

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85057 of 2018

(Arising out of Order-in-Appeal No. GOA-CUSTOM-000-APP-084-2017-18 dated 25.09.2017 passed by the Commissioner (Appeals), Central GST & Customs, Goa)

JSW Steel Limited

JSW Centre,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

.... Appellants

Versus

Commissioner of Customs, Goa

ICE House,
EDC Complex, Panaji, North Goa
Goa - 403001.

.... Respondent

Appearance:

Shri Vipin Jain along with Shri Ramnath Prabhu, Advocates for the Appellants
Shri D.S. Mann, Authorized Representative for the Respondent

WITH

**Customs Stay Application No.85211 of 2018
in
Customs Appeal No. 85507 of 2018**

And

Customs Appeal No. 85507 of 2018

(Arising out of Order-in-Appeal No. GOA-CUSTOM-000-APP-084-2017-18 dated 25.09.2017 passed by the Commissioner (Appeals), Central GST & Customs, Goa)

Commissioner of Customs, Goa

ICE House,
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.... Appellant

Versus

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Mumbai – 400 051.

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Appearance:

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Shri Vipin Jain along with Shri Ramnath Prabhu, 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/85663-85664/2024**

Date of Hearing: 08.03.2024

Date of Decision: 08.07.2024

PER: M.M. PARTHIBAN

The appeal bearing No. C/85057/2018 have been filed by M/s JSW Steel Limited, Mumbai (herein referred to, for short, as 'appellants') against Order-in-Appeal No. GOA-CUSTM-000-APP-084-2017-18 dated 25.09.2017 (herein after, for short, referred to as 'impugned order') passed by the Commissioner (Appeals), Central GST & Customs, Goa. Revenue has also filed appeal bearing No. C/85507/2018 against the impugned order along with Customs Stay Application No. 85211 of 2018 praying for stay of operation of the impugned order.

2.1. Briefly stated, the facts of the case are that the appellants herein are *inter alia*, engaged in the manufacture of iron and steel products for which they had imported different grades/varieties of coal, in bulk form, from various countries and used these coal in Blast Furnace, COREX and Coke ovens in various manufacturing plants. The appellants have declared such coal imported by them as Coking/Soft Coking/Semi-Soft Coking/COREX/PCI Coal and have classified these as "Coking Coal" under Tariff Item 2701 19 10 of the Customs Tariff Act, 1975 and claimed full exemption from payment of Customs duty under Sl. No. 68/68A to Notification No. 21/2002-Customs dated 01.03.2002, as amended, with specific reference to amendment by Notifications No. 44/2004-Customs dated 28.02.2004, No.20/2007-Customs dated 01.03.2007.

2.2 However, the Directorate of Revenue Intelligence (DRI) on the basis of intelligence initiated investigation disputing that the imported coal by the appellants for use in COREX furnaces was not of the same category of coking coal imported by the appellants for its blast furnaces and thereby disputing the eligibility of imported goods for claiming exemption from payment of customs duty under notification dated 01.03.2007. Accordingly, samples of the imported goods were drawn by DRI from imports made by appellants in Bill of Entry No. 115073 dated 11.05.2010 and the same was sent for testing by Chemical Examiner, Custom House Laboratory, Goa. Based on the test report/letter dated 17.05.2010 stating that the imported coal had the

characteristics of the Bituminous Non-Coking Coal with Crucible Swelling index Number (CSN) at 0.50, DRI treated the soft coking coal imported by the appellants as Bituminous Non-Coking Coal and concluded that all the imports of coal by the appellants were not eligible to claim customs duty exemption which is applicable only to Coking Coal. Therefore, all subsequent import of coal by the appellants were subjected to provisional assessment upon payment of Basic Customs duty at 5% adv., along with applicable Education and Secondary & Higher Education Cess at 1% and 2% respectively, totalling to 3% thereon, besides applicable Clean Energy Cess at Rs.50/- per Tonne.

2.3 DRI investigation examined all the previous import transactions of the appellants from December 2006 onwards, and upon completion of the investigation issued show cause notice disputing the classification and eligibility to exemption of the imported coal viz., Soft Coking/Semi-Soft Coking/COREX/PCI Coal, by denying exemption from payment of Basic Customs Duty under Sl. No. 68/68A to Notification No. 21/2002-Customs dated 01.03.2002, as amended. The duty demand under the SCN dated 22.02.2012 included differential duty of Rs.302 crores, covering total 151 B/Es i.e., 126 B/Es for imports through Goa port and 25 B/Es for import through New Mangalore and Chennai ports covering the period from 2006 to March, 2011. This SCN was adjudicated by the Commissioner of Customs, Goa vide Order-in-Original No. Commr/Adj./Cus.11/2013/14 dated 27.09.2013. As adjudicating authority, learned Commissioner had confirmed the demand of customs duty in respect of 21 consignments of coal wherein, on testing, the chemical examiner had found the CSN in respect of the same to be less than 1. The demand in respect of the remaining consignments was dropped on the ground that the chemical examiner on testing, found that the CSN of the coal imported was 1 or more than 1, and that with effect from 01.03.2011, the exemption notification had itself introduced the criteria of 1 CSN by way of an explanation, which being clarificatory, was to be applied retrospectively, and hence those remaining consignments were eligible for customs duty exemption dated 01.03.2002 under Sl. No.68/68A. The adjudicating authority also gave relief on the ground of limitation where the provisional assessments were finalized after receipt of test reports. The adjudicating authority did not see any merit in the confiscation of goods as well as the penalties imposed on various officials and the CHAs and set them aside. The list of 12 B/Es on which the appellants have claimed interest for refund of customs duty in the present appeals are related to these imports, where the original order dated 27.09.2013, had dropped the duty demands.

2.4 Both appellants as well as Revenue have challenged the said original order dated 27.09.2013 passed by the Commissioner, *inter alia*, on the ground that the explanation effective from 01.03.2011 in Serial No. 68 of Notification No. 21/2002-Cus. could not be given retrospective effect. The Co-ordinate Bench of this Tribunal vide its Final Order No. A/3894-3896-WZB/CB dated 14.12.2015 had partly set aside the Commissioner's order to the extent it confirmed the duty in respect of 21 Bills of Entry and upheld the order in extending the benefit of notification which grants exemption to coking coal. Having set aside the duty demand, the Tribunal held that the question of confiscation and imposition of penalties against noticees does not arise. Revenue's appeal in this case was dismissed.

2.5 In respect of the 12 B/Es relevant to the present appeals, the appellants had filed a refund application in the form of letter dated 22.11.2013, addressed to the Deputy Commissioner of Customs (Refunds), Custom House, Goa seeking consequential refund of differential duty paid under protest for an amount of Rs.30,79,12,708/- in pursuance of original order dated 27.09.2013 passed by the Commissioner of Customs, Goa. With various correspondence exchanged between the appellants by way of their letters dated 23.12.2013, 23.05.2014, 22.07.2014, 18.08.2014, 19.11.2014 with the department, and the letters sent by the department to the appellants on 12.12.2013, 11.11.2004 and internal reference sent from AC (Refunds) to AC (Appraising Group) on 07.08.2004, the issue was delayed and ultimately a personal hearing was given on 21.11.2014 and the issue was decided by the Deputy Commissioner of Customs (Appraising) vide Order-in-Original No.71/2015-D.C.(A) dated 30.01.2015 *inter alia*, allowing refund of Rs.30,79,12,708/- in respect of 12 B/Es and credited the same to the Consumer Welfare Fund. The appellants had preferred an appeal against the original order dated 30.01.2015, which was disposed of by the Commissioner of Customs (Appeals), Goa vide Order-in-Appeal No. GOA-CUSTOM-000-APP-005-2016-17 dated 08.04.2016, by setting aside the original order dated 30.01.2015 and allowed the appeal of the appellants with consequential relief. Again the appellants had taken up the matter of payment of refund sanctioned in respect of 12 B/Es, in pursuance of the Order in Appeal dated 08.04.2016, vide their letters dated 05.05.2016 and 06.09.2016 claiming refund along with applicable interest. This issue was taken up for finalization of assessment in respect of 12 B/Es vide Order-in-Original No.19/2017-AC(A) dated 03.03.2017 by determining the total duty liability as Rs.4,00,22,900/- and after adjusting the same with the duty of Rs.34,79,35,608/- already paid under protest by the

appellants in provisional assessment, thereby allowed the case entitling the appellants for refund of Rs.30,79,12,708/-. Once again the appellants took up the matter of sanction of the refunds vide their letter dated 08.03.2017 to the Assistant Commissioner of Customs (Refund), Custom House, Goa who in response had sought for proper refund application for the same vide department's letter dated 17.03.2017. The Assistant Commissioner of Customs (Refund), by taking cognizance of the appellants' refund application dated 23.05.2014 submitted by their letter dated 08.03.2017, sanctioned the refund of Rs.30,79,12,708/- vide Order-in-Original No. 48/2017-AC (Refund) dated 30.03.2017 and paid the same to the appellants by Cheque No.22 dated 30.03.2017. Against this original order dated 30.03.2017, the appellants have preferred an appeal before the Commissioner (Appeals) claiming interest on payment of refund from the date of expiry of 3 months from the refund application dated 22.11.2013 received in the Department on 25.11.2013 on the basis of CBEC Circular No.670/61/2002-CX dated 01.10.2002. However, the Departmental officers representing in this case before the Commissioner (Appeals) claimed that the appellants are eligible for refund only after finalization of the provisionally assessed bills of entry, and the refund having been sanctioned within the prescribed time limit, does not entail any payment of interest. In disposing this issue by passing the impugned order, learned Commissioner (Appeals) has held that appellants are eligible for payment of interest on delayed refund for the period commencing from 24.09.2014 i.e., 3 months from the date of receipt of complete refund application on 25.06.2014, to the date of sanction of refund on 24.03.2017. Being aggrieved with the above impugned order, both the appellants and Revenue have filed these appeals before the Tribunal.

3.1 The learned Advocate for the appellants submits that the payment of interest on the delayed refund of duty is governed by the provisions of Section 27A of the Customs Act, 1962. He submitted that in the instant case, it is an admitted fact that the refund application has been filed on 22.11.2013 duly acknowledged by the department on 25.11.2013 along with all relevant documents requesting for consequential refund of duty of Rs.30,79,12,708/- and the claimed refund amount has also been sanctioned and paid but after much delay. The department vide letter dated 10.12.2013 much after acknowledgment of the Refund application wrote to the appellants that the said 12 B/Es are required to be re-assessed first before approaching for refund and the refund application has to be in prescribed format. The appellants immediately vide its letter dated 23.12.2013 clarified

the factual and legal position and requested for processing of their refund application 25.11.2013. In this regard the learned Advocate submitted that from reading of section 27A of the Customs Act, 1962, it is crystal clear that the interest shall be paid on the 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. He submitted that there is no legal bar on processing of refund application unless it is filed in Prescribed Format as such if all the relevant information required for refund is emanating from the application submitted with the application. Therefore, the date of first and original refund application filed and on record of the authority, as is evident from para 4 of the order in original dated 30.1.2015 has to be considered as the date eligible for granting refund of interest, irrespective of the fact that such refund application is filed in prescribed format or not. As the refund is related to consequential refund of duty deposited during investigation, paid under protest, pending adjudication the refund claim application of appellants should have been processed by the department in terms of the order of the Commissioner of Customs. Therefore, he stated that the learned Commissioner (Appeal) has erred in holding that complete refund application was filed on 25.06.2014 when the original application was complete with information and documents and even the original authority in his letter dated 10.12.2013 has not alleged that the application already submitted was incomplete. The said Assistance Commissioner had only indicated that the application is to be filed in prescribed Format. Therefore, the exclusion of period prior to 25.06.2014 on the ground of non-submission of complete Application of Refund in prescribed format is arbitrary, erroneous and unwarranted by provisions of Section 27A of Customs Act, 1962. In view of the above submissions, learned Advocate submitted that the appellants are eligible to get interest of Rs. 1,07,81,163/- for the excluded period not taken into consideration by the Commissioner (Appeals) in the impugned order while calculating the period of delay in payment of refund.

3.2 The learned Advocate for the appellant in order to further support their aforesaid view relied on the decision of the Hon'ble Supreme Court in the case of *Union of India and Ors. Vs. M/s Hamdard (Waqf) Laboratories (2016-TIOL-21-SC-CX)*. Further the appellants had also relied on the judgement of the Hon'ble High Court of Bombay in the case of *Jindal Drugs Pvt Ltd Vs. Union of India (2016-342-ELT-17)* citing that in that case it was held that the assessee filing revised refund claim at the insistence of Assistant Commissioner is entitled to refund from date immediately after the expiry of

three months from the date of receipt of original refund application till date of receipt of refund amount. Hence, they claimed that this case is squarely applicable in the facts and circumstances of their case in dispute.

3.3 The learned Advocate for the appellants without prejudice to their above submissions had also stated that the Commissioner of Customs (Appeals), Goa, who has passed the impugned order in appeal has himself, in another case involving one another refund application of the appellant, granted payment of interest vide Order in Appeal no. GOA-CUSTOM-000-APP-108-2017-18 dated 23.10.2017 from the date immediately after the expiry of three months from the date of receipt of original refund and hence this should also be taken into account for this case.

3.4 The learned Advocate also submitted that the Public Notice No. 5/2012 dated 17.01.2012 issued by the Customs Commissionerate at Mumbai is also applicable on Goa Customs authorities in terms of the judgement of the Hon'ble Supreme Court in the case of *Collector Vs. Raymond Wollen Mills Ltd. – 1997 (91) E.L.T. A232 (S.C.)*, wherein it was held that trade notice or public notice issued in the context of central enactment which has pan-India application is binding on all authorities.

3.5 In view of the submissions made above, the learned Advocate for the appellant submitted that the impugned order is liable to be set aside to the extent it does not grant interest from the date immediately after the expiry of three months from the date of receipt of original refund application i.e. application filed by the appellants on 22.11.2013, which was duly acknowledged by the department on 25.11.2013. The learned Advocate therefore prayed that the impugned order be modified for the above reason and the appellant may be given relief for the eligible differential interest of Rs.1,07,81,163/- which has not been taken into account in the impugned order.

3.6 The learned Advocate for the appellants relied upon the following judgments: -

- (i) *Commissioner of Customs Vs. Hindalco Industries Ltd. – 2008 (231) E.L.T. 36 (Guj.)*
- (ii) *Commissioner of Central Excise, Mumbai-II Vs. Allied Photo graphics India Ltd. – 2004 (166) E.L.T. 3 (S.C.)*

(iii) *Mafatlal Industries Ltd. Vs. Union of India - 1997 (89) E.L.T. 247 (S.C.)*

(iv) *Union of India and Ors. Vs. M/s Hamdard (Waqf) Laboratories 2016-TIOL-21-SC-CX*

4.1 The learned AR for the Revenue submitted that the said goods were assessed provisionally on submission of Test Bond, subject to test result and submission of certificate of Demurrage / dispatch, Draught Survey Reports at the time of finalization of assessment. The adjudicating authority, vide Order-in-Original dated 27.09.2013 confirmed the demand for customs duty in respect of 21 bills of entry and the demand in respect of the remaining 130 consignments was dropped. Out of these 130 bills of entry, appellants JSW had already paid duty in respect of 12 bills of entry which were provisionally assessed, which are the subject matter of present appeals in this case.

4.2 The learned AR further submitted that appellants importer vide letter dated 22.11.2013 received by the department on 25.11.2013 requested for refund of the duty amounting to Rs. 30.79 crores paid by them in respect of the abovementioned 12 bills of entry. However, appellants JSW vide letter dated 23.12.2013 informed the department that the final assessment of the respective bills of entry are required to be done by the department as per the Public Notice no. 5/2012 dated 17.01.2012 issued by Commissioner of Customs, (ACC), Mumbai and that they are not required to file the refund application in the prescribed format as the amount had been deposited provisionally and under protest during the investigation conducted by DRI. Nevertheless, they submitted the refund claim in the prescribed format vide letter dated 23.05.2014 along with a request for interest on the delayed refund and the same was received by the department on 25.06.2014.

4.3 The learned AR further submitted that as there was no stay against the Order-in-Original dated 27.09.2013 passed by the Commissioner, the refund of Rs. 30.79 crores was sanctioned and transferred to Consumer Welfare Fund vide Order-in-Original dated 30.01.2015. Appellants JSW went in appeal against the above mentioned order and the Commissioner (Appeals) vide order dated 08.04.2016 set aside the Order-in-Original dated 30.1.2015. Consequently, the AC (A) vide Order-in-Original dated 3.3.2017 finalized the assessment of the said 12 bills of entry in terms of the Order-in-Original dated 27.09.2013. The refund was subsequently sanctioned vide

Order-in-Original dated 30.3.2017. Appellants JSW again approached the Commissioner (Appeals) stating that they were to be allowed interest on the delayed refund. The Commissioner (Appeals) vide order dated 25.09.2017 allowed their appeal and held that they should be paid refund from 24.09.2014 i.e., three months from the date of receipt of complete refund application.

4.4 The learned AR submitted that the Commissioner (Appeals) have erred in holding that the refund is payable on the expiry of three months from the date of receipt of the complete refund application. In this regard it is submitted that the present case deals with provisionally assessed bills of entry in which case the refund becomes payable only after these bills of entry have been finalised. Further, he stated that Section 18 (4) of the Customs Act, 1962 clearly mentions that the interest on refund, in case of provisionally assessed bills of entry, shall be paid only in case where refund has not been made within three months from the date of final assessment of bill of entry. He further submitted that in this case the final assessment was complete only vide Order-in-Original dated 3.3.2017 and the refund has been sanctioned on 30.3.2017. Even in the Order dated 30.1.2015, the bills of entry were not finally assessed as the Deputy Commissioner clearly records in para 9 and 10 of the order that the importer have not submitted the details of the Demurrage / Dispatch incurred by them and in view of the Board's Circular no.26/2006-Cus dated 26.09.2006 and provisions of Rule 10(2) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 the demurrage incurred is part of the assessable value. However, he goes ahead and sanctions refund as there was no stay to the Order-in-Original dated 23.9.2013. Therefore, he submitted that the 12 Bills of Entry were not finalised by the order dated 30.1.2015.

4.5 Learned AR further stated that the reliance on Public notice no. 5 of 2012 issued by Commissioner of Customs, Air Cargo Complex, Mumbai is not relevant in this case as the Public notice nowhere talks about refund arising out of provisional assessment. The Public notice deals with cases where bill of entry were finally assessed and later as a consequence of amendments and appellate orders revising assessments already finalized. The public notice is therefore not relevant in this case as the commissioner order is the order of Original authority and not of appellate authority. He further submitted that even Section 27 of the Customs Act, 1962 distinguishes refund arising out of finalization of provisional assessment and

refund arising a consequence of appellate orders. The Commissioner (Appeals) had also relied on Board circular dated 1.10.2002. In this regard he submitted that the Board's Circular does not deal with refund arising out of finalization of provisionally assessed bills of entry.

4.6 The learned AR also submitted that appellants JSW had not challenged the order dated 3.3.2017 whereby the provisionally assessed bills of entry were finalised. Since the final assessment order has not been challenged the claim for interest would not arise. He placed reliance on the judgement of Hon'ble Supreme Court in the case of *Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive)* reported in 2004 (172) E.L.T. 145 (SC).

4.7 He further submitted that the department had challenged the said Order-in-Appeal on following grounds: -

(i) In Point no. 6.4 of the impugned Order-in-Appeal, the Commissioner(Appeals) had observed that in First Order-in-Original dated 30.01.2015, the adjudicating authority does not appear to have complied with the direction of Ld. Commissioner, who vide Para 81(v) of his Order-in-Original dated 27.09.2013 held that the goods imported vide relevant 12 B/Es which were assessed provisionally and against which duty paid under protest are to be finalized on the basis of test reports by extending exemption notification benefit but the refund was sanctioned and transferred to consumer welfare fund. The said 12 B/Es were finalized only by 03.03.2017. After that finalisation date, the appellants JSW was entitled for refund and consequently the party filed fresh refund application 23.03.2017 and refund was granted vide Order-in-Original dated 30.03.2017. The Order-in-Appeal noted the aspect that B/Es are yet to be finalized, but granted interest, which is not proper.

(b) He submitted that without finalization of the impugned B/Es, it is not possible to determine whether the importer has to pay and differential duty/interest and also not possible to ascertain vice versa for refund also. Thus, the earlier refund application dated 22.11.2013 was incomplete and it cannot be processed in absence of speaking order for finalisation and thus refund under Section 27*ibid* was not possible, which the Commissioner (Appeals) failed to notice.

(c) The ratio of the case of M/s Ranbaxy was not applicable as the appellants filed complete refund application in prescribed manner on 23.03.2017 and refund was granted vide refund Order-in-Original dated 30.03.2017, i.e. well within three months as laid down by Section 27A.

(d) Also, the present case deals with provisionally assessed B/Es in which case refund becomes payable only after these B/Es have been finalized. Further Section 18(4) of the Customs Act, clearly mentioned that interest on refund in case of provisionally assessed B/Es shall be paid only in cases where refund has not been made within three months from the date of final assessment of B/Es.

(e) The reliance of the P.N. 5/2012 is not relevant as it nowhere talks about refund arising out of provisional assessment. The Public Notice deals with cases where the B/Es were already finally assessed and later as a consequence of amendment and appellate orders revising assessment is involved. In this case the final assessment arises on account of Order-in-Original, not by any order of Appellate Authority. Bills of Entry were assessed provisionally not only for DRI investigation, but also for other reasons like test report, submission of final invoice, details of demurrage/despatch charges and survey report on submission of PD Bond.

(f) In this case the final assessment was complete only vide Order-in-Original dated 03.03.2017 and refund has been sanctioned on 30.03.2017. Even in the Order-in-Original dated 30.01.2015, the B/Es were not finally assessed as the Deputy Commissioner clearly records in Para 9 and 10 of the order that the importer have not submitted the details of the Demurrage /Dispatch incurred by them and in view of the Board's Circular no. 26/2006-Cus dated 26.09.2006 and provisions of Rule 10(2) of the Customs Valuation Rules (CVR), 2007 the demurrage incurred is part of assessable value. However, he goes ahead and sanctioned the refund as there was no stay to the Order-in-Original dated 23.09.2013, Therefore, the 12 B/Es were not finalized by the Order-in-Original dated 30.01.2015.

In view of the above detailed submission, the learned AR prayed for dismissal of the appeal filed by the appellants importer and submitted that the appeal filed by the department for not granting interest may be allowed.

5. We heard both sides and have considered the submissions advanced by the learned Advocates appearing for the appellants and the learned Authorized Representative of the Department. We have also carefully perused the records of the case and the additional written submissions given in the form of paper books.

6. In the impugned order dated 25.09.2017 and in the original order dated 30.03.2017, the facts of the case have been brought out in detail. We find that the issues arising for consideration before us from these appeals are to determine the following:

(i) In the case of sanction of refund of Rs.30,79,12,708/- vide Order-in-Original No. 48/2017-AC (Refund) dated 30.03.2017, whether there is any delay in sanction of refund to the appellants or not?

(ii) if there is a delay, then whether interest under Section 27A of the Customs Act, 1962 is payable to the appellants or not;

(iii) if any interest is payable on account of delay in the above refund, then for what period such interest under Section 27A ibid, is payable?

7. The period of dispute in the present case is August, 2010 to January, 2011, as the 12 B/Es covered under the present dispute were filed under Section 46 ibid during the period 05.08.2010 to 24.01.2011 with details of B/Es furnished by the appellants. Besides these details, the details furnished at the time of filing their refund application letter dated 22.11.2013 provide the following details in respect of the details of duty paid by the appellants:

Sl. No.	B/E No.& Date as per Section 46	Quantity of imports as per B/L	Invoice Value as declared in Rs.	Duty paid under Provisional assessment in Rs.		
				BCD@5%	Edn. Cess 3%	Clean Energy Cess Rs.50/MT
		in MTs				
1	20 05.08.2010	60536	607080738	30354037	910621	3026800
2	40 09.08.2010	61178	366644088	18332204	549966	3058900
3	41 03.09.2010	60697	364819264	18240963	547729	3034850
4	164 16.09.2010	63324	668706085	33435304	1003059	3166200
5	204 20.09.2010	72000	679003957	33950198	1018506	3600000
6	256 21.09.2010	50491	304830446	15241522	457246	2524550
7	91 08.10.2010	67992	387237593	19361880	580856	3399600
8	18 03.11.2010	70775	578845902	28942295	868269	3538750
9	220 24.11.2010	83222	441009746	22050487	661515	4161100
10	37 03.12.2010	70531	398743371	19937169	598115	3526550
11	95 21.01.2011	66000 (65736)*	519260534	25963027	778891	3300000
12	100 24.01.2011	73712 (72680)*	662705817	33135291	994059	3685600
		800658		298944377	8968832	40022900
Total BCD and Education Cess Paid				Rs.30,79,13,209/-		
Total duty paid with Clean Energy Cess				Rs.34,79,36,109/-		

* Quantity of import goods taken into consideration by AC in O-in-O dated 03.03.2017 at the time of final assessment in variation with the quantity declared in the Bill of Lading.

8.1 In order to address the above issues, we would like to refer the relevant legal provisions contained in the Customs Act, 1962 as it existed during relevant point of time of the dispute and the relevant facts evidenced through various orders, documents/letters dealing with the issue, for coming to a proper conclusion about the subject issues of determination referred above.

Customs Act, 1962

"Definitions.

Section 2.—In this Act, unless the context otherwise requires,—

(2) 'assessment' includes provisional assessment, re-assessment and any order of assessment in which the duty assessed is nil;

Assessment of duty.

Section 17.—(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

Provisional assessment of duty

Section 18.(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46—

(a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, 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 finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally 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 and if the amount so paid falls short of, or is in excess of the duty finally assessed, 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 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 under sub-section (2), at the rate fixed by the Central Government under section 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 finally, there shall be paid an interest on such unrefunded 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.

Claim for refund of duty.

Section 27.*(1) Any person claiming refund of any duty and interest, if any, paid on such duty—*

(i) paid by him in pursuance of an order of assessment; or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs—

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year;

(b) in any other case, before the expiry of six months,

from the date of payment of duty and interest, if any, paid on such duty, in such form and manner as may be specified in the regulations made in this behalf and the application 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provisions of sub-section (2) :

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty and interest, if any, paid on such duty has been paid under protest :

Provided also that 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 or six months, as the case may be, shall be computed from the date of issue of such order:

Provided also that where the duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, shall be computed from the date of such judgment, decree, order or direction.

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

Explanation II.—Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.'

(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;

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, the 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).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

Interest on delayed refunds.

Section 27A. *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 per cent and not exceeding thirty per cent 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 Act, 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."

8.2 At the outset, it is also made clear that the above disputed period pertains to the time prior to the introduction of self-assessment under the definition clause in Section 2(2) *ibid* and in the legal provision contained in Section 17 *ibid* relating to assessment. The legal provision governing the self-assessment was brought into the Customs Act by Finance Act, 2011 with effect from 08.04.2011, and hence these are not relevant to the dispute period in the present case.

8.3 The legal provisions relating to assessment at the relevant point of time i.e., during the period of dispute provide that after an importer has filed necessary Bill of Entry under Section 46 *ibid* in respect of the imported goods, then such goods firstly, may be subjected to examination and testing by the proper officer of Customs, as may be necessary and without causing undue delay; secondly, after such examination and testing of the goods, the duty, if any leviable on such goods shall be assessed by the proper officer of customs. Further, for the purpose of assessing such duty, the proper officer of customs may require the importer to produce any contract, broker's note, policy of insurance, catalogue or other document, for the purpose of such ascertainment of the customs duty. The provisions relating to assessment of duty on the basis

of statements made by the importer firstly and then after examination or testing or perusal of the documents for ascertaining the duty payable, if it is found that statement made in the declaration is incorrect, the subject goods being subjected to re-assessment by the proper officer of customs determining the duty payable by the importer, is not applicable in the present case, since such is not the factual position in the present case. Further it is also provided that where any assessment done after examination and testing of the imported goods is contrary to the claim of the importer in respect of classification, exemption or condition of duty under any notification, then the proper officer of customs shall be required to pass a speaking order within 15 days from the date of assessment of bill of entry; however, such requirement of passing a speaking order is not necessary in case where the importer confirms his acceptance, in writing, to the assessment made by the proper officer of customs. The plain reading of the sub-sections (1) to (5) of Section 17 *ibid* reveal that the assessment of import goods is to be conducted by the proper officer of customs for the purpose of ascertaining the duties of customs payable by an importer. The purpose of subjecting the imported goods to examination and its testing, besides verification of documents is to find out whether on conduct of such examination/test, perusal of such documents, whether the duties of Customs payable can be ascertained for the purpose of assessment.

8.4 Similarly the legal provisions in respect of provisional assessment of duty under Section 18 *ibid* provide for certain situations in which such ascertainment of duty is not possible, unless the goods are subject to chemical or other tests; or due to following reasons viz., importer is unable to produce documents which are necessary for assessment of duty or despite the production of all necessary documents by the importers providing complete information, the proper officer of customs deems it necessary to make further enquiry for assessing the duty payable on such imported goods. In the present case, the appellants importer had submitted all information required for ascertaining the duties of customs leviable on the imported goods and also the reports of the test conducted at the port of loading for deciding the classification of imported goods and the claim for the duty exemption/concession in terms of Sl. No. 68/68A of Notification No. 21/2002-Customs dated 01.03.2002. It is a fact on record that on the basis of DRI investigation, the imported goods were subjected to chemical testing to ascertain certain parameters required for deciding on whether the exemption from customs duty is eligible to be availed in respect of such imported goods. Accordingly, the

imported goods were subjected to provisional assessment upon payment of differential duty (under protest) without availing the exemption claimed by the importer besides execution of bond in terms of Customs (Provisional Duty Assessment) Regulations, 1963. In terms of Regulation 2 *ibid*, upon subjecting the goods to provisional assessment of duty, the proper officer of customs shall make an estimate of the duty that is most likely to be levied as the provisional duty. If the importer executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty. In the present case, the appellants importer have paid the full customs duty applicable without the exemption claimed by them for the imported goods by paying it under protest. In other words, the appellants importer had paid the duty which would be finally assessed even if the exemption claimed was not available to the appellants, by paying the same under protest. In terms of the CBEC's instructions vide F.No.512/5/72-Cus.VI, dated 23-4-1973 and F.No.511/7/77-Cus.VI, dated 9-I-1978, the provisional assessments must be finalized expeditiously, well within 6 months. Thus, it could be inferred that even though there is no specific time limit prescribed in the Regulations of 1963, either for submission of documents by the importer or for finalizing the provisional assessment by the proper officer of customs, the endeavour of the department is to obtain finalization of provisionally assessed duties at the earliest as may be possible under the Customs statute. This also becomes clear from the subsequent Customs (Provisional Duty Assessment) Regulations, 2011, introduced with effect from 25.11.2001, where it is specifically provided that in case of provisional assessment which is pending the production of any document or furnishing of any information by the importer or the exporter, the bond referred to in regulation shall *inter alia* contain an undertaking that he shall produce such document or information within one month or within such extended period as the proper officer may allow.

8.5 We find that the provisions under sub-section (2) to Section 18 *ibid* provide that the duty leviable on import goods shall be assessed finally in accordance with the Customs Act. In the event of finally assessed duty falls short of the amount already paid, then the importer is required to pay the deficiency after adjusting the duty already paid under provisional assessment; further, in case the finally assessed duty is in excess of the duty already paid

on the provisional assessment, then the importer is entitled to get refund of such amount of excess duty paid over the finally assessed duty.

8.6 From careful examination of the legal provisions of Section 18 *ibid*, it is clear that the appellants importer in the present case, having paid the customs duty applicable on imported goods without applying the exemption/concession initially while provisionally assessment of the imports, whereas at the time of finalisation of provisionally assessed B/Es, the imported goods having been found to be eligible for availing customs duty exemption, then the appellants importer becomes entitled to refund of such amount of excess duty paid in terms of Section 18(2) *ibid*.

8.7 We also find from the provisions of sub-sections (3), (4) and (5) to Section 18 *ibid*, was introduced through Taxation Laws (Amendment) Act, 2006 w.e.f. 13.07.2006, and that these provide for a mechanism to regularise the payments of duty short levied and interest thereon as well as duties that are to be refunded on finalisation of a provisional assessment. Thus, it is crystal clear that upon finalization of assessment of imports which are initially provisionally assessed, in case where the duty paid initially is in excess than the duty finally assessed by the proper officer of customs, then the importer is entitled to refund of customs duty paid in excess than the finally assessed duty. Further, as the sub-section (4) to Section 18 *ibid* provide for payment of interest and the rate fixed by the government in terms of Section 27A *ibid*, in case the amount of excess paid duty is not refunded within three months from the date of final assessment of duty.

8.8 In terms of the provisions of Explanation-II to sub-section (1) of Section 27 *ibid*, the time-limit for filing refund claim under this section is required to be computed from the date of adjustment of duty after the final assessment thereof. Therefore, in case where the duty paid under of provisional assessment is in excess of the duty finally assessed by the proper officer of customs, then in respect of the entitlement for refund of such excess paid duty, the applicant for refund/appellant importer could file requisite refund application within the time prescribed in the statute calculated from the date of such adjustment upon final assessment of the customs duty.

8.9 In the context of the present factual matrix of the case, in terms of the above discussed legal provisions of the Customs Act, 1962, we are of the *prima facie* view that the appellants importer is eligible for refund of excess amount of customs duty paid over and above the finally assessed duties of

customs by the proper officer. The delay in sanction of eligible refund is to be determined in terms of the specific facts of each case and therefore we are also of the prima facie view that where there is a delay in payment of unrefunded amount, the interest of appropriate rate fixed by the government under Section 27A *ibid* is payable upon expiry of three months from the date of adjustment of the finally assessed duty till the date of actual payment of such amount to the eligible appellants importer.

9.1 In order to further examine the facts of the case, we would like to refer to the relevant paragraphs of the original order dated 30.03.2017 wherein the details of the case, eligibility to the claim of exemption under Sl. No. 68/68A of Notification No. 21/2002-Customs dated 01.03.2002, details provided by the appellants importer for finalisation of provisional assessment, final assessment of customs duty etc. are given in detail.

"12.2 In view of the above, there appears to be a need to first finalize the above 12 provisionally assessed Bills of Entry, In the light of the orders of the Commissioner of Customs, Goa vide OIO No. Commr./Adj./Cus/11/2013-14 dated 27.09.2013 by extending the benefits of exemption notification no. 21/2002-Customs dated 01.03.2002 as amended vide notification. no.21/2011-Cus dated 01.03.2013, as amended read with explanation Sl.No.68 to the Notification 77/2011-Cus dated 17.08.2011, vide Sl no. para 81(V) of the above order.

12.3 From the **Table-5** above, it can be seen that at discharge port as well as at load port w.r.t. above mentioned 12 B/Es, the CSN Is 1 and above and same are to be assessed by extending the benefits of exemption notification no.21/2002-Customs dated 01.03.2002 as amended vide notification. No.21/2011-Cus dated 01.03.2013, as amended read with explanation Sl.No.68 to the Notification 77/2011-Cus dated 17.08.2011 as per the orders of the Commissioner of Customs, Goa, vide his OIO No. Commr./Adj./Cus/11/2013-14 dated 27.09.2013, at Para 81(V).

12.4 I have also gone through Order of Commissioner (Appeals), Pune Appeal-II (At Goa), Central Excise & Customs, Order-In- Appeal No. Goa-Custm-000-APP-170 to 176-2014-15 dated 26.03.2015 wherein it was ordered by the Hon'ble Commissioner (Appeals), " **that the finalization of assessment shall be done by accepting the value in final Invoice as transaction value in each case**", which has been accepted in review by Committee of Commissioners.

12.5 The importer has submitted demurrage Certificates w.r.t. all the B/E Sr. No.1 to 12 of Table-1, Para 2 above. In view of Board's Circular No.26/2006-Cus dated 26.09.2006, and provisions of Rule 10 (2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the demurrage has to be included in the Assessable Value for finalization of assessment. The final assessable value, final duty, differential duty and interest for B/E mentioned at Sr No. 1 to 12 of Table-1 is as given under Table-6 below (upto31.12.2016).

TABLE-6

Sr. No.	B/E No. Dt.	Qty of goods (MTS)	Provisional Assessable value (Rs.)	Final Assessable value (Rs.)	Final Duty payable Incl. CEC (Rs.)	Prov. Duty paid Incl. CEC (Rs.)	Diff. Duty (Refund) (Rs.)
(1)	(2)	(3)		(4)	(5)	(6)	(7)
1	91/08.10.2010	6799.0002	387237593	387237593	3399600	23342336	-19942736
2	91/08.10.2010	50491.000	304830446	307029202	2524550	18223318	-15698768

Sr. No.	B/E No. Dt.	Qty of goods (MTS)	Provisional Assessable value (Rs.)	Final Assessable value (Rs.)	Final Duty payable Incl. CEC	Prov. Duty paid Incl. CEC	Diff. Duty (Refund)
3	41/ 03.09.2010	60697.000	364819264	364384767	3034850	21823042	-18788192
4	40/ 08.10.2010	61178.000	366644088	369433396	3058900	21941070	18882170
5	20/ 05.08.2010	60536.000	607080738	608616646	3026800	34291458	-31264658
6	164/ 16.09.2010	63324.000	668706087	668499287	3166200	37604563	-34438363
7	204/ 20.09.2010	72000.000	680068844	680068844	3600000	38568704	-34968704
8	18/ 03.11.2010	70775.000	636619667	636619667	3538750	33349314	29810564
9	220/ 24.11.2010	83222.000	522893147	522893147	4161100	26873102	-22712002
10	37/ 03.12.2010	70531.000	479419254	479419254	3526550	24061834	-20535284
11	95/ 21.01.2011	65736.000	598876536	598876536	3300000	30041917	-26741917
12	100/ 24.01.2011	72680.030	663415847	663415847	3685600	37814950	-34129350
Total					40022900	347935608	-307912708

12.6 From above discussion it emerges that the import of coal made vide above mentioned 12 Bills of Entry is to be assessed extending the benefit of Notification no.21/02-Cu Sl.No.68 as amended read with explanation Sl.No.68 to the Notification 77/2011-Cus dated 17.08.2011, and the duty paid in excess on finalisation is to be refunded under the provisions of Section 27 of the Customs Act, 1962.

12.7. I also find that the finalisation of provisionally assessed Bills of Entry 18 being done as per the Order In Original No.GOA-CUSTOM-000-APP-005-2016-17 dated 08.04.2016.The Hon'ble CESTAT in an Appeal filed by the department as well as the Importer, vide Order No. A/3894-3896/15/CB dated 14.12.2015 while dismissing the Appeal of the Revenue has allowed the Appeal of the Appellant (Importer) with consequential relief, if any, in accordance with the law; and on being aggrieved by the Order of the Hon'ble CESTAT the revenue have filed an SLP before the Hon'ble Supreme Court against the above orders of the CESTAT which is admitted but the Hon'ble Supreme Court has not stayed the CESTAT order.

Xxxx xxxx xxxx xxxx

13 From foregoing facts, it emerges that the import of coal made vide above mentioned 12 Bills of Entry is to be assessed extending the benefit of Notification no.21/02-Cus. dated 01.03.2002 as amended read with explanation Sl.No.68 to the Notification 77/2011-Cus dated 17.08.2011 and the duty paid in excess on finalisation is to be refunded under the provisions of Section 27 of the Customs Act, 1962.

14 In view of the foregoing, I proceed to finalise the provisionally assessed Bills or Entry no. 91/ 08.10.2010 Soft Coking Coal; 256/ 21.09.2010 Soft Coking Coal; 41/ 03.09.2010 Soft Coking Coal; 40/ 09.08.2010 Soft Coking Coal; 20/ 05.08.2010 Black Water Soft Coking Coal; 164/ 16.09.2010 Jellinbah PCI Coal; 204/ 20.09.2010 Black Water Soft Coking Coal; 18/ 03.11.2010 Black Water Soft Coking Coal; 220/ 24.11.2010 Soft Coking Coal; 37/ 03.12.2010 Soft Coking Coal; 95/ 21.01.2011 Jellinbah PCI Coal; 100/ 24.01.2011. Black Water Soft Coking Coal, by extending the benefit of Notification no.21/02 Cus dated 01.03.2002 as amended read with explanation Sl.No.68 to the Notification 77/2011-Cus dated 17.08.2011 and the duty paid in excess on finalisation is to be refunded under the provisions of Section 27 of the Customs Act, 1962; as in respect of all these 12 B/Es the discharge port as well as customs lab report shows the Swelling Index or Crucible Swelling Number (CSN) is shown as 1 and above.

ORDER

13.1 I order that the goods declared in respect of 12 Bills of Entry as mentioned in Table 1 are assessed finally taking into account the Invoice Value & Demurrage/Dispatch as shown against the respective Bills of Entry.

13.2 I order for the rejection of the declared value of all 12 B/Es mentioned in Sr No.1 to 12 of Table-1, of this order, in view of provisions of the Customs

Valuation (Determination of value of Imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry are ordered to be finalized as per the Value mentioned in Column- 4 of the Table 6 (Para, 12.5) above under Sec.18 (2) of the Customs Act, 1962, and the differential duty shall be paid accordingly.

*13.3 The total duty liability on these 12 B/E (Sr No.1 to 12) on finalization after extending the benefits of Notfn No.21/02-Cus S.No.68/ works out to **Rs. 4,00,22,900/ (Rupees Four Crores, Twenty Two Thousands and Nine Hundred only)**. The Importer has already paid total duty of **Rs. 34,79,35,608/- (Rupees Thirty Four Crores, Seventy Nine Lakhs, Thirty Five Thousand, Six Hundred and Eight only)** at the time of provisional assessment under protest. The duty of Rs. 40022900/- (Rupees Four Crores, Twenty Two Thousands and Nine Hundred only) arrived on finalization of above 12 Bills of Entry is ordered to be appropriated against the duty of Rs. 34,79,35,608/- (Rupees Thirty Four Crores, Seventy Nine Lakhs, Thirty Five Thousand, Six Hundred and Eight only) paid by the importer against above 12 Bills of Entry at the time of provisional assessment under protest. On appropriation of Rs. 40022900/- (Rupees Four Crores, Twenty Two Thousands and Nine Hundred only) against Rs. 34,79,35,608/- (Rupees Thirty Four Crores, Seventy Nine Lakhs, Thirty Five Thousand, Six Hundred and Eight only) the importer M/s. JSW Steel Ltd. is entitled for refund of Rs. 30,79,12,708/- (Rupees Thirty Crores, Seventy Nine Lakhs, Twelve Thousand, Seven Hundred and Eight only) being duty paid in excess under protest, subject to provisions of Sec. 27 of Customs Act, 1962.*

13.4 This order is issued without prejudice to any other action likely to be taken under this Act. Regulation, Rules or any other Allied Acts/Rules/Regulations for the time belong in force, and without prejudice to the outcome of the SLP filed by the revenue against the orders of the Hon'ble CESTAT No. A/3894-3896/15/CB dated 14.12.2015 before Hon'ble Supreme Court."

9.2 From the above factual matrix of the case, it clearly transpires that the original authority in his order dated 03.03.2017 had accepted the fact that in respect of all the 12 B/Es relevant to this case, the discharge port as well as customs lab report shows the Swelling Index or Crucible Swelling Number (CSN) as 1 and above, there by concluding that the appellants importer are eligible to claim the customs duty exemption applicable in respect of 'coking coal' under Sl. No. 68/68A of Notification No. 21/2002-Customs dated 01.03.2002, as amended. Even though the amendment inserted under Sl. No.66A was issued by Notification No.31/2011-Customs dated 24.03.2011, by relying on the orders passed by the higher authorities such as the Commissioner of Customs dated 27.09.2013, Tribunal's Final Order dated 14.12.2015 in the case of appellants, he had extended the benefit of 'NIL' rate of customs duty exemption to the imports made by the appellants importer. However, by citing the reasons of inclusion of the demurrage charges in terms of CBIC Circular No.26/2006-Customs dated 26.09.2006 in the assessable value of the imported goods, and for providing deduction of dispatch value i.e., dispatch money paid to the importers on quick turnaround of the vessel during unloading of the bulk imported goods, on the same analogy in terms of the Tribunal's Final Order in the case of *Indian Farmers Fertiliser Co-op. Ltd. Vs. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I* – 2012 (284) E.L.T. 266 (Tri. Kolkata), he had rejected the declared value and

finalized the assessable value in terms of the details given in Table-6 at paragraph 12.5 of his order dated 03.03.2017.

9.3 On careful perusal of the above details, we find that the issue for decision in finalizing the assessment of imports in 12 B/Es which were provisionally assessed initially involved a simple calculation of deducting the Clean Energy Cess payable and the rate of Rs.50/ per Tonne from the total customs duty paid under provisional assessment, as by extending the notification benefit under Sl. No. 68/68A of Notification No. 21/2002-Customs dated 01.03.2002, as amended, the entire customs duty along with applicable education cess is 'NIL'. In fact, the Order-in-Original No. 71/2015-D.C. (A) dated 30.01.2015, issued in pursuance of the finalisation of assessment in respect of various bills of entry including the 12 B/Es in the present case on the basis of the Commissioner of Customs order dated 27.09.2013, precisely did the same thing by deducting the amount of Clean Energy of Cess of Rs.4,00,22,900/- from the total duty of Rs.34,79,35,608/- paid under provisional assessment and in determining the amount of refund as Rs.30,79,12,708/- being excess duty paid over and above the finally assessed duty but credited to the Consumer Welfare Fund. The said order was appeal against before the Commissioner (Appeals) who had disposed of the case vide Order dated 08.04.2016 allowing the refund to be paid to the importer appellants with consequential relief, by holding that the appellants had discharged the burden of rebuttal of the presumption of unjust enrichment. The above facts also highlight that there was no relevance of determination of assessable value by including the demurrage charges and deduction of dispatch amount from assessable value, as 'NIL' rate of customs duty on whatever be the assessable value, remained 'NIL'. The plea taken by authorities below stating that details of final invoices indicating the invoice value, the demurrage value, dispatch value was given by the appellants importer on 22.02.2017 has no logical basis, inasmuch as the applicable customs duty was 'NIL' and only Clean Energy Cess (CE Cess) is required to be paid at the rate of Rs.50 per tonne vide Notification No.3/2010-Clean energy Cess dated 22.06.2010 read with Section 83 of Chapter VII of the Finance Act, 2010. Therefore, we find that in order to avoid payment of interest under the garb of finalising the provisionally assessed B/Es, the authorities below in a convoluted manner brought in the aspect of rejection of transaction values in redetermination of assessable value for the purpose of ascertaining the duty to be finally assessed, and the same is entirely incorrect and contrary to the facts of the case. Even an attempt to recalculate the CE Cess in respect of 2 B/Es

where the quantity of imported goods was adapted differently in Table-6 of the order dated 03.03.2017 was not done and the figures provided by the appellants importer were simply followed in the calculation of CE Cess. Thus, we find that there is neither any legal requirement nor there existed any fresh facts necessitating the authorities below to undertake the finalisation of assessment in the manner projected by them in the order dated 03.03.2017. Thus we find that this order is factually incorrect to the above extent of determining the duty to be assessed in finalisation of the provisional assessment is not legally sustainable, as the said exercise has already been done in the initial order dated 27.09.2013 of the Commissioner and it is obviously evident from the facts of the case and the refund request letter of the appellants importer dated 22.11.2013.

9.4 Further, we would also like to refer to the relevant paragraphs of the impugned order dated 25.09.2017 wherein the learned Commissioner (Appeals), had come to the conclusion in payment of interest for the period stated therein. The relevant paragraphs of the said order are extracted and given below:

"DISCUSSION AND FINDINGS

6. *I have carefully gone through the appeal memorandum, written and oral submissions made by the Appellant and the Respondent, the case laws cited by the Appellant, as well as the records of the case placed before me. I find that the only issue to be decided by me is whether the Appellant is eligible for interest on delayed refund or not? And if so, with effect from the date immediately after the expiry of three months from the date of submission of the refund application on 25.11.2023 or after the expiry of three months from the date of submission of the refund application in the prescribed format under Section 27 of the Act received on 25.06.2024 or after the expiry of three months from the date of final assessment of the 12 Bills of Entry vide OIO No.19/2017 – AC(A) dated 03.03.2017?*

xxx

xxx

xxx

xxx

7. *Therefore, by applying the ratio of the above judgments to the facts of the present case. I find that the issue of payment of interest on delayed sanction of refund is no more res integra in view of the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. v. Union of India (2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)). I find that the adjudicating authority should have paid interest along with grant of refund in terms of Section 27 (A) (1) of the Act as discussed above, with effect from the date **immediately after expiry of three months** from the date of receipt of such complete refund application i.e., three months from 25.06.2014 which is from 24.09.2014, till the date of the refund of such duty i.e., upto 24.03.2017.*

8. *In view of the above, I pass the following Order:*

ORDER

The appeal is allowed and the Respondent is directed to release the interest on the delayed refund as discussed above. The appeal is disposed of accordingly."

9.5 From the above facts, it clearly transpires that the learned Commissioner (Appeals) had taken into consideration the date of submission of refund

application in the prescribed format by the appellants importer vide their letter dated 23.05.2014 received by the Department on 25.06.2014. In this letter, the appellants have stated that they had submitted vide their letter dated 22.11.2013 requisite refund application duly acknowledged by the Department and in reply to the letter of the Department dated 10.12.2013, the same is being submitted again at the request of the Department for processing the refund claim. The appellants importer have also again submitted a letter dated 08.03.2017 upon receipt of Order-in-Original dated 03.03.2017 seeking the refund in pursuance of the earlier order of the Commissioner (Appeals) dated 08.04.2016. In reply, the Assistant Commissioner of Customs (Refund), Customs House, Goa vide their letter dated 17.03.2017 again sought for filing of proper refund application along with all relevant documents to be submitted by the appellants for processing the refund claim.

9.6 We also note that the provisions of Section 27 *ibid* provide for filing of an application for refund by an applicant in such form and manner as specified in the regulations. Relevant extract of the Customs Refund Application (Form) Regulations, 1995 is provided as below:

"Regulation 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."*

The above regulations provide a manner in which complete details are required to be submitted by the applicant, which shall be scrutinized for its completeness by the proper officer of customs and if there is a deficiency in respect of its completeness, the same shall be communicated to the applicant within 10 working days of receipt of the application, by returning the incomplete application to be re-submitted making good the deficiencies.

9.7 In terms of the Form prescribed under the Regulations, 1995, the following details are required for processing the refund application. These are:

- (i) Import/Export document (Bill of Entry, Shipping Bill etc.)/ Purchase invoice – No. and Date
- (ii) Duty deposit reference (Cash No./Deposit No.) and date
- (iii) Description of goods
- (iv) Name and address of (a) Importer, (b) Customs House Agent, (c) Applicant
- (v) Refund Claim under: Section 27(1)(a)/Section 27(1)(b) of the Act
- (vi) 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).]*
- (vii) Amount of refund claim
- (viii) Amount of Modvat credit availed from the additional duty of customs paid and now covered by the refund claim
- (ix) Enclosures* (in original) in support of refund claim
- (x) Any further details deemed necessary and relevant to the refund claim
- (xi) Whether any other refund claim filed/pending against the same Import/Export document (Bill of Entry, Shipping Bill etc.). If yes, give details
- (xii) Whether personal hearing required or not before the case is decided
- (xiii) (a) Whether duty has been paid under protest, (b) If yes, Customs House protest registration No.

As discussed above in paragraphs 9.1 to 9.5 above, in the present case when the appellants importer had submitted their application for refund vide their letter dated 22.11.2013, the requisite details as per prescribed form given above were available to enable processing of the refund claim. Thus from the factual details of the present case it can be seen that neither there was any incompleteness in terms of the details required for finalisation of the assessment, since the duties of customs was 'NIL' and the amount of Clean Energy Cess payable was indicated therein along with the amount paid initially at the time of provisional assessment, nor there was any deficiency letter issued to the appellants importer. As we had also analysed the issue of re-assessment of customs duties in the context of addition of the demurrage value, adjustment of dispatch value having no relevance in finalization of provisional assessment, in the context of customs duties being 'NIL', we find that the relevant date for the purpose of filing of refund application with complete details in this case shall be considered as letter dated 22.11.2013 acknowledged with date stamp of 25.11.2013 by the Department. Hence, for the unrefunded amount of Rs.30,79,12,708/- which was refunded and paid by the department on 30.03.2017, interest in terms of Section 27A *ibid* is liable to be paid from the expiry of three months from the date of receipt of the application for refund containing all details on 25.11.2013, i.e., from 24.02.2014 to 30.03.2017.

9.8 We also note that in the judgement delivered by the Hon'ble Supreme Court in the case of *Mafatlal Industries Ltd. Vs. Union of India – 1997 (89) E.L.T. 590*, the distinction in respect of refund under Rule 9B of the Central Excise Rules, 1944 and Section 11B Central Excise Act, 1944 has been brought out as follows:

"95. Rule 9B provides for provisional assessment in situations specified in Clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be". Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule (5) are appealed against - or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed/decreed - then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) re-agitating the issues already decided under Rule 9B - assuming that such a refund claim lies - and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation."

9.9 The above legal position was also explained in the case of *Hindalco Industries Ltd. (supra)* by the Hon'ble Gujarat High Court as follows:

"18. On a plain reading it becomes apparent that sub-sections (3) and (4) relate to liability to pay interest or entitlement to claim interest consequent upon final assessment order. However, sub-section (5) is the material amendment which indicates that the Proviso appearing below sub-section (2) of Section 27 of the Act has now been incorporated as a part of Section 18 of the Act. On a plain reading the distinction between Section 18 as it stood prior to amendment i.e. upto 12-7-2006 and subsequent to the amendment i.e. with effect from 13-7-2006 becomes apparent. The difference is stark and revealing and it is not possible to agree with the contention of revenue that such amendment has to be understood as clarificatory in nature. This is more so, when one reads the amendments made in 1998 and the amendment made in Rule 9B of the Central Excise Rules in 1999 considering the pronouncement of the Apex Court as to the distinction between making of a refund and claiming of a refund; the amendment cannot be considered to be retrospective in nature; and cannot be made applicable to pending proceedings.

19. This can be considered from a slightly different angle. While introducing the Taxation Laws (Amendment) Bill, 2005 (Bill No. 74 of 2005) the Notes on Clauses in relation to Section 18 of the Act indicate that sub-sections (3), (4) and (5) to Section 18 of the Act, have been inserted to provide for a mechanism to regularise the payments of duty short levied and interest thereon and duties that are to be refunded on finalization of provisional assessment and in this context in the report of the Standing Committee on Finance it has specifically been noted that this amendment became necessary because Section 18 of the Act which provides for provisional assessment of duty presently (i.e. upto 12-7-2006) does not provide for various issues arising from the finalization of provisional assessment. Thus it becomes apparent that the amendment in question is substantive in nature when one finds that various provisions have been inserted which were not forming part of the original Section 18 of the Act as it stood upto 12-7-2006. It is not possible to state that the provisions for payment of interest on duty short levied or entitlement to interest on duty paid in excess of the finally assessed duty can be considered to be clarificatory provisions and in the same vein the newly inserted sub-section (5) deserves consideration. Thus in effect upto 12-7-2006 no provision existed in Section 18 of the Act which would permit revenue to invoke principles of unjust enrichment in relation to duty paid in

excess, found to be so, upon finalization of provisional assessment under Section 18 of the Act.

20. *Hence, the reference to provisions of Section 27 of the Act which generally deals with claim for refund cannot be of any assistance to the revenue. Similarly the definition of the term assessment under Section 2(2) of the Act also cannot help the revenue in light of the specific provisions of Section 18 of the Act which override all other provisions of the Act. The contention that the Court should not permit a person to derive unjust benefit also does not merit acceptance. The Court can only read the provisions and that statute as they stand, and if necessary, interpret the same but the Court cannot legislate. This is a salutary principle of interpretation. Furthermore, as noticed hereinbefore, the Apex Court has in no uncertain terms drawn the distinction between making of refund and claiming of refund. The High Court cannot equate the two in light of the authoritative pronouncement of law by the Apex Court.*

21. *Therefore, on both counts, in light of the authorities referred to hereinbefore, and on interpretation of provisions of Section 18 of the Act, on finalisation of assessment if any excess duty is found to have been paid at the time of provisional assessment Revenue is bound in law to make the refund without any claim being required to be made by an assessee. This would be the position in law upto 12-7-2006 and not thereafter."*

9.10 It is a fact on record that the present dispute relates to the period of August, 2010 to January, 2011 i.e., post amendment of Section 18 *ibid* w.e.f. 13.07.2006, and that the facts of the above relied upon case being adjustment of finally assessed duty (on the basis of LME price of Copper concentrate in final invoice) with provisionally paid duty during 2004, is entirely different from the facts of the present case where finally assessed duty is NIL on account of full exemption from customs duty. Accordingly, we are unable to take guidance from the above judgement to the limited extent applying the distinction between 'making of refund' and 'claiming of refund' and the finding that Revenue is bound in law to make the refund without any claim being required to be made by an assessee, to the present case, as the Hon'ble High Court of Gujarat held that the above is the correct position in law up to 12.07.2006 and not thereafter.

9.11 In order to further examine the above aspects argued by both sides with supporting case laws, we have also carefully perused the legal provisions of Section 18 and 27 *ibid* as it stood during the disputed period. Upon such detailed examination of such legal provisions and careful reading of the specific words used therein, we find that the following conclusions could be drawn for fulfilment of legal requirements on the issue of refund arising from the finalization of provisional assessment:

(i) On finalization of provisional assessment under Section 18(2) *ibid*, if the amount of duty paid under provisional assessment is in excess of the duty finally assessed, then the importer shall be entitled to a refund of such excess duty paid;

(ii) If any refundable amount is arising as at (i) above, and the same is not refunded within three months from the date of final

assessment of duty, then there shall be a payment of interest at such rate fixed under Section 27A *ibid*;

(iii) The amount of duty refundable is subject to the principles of Unjust Enrichment as provided under Section 18(5) and/or First proviso to Section 27(2) *ibid*;

(iv) Notwithstanding anything contained to the contrary in any judgement of the Appellate Tribunal or any Court or in any other provision of the Customs Act, 1962 or any other law for the time being in force, no refund of duty shall be made except as provided under Section 27(2) *ibid*;

(v) Refund application is required to be made by any person claiming refund of duty under Section 27(1) *ibid*, in the form and manner as specified in the Customs Refund Application (Form) Regulations, 1995, as amended.

9.12 As discussed in paragraphs 9.1 to 9.7 above, all the above aspects of the legal requirements under Sections 18 and 27 *ibid* are fulfilled in the present case. It is a fact on record that the refundable amount entitled to the appellants importer on finalization of assessment under Section 18(2) *ibid*, remained unpaid beyond three months after submission of complete details in the form application letter dated 22.11.2013 received and acknowledged on 25.11.2013 by the department, for processing the refund claim under Section 27(2) *ibid*. In harmonious interpretation of the provisions of Sections 18 and 27 *ibid* as discussed above and the conclusions drawn in paragraph 9.11, we are of the considered view that interest is payable to the appellants in the present case for the period from 24.02.2014 to 30.03.2017.

9.13 We also find support for our above conclusions from the judgement of Hon'ble High Court of Madras in the case of *Commissioner of Cus. (Export), Chennai Vs. Sayonara Exports Pvt. Ltd.* – 2015 (321) E.L.T. 580 (Mad.). In this case, the Hon'ble High Court had referred to the judgements of the Hon'ble Supreme Court in the case of *Mafatlal Industries Ltd.*, (*supra*); Hon'ble Gujarat High Court in *Hindalco Industries Ltd.* [wherein the judgements of *Bussa Overseas & Properties Pvt. Ltd.*, *Allied Photographic* were discussed] (*supra*), and held that in agreement with the proposition of law making a distinction between Section 18 and 27 *ibid*, stating that no application is required to be filed under Section 27 *ibid* for refund under Section 18 *ibid* is applicable to the period earlier to the amendment made w.e.f. 13.07.2006.

10.1 We further find that the CBEC had issued instructions to the filed formations by issue of Circular No.59/98 dated 05.06.1995 emphasizing the

importance of the requirement for processing the refund applications within the interest free period of three months prescribed under Section 27A *ibid*. The said circular is extracted and placed below for ease of reference and understanding:

**Circular No. 59/95
dated 5/6/95**

F.No. 438/7/95 CUS IV

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Customs Refund Application (Form) Regulations, 1995 - Interest on Refund - Instructions Reg.

I am directed to say that with the enactment of the Finance Bill, 1995 with effect from 26.5.1995 section 27 A relating to payment of interest on delayed refund of customs duties have become part of the Customs Act, 1962. Consequently, Notification No. 32/95 (NT) customs dated 26.5.1995 has been issued by the Board to specify the rate of interest payable by the Department in the case of delayed refunds to customs duties in terms of the said notification is simple interest of 15% per annum. Instructions have already been issued by TRU as a part of the Budget instructions regarding the payment of interest and the calculation of which interest is payable.

2. In order to give effect to the aforesaid provisions and to streamline the procedure for processing of refund applications the Customs Refund Application (Form) Regulations, 1995 have been prescribed by the Board in terms of Notification No. 34/95 (NT) Customs dated 26.5.1995. These regulations supersede the Customs Application (Form) Regulations, 1991.
3. The new regulations provide for the form and manner in which an application of refund is to be made. As may be seen, the regulations also provide for the scrutiny of an application and its return of the applicant within a period of 10 working days. If it is found incomplete in any manner or detail. If however, the application is found to be complete in all respects for the purpose of processing the refund claim the same is to be acknowledged within the period of 10 working days. The interest free period of 3 months for processing the claim while be deemed to start the date of receipt of the complete refund application.
4. The aforeindicated provisions warrant that the Department is geared to meet the new standards required by law as the payment of interest by the Government cases of delayed settlement of refund case would be detrimental to Government revenue. Accordingly, steps are to be taken by the Commissioners of Customs to closely monitor the performance of the refund cells of the Customs Houses to ensure that all refund claims are settled at the earliest and in any case before the period the interest liability starts. In this direction the centralisation of all types of refund claims and their settlement procedure may be examined by the Commissioners for greater efficiency and accountability.
5. As the period of interest determination starts from the date of receipt of a complete refund application, the responsibility of proper scrutiny of the applications for determining the completeness or otherwise of the applications can not be under estimated. Accordingly, particular importance is to be given to this area of work and it may be ensured that there should be proper selections of officers conversant with such work. In case of delays not warranted in the administrative system, perhaps, Government would be constrained to recover the interest paid from the officials who were responsible for such delays.
6. The finalisation of refund claims are to be closely monitored and it may be ensured that these are decided without fail within the period provided. No interest liability should normally lie on the Government. It is further desired that all refund claims in future be settled at the level of Assistant commissioner only (and not by Superintendent/ Appraiser). It may be noted that the interest is payable only in respect of delayed refunds of customs duties. No interest is payable in respect of deposits (for example deposits for project import, etc.). Pre audit system as well as issue of cheques should be ensured at utmost speed.
7. I am directed to say that the Board has desired that this aspect of tax administration be given due importance in view of the revenue implications. Accordingly, the Commissioners of Customs concerned may evolve a suitable procedure for implementing the new legal provisions. Suitable detailed Standing Order to departmental officers may be issued. Trade may also be advised of this procedure for filing claims in complete forms by issue of a Public Notice. Copies of standing Order/ Public Notice may be endorsed to the Board [Director (Cus) and to DGACCE, Delhi.
8. copies of the referred notifications have been sent to the Commissioners of Customs vide Board letter F.No. 446/18/94- Cus IV dated 29.5.1995.

Sd/-
(S.M. Bhatnagar)

10.2 On plain reading of the above instructions of the CBEC, it explains the concern of the government that timely processing and sanction, where eligible, of the claims being one crucial aspect of tax administration and the same is required to be given due importance in view of the revenue implications. Further, the said circular also places responsibility on the senior officers of the field formations by directing them for taking necessary steps in the manner that Commissioners of Customs to closely monitor the performance of refund cells of the Customs Houses to ensure that all refund claims are settled at the earliest. We are surprised to note that in the present case, when the

Commissioner of Customs in his order dated 27.09.2013 had clearly held that the duty exemption claimed by the appellants importer in 12 B/Es are eligible to be extended based on the parameters of the test report ascertained from the chemical examination done at the port of unloading here in India, which thereby resulted in paying NIL customs duty except the Clean Energy Cess, none of the authorities below have examined the issue in detail. We also failed to know the reason as to why the fact that no customs duty is payable in the finalized assessment, despite being so apparent upon the import goods are extended with the NIL duty benefit, and in terms of CBEC instruction of close monitoring of refunds, the Commissioners have failed to appreciate that there remained nothing for the department to keep the refund pending by citing various reasons, as the entire duty paid by the appellants importer became refundable except the CE Cess, including the present appeal filed before this Tribunal, in review of the Committee of Commissioners.

11.1 We further find that the original order dated 03.03.2017 had also mentioned in the order portion that the Department had filed an appeal before the Hon'ble Supreme Court against the final order dated 14.12.2015 of the Tribunal confirming the customs duty exemption benefit extended by the Commissioner of Customs in his order dated 27.09.2013 and the refund arising from his order dated 03.03.2017, without prejudice, is subject to the outcome of such appeal. In this regard, we find that Revenue had filed Civil Appeal No. 7863-7864/2013 along with C.A. No. 8319/2018 (XVII-A) (for admission and I.R. and IA No.108004/2018-Condonation of delay in filing and IA No.108007/2018-EX-PARTE STAY before the Hon'ble Supreme Court by Diary No. 26572/2016 filed on 08-08-2016.

11.2 We have also perused the details of proceedings displayed in the website of the Hon'ble Supreme Court and note that the department was granted four weeks' time, as a last chance, to file affidavit of valuation vide Order dated 18.09.2023 and to list the matter again on 20.11.2023. On subsequent hearing, the Hon'ble Supreme Court had noted in its order dated 08.12.2023 that the Learned Counsel for the appellant department has failed to file affidavit of valuation. Hence, the matter was sent to process the matter for listing before the Hon'ble Judge-in-Chambers, for further directions. Since the status of the case is still showing as 'Pending', and that there is no stay order or any other direction given by the Hon'ble Supreme Court in pursuance to the appeal filed by the department impacting the

implementation of the said final order of the Tribunal in this case, we do not find that there are any impediments in implementing the Orders of the Tribunal in this case which confirmed the duty exemption extended to the imports by appellants importer including the 12 B/Es relevant to the present case.

11.3 The copy of the orders of the Hon'ble Supreme Court in the above matters providing the present status of the case is extracted and given below:

ITEM NO.3 REGISTRAR COURT. 2 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR SH. PUNEET SEHGAL

Civil Appeal No(s). 7863-7864/2013

COMMISSIONER OF CUSTOMS Appellant(s)

VERSUS

M/S JSW STEEL LTD. THROUGH ITS MANAGING DIRECTOR Respondent(s)

(ONLY CA No. 10083 of 2018 TO BE LISTED BEFORE LD. REGISTRAR'S COURT.)

WITH

C.A. No. 10083/2018 (XVII-A)

Date : 18-09-2023 These appeals were called on for hearing today.

For Appellant(s)

Mr. Kamal Kishor, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. B. Krishna Prasad, AOR

For Respondent(s)

M/S. Gagrath And Co, AOR
Mr. Ujjwal A. Rana, Adv.
Mr. Ujjwal A. Rana, Adv.
Mr. Himanshu Mehta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Sole respondent has already filed counter affidavit.
Four weeks time, as a last chance, is granted to Ld. counsel
for Appellant to file affidavit of valuation.
List again on 20.11.2023.

PUNEET SEHGAL
Registrar

pm

ITEM NO.4 REGISTRAR COURT. 2 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

BEFORE THE REGISTRAR SH. VIVEK SAXENA

Civil Appeal No(s). 7863-7864/2013

COMMISSIONER OF CUSTOMS

Appellant(s)

VERSUS

M/S JSW STEEL LTD. THROUGH ITS MANAGING DIRECTOR Respondent(s)

(ONLY CA No. 10083 of 2018 TO BE LISTED BEFORE LD. REGISTRAR'S COURT.)

WITH

C.A. No. 10083/2018 (XVII-A)

Date : 08-12-2023 These appeals were called on for hearing today.

For Appellant(s)

Ms. Manvi Sharma, Adv.
Mr. Mukesh Kumar Maroria, AORFor Respondent(s)
Mr. B. Krishna Prasad, AORM/S. Gagrat And Co, AOR
Mr. Ujjwal A. Rana, Adv.
Mr. Himanshu Mehta, Adv.UPON hearing the counsel the Court made the following
O R D E RCIVIL APPEAL No. 10083 OF 2018

Sole respondent has already filed counter affidavit.

Ld. Counsel for the appellant has failed to file affidavit of valuation.

Hence, process the matter for listing before the Hon'ble Judge-in-Chambers, for further directions.

VIVEK SAXENA
Registrar

11.4 We also find that the issue of complying with the orders of the appellate authorities or higher judicial forum is well settled as in the case of *Union of India Vs. Kamalakshi Finance Corporation Ltd. - 1991 (55) E.L.T. 433 (S.C.)* the Hon'ble Supreme Court have observed as under:

"6. Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative

authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.

From the above observations of the Hon'ble Supreme Court, it is amply clear that the principle of judicial discipline requires that the order of the higher appellate authority should be followed unreservedly by the subordinate authority. Hon'ble Supreme Court also observed that mere fact of the order of the appellant authority is not acceptable to the department, in itself, is objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by the competent Court. In the present factual matrix of the case, we find that there is no stay by the Hon'ble Supreme Court against the final orders of the Tribunal passed in the first round of litigation vide Final Order No. A/3894-3896-WZB/CB dated 14.12.2015 and hence in terms of the laid down principle of the Hon'ble Supreme Court, the same need to be implemented in order to avoid undue harassment and anarchy in administration of tax laws.

12. In view of the foregoing discussion and analysis, we are of the considered view that the impugned order dated 25.09.2017 is required to be modified to the extent of allowing payment of interest on the unrefunded amount of Rs.30,79,12,708/-, which was refunded and paid by the department subsequently on 30.03.2017, in terms of Section 27A ibid from the expiry of three months from the date of receipt of the application for refund containing all requisite details. On the basis of the factual matrix of the case, since we find that the refund application, complete with requisite details, as required under Customs statute was filed vide appellant's letter dated 22.11.2013 received by the Department on 25.11.2013 for processing the refund claim, payment of interest is to be effected for the period commencing from 24.02.2014 to 30.03.2017.

13. In the result, the appeal filed by the appellants is allowed in their favour with consequential relief, in modification of the impugned order dated 25.09.2017 as above. The appeal filed by Revenue is dismissed.

14. The application filed for stay of operation of the impugned order filed by Revenue is disposed of.

(Pronounced in open court on 08.07.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha