fact, we would find that the Tribunal has not at all a recorded finding indicating that the order passed by the original authority as well as the Appellate Authority suffers from perversity. We would find that the Tribunal has not even discussed the facts of the present case on hand. What emerges from the order passed by the Tribunal is that it has proceeded to order for payment of interest on the ground that the application is not decided within a period of three months.

13. From the records, we would find that the original refund application was filed on 22-4-2016 which was rejected vide order dated 12-7-2016 on the ground that it was premature as the bills of entry were provisionally assessed and were yet to be finalized. It can also be gathered from the records that the importer had not enclosed all relevant documents until a show cause notice was issued by the Department which is dated 7-7-2017. It is only after receipt of documents which was submitted on 11-10-2017, the refund has been sanctioned by the Department which is well within the prescribed time limit of three months from the date of receipt of relevant documents. The Appellate Authority has concurred with the reasons assigned by the Original Authority. Therefore, the contention of the respondent-importer that even if the application was defective, the same at the most may amount irregularity and hence, the Department cannot escape the liability of paying interest in terms of Section 27A of the Act, 1962 is too far stretched and we are unable to accede to such a contention. The respondent-importer cannot be permitted to take undue advantage of lapses on his part in not submitting complete document to enable the Revenue to finalize the assessment before ordering for refund of 1% EDD. All these significant details are not dealt by the Tribunal and therefore, the order dated 20-9-2018 passed by the Tribunal is illegal and the Tribunal has erred in holding that interest is payable on the said refund claim.

14. Accordingly, the substantial questions of law formulated in the present appeal are answered in affirmative i.e., in favour of the Revenue and against the assessee."

12. We further find that this Tribunal in the case of *Associated Pigments Limited Vs. Commissioner of Customs (Port) Kolkata* 2007 (215) E.L.T. 225 (Tri.-Kolkata) had also taken a similar view with respect to reckoning the date of receipt of the refund claim only on submission of all documents, making the refund claim complete. The relevant para of the said order is extracted below:

"3. After considering the submissions from both sides, I find that in the original refund application dated 13-9-94, there was a mention regarding submission of Chartered Accountant's Certificate. However, Modvat

Certificate issued from Range was not submitted at the time of filing of the original Refund Application, but was submitted along with the letter dated 26-7-05/9-8-05. Learned Counsel appearing for the appellant states that even though the Refund Claim was originally rejected as time-barred, in view of the decision of the Honorable High Court of Rajasthan in the case of J.K. Cement Works v. Asstt. Commissioner of Central Excise & Customs - 2004 (170) E.L.T. 4 (Raj.), the appeal against which has been dismissed by the Apex Court, vide 2005 (179) E.L.T. A150, interest is payable from the date of filing the refund claim and not from the date of Order of the Tribunal allowing the refund on 5-5-2000.

3.1 In view of the fact that all the necessary documents were submitted by the appellant on 9-8-95, learned Advocate fairly agrees that their claim for interest has to be limited from that date. Keeping in view the decision in the case of J.K. Cement Works (cited supra), and the fact that all the documents were submitted by 9-8-95, the impugned Order is set aside and the Revenue is directed to pay interest for the period from 10-8-95 till 23-4-2001."

13. In view of the above detailed discussions and findings recorded herein, we conclude that the impugned order allowing payment of interest claimed on refunds already sanctioned to the importer respondent, is not legally sustainable and hence the same is set aside.

14. In the result, we allow the appeals filed by the appellant department by setting aside the impugned order.

15. Stay application filed by the Revenue also stands disposed off.

(Order pronounced in open court on 15.12.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)