CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 85804 OF 2021

(Arising out of Order-in-Appeal No. MUM-CUS-PK-IMP-271/2020-21 dated 24.03.2021 passed by the Commissioner of Customs (Appeals-I), Mumbai.)

APAR INDUSTRIES LIMITED,
A-201/202, 2ND FLOOR,
BEZZOLA COMPLEX,
SION TROMBAY ROAD,
CHEMBUR, MUMBAI-400071. **Appellant**

Vs.

COMMISSIONER OF CUSTOMS,
MUMBAI IMPORT-I
NEW CUSTOM HOUSE, **Respondent**
BALLARD ESTATE,
MUMBAI-400001.

APPERANCE:
Shri Mohit Raval,, Advocate with Shri Ananth Khandait, Advocate for the Appellant

Shri A.K. Srivastava, Supdt., Authorised Representative for the Respondent

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85244/2025

Date of Hearing: 14.02.2025
Date of Decision: 14.02.2025

The appeal is heard from both the sides and taken up for order.

2. Ld. Counsel for the Appellant submits that Appellant had deposited certain amount during investigation stage which was taken as pre-deposit at the time of filing of appeal before the Commissioner (Appeals) and after he succeeded in his appeal filed before the Commissioner (Appeals), Appellant has sought for refund of entire amount of Rs. 19,78,485/- that was paid by the Refund Sanctioning Authority by his order dated 06.03.2018 but no interest was paid to the Appellant against the entire pre-deposit amount for which he

sought for interest through several letters numbering more than six, addressed to the Refund Sanctioning Authority for such payment of interest but subsequently received a communication from him in his capacity as Assistant Commissioner of Customs/ CRARS NCH, Mumbai on dated 09.07.2019 that Appellant should prefer to file appeal against the Refund Sanction Authority's order namely Order-In-Original No. 1092/ACH/AC/CRARS/2017-18 dated 06.03.2018 and with such communication he had returned back the documents submitted by the Appellant claiming interest on the refunded amount. He further submits that Ld. Commissioner (Appeals) had not treated the said letter as order passed by Authorities below that would enable the Appellant to prefer appeal before him u/s. 128, of the Customs Act, 1962 and with such observation he dismissed the appeal as not-maintainable. Being aggrieved, Appellant is before this Tribunal.

3. Both sides also have made lengthy arguments on the merit of such filing of application before the Commissioner (Appeals) after the due date and both sides also have produced judicial decisions in support of their stand that such letter can be considered as an appealable order /cannot be considered as appealable order. Appellant has reproduced para-6 of the order passed by this Tribunal in the case of Ahimsa Mines and Minerals Ltd., V/s. Commr. (Appeals) of C.E. & CGST, Jaipur reported in 2019(369) E.L.T. 1581 (Tri.-Delhi), to justify that such a request letter that was reverted back with denial of interest was treated as appealable order and necessary relief was granted by this tribunal to the assessee. It reads;

> *I find that in this case there is no dispute that on 22.06.2017 the refund claim was sanctioned to the Appellant, but the Appellant contested the claim of interest on 30-6-2017 with three reminders given to the Department on various occasions. After entertaining the claim of interest of the Appellant, the Appellant was advised to file an appeal against the order dated 22-6-2017 before the Learned Commissioner (Appeals) on 14-11-2017 and thereafter appeal was filed on 8-12-2017 which shows that the claim of interest was asked to the Appellant to file before the Learned Commissioner (Appeals) against the order dated 22-6-2017. In that circumstances, I hold that appeal filed on 8-12-2017 is within time as the cause of action for filing the appeal arose on 14-11-2017 when the Appellant was asked to file the appeal. In these circumstances, I set aside the impugned order.*

4. On the other hand Ld. Authorised Representative also pointed out that way back in 2015 in the case of Orissa Polyfibres Limited V/s. Commissioner of C.EX. & CUS., Bhubaneshwar-I, reported in 2003 (156) E.L.T.. 237(Tri.-Kolkata), letter /communication by the Dy. Commissioner/Assistant Commissioner was held to be not appealable order for which he seeks for no interference of this Tribunal in the order passed by the Commissioner (Appeals).

5. I have perused the case record and relevant provisions of law, it would be relevant to reproduce operating portion of the order passed by Refund Sanctioning Authority in para-41 of his order. It reads;

> *I find that the amount of Rs. 19,78,485/- (Rupees Nineteen Lakh Seventy Eight Thousand Four Hundred & Eighty Five only) <u>paid as pre-deposit</u> Rs. 15,00,000/- vide Challan No. 275 dated 12.03.2013 & Rs. 4,78,485/- vide Challan No. 1366 dated 18.11.2014 (as stated above in Table-B at para 18) against O-I-O/CAO No. 33/2014/CAC/CC/AB/Gr. Oil Unit dated 20.03.2014 <u>under F. No. SG/INV-47/SPS/2012-13 SIIB(I) // S/10-Adin-15/2013 Oil Unit</u> is admissible as refund to M/s. Apar Industries Ltd. in terms of Section 27 of the Customs Act, 1962.*

(underlined to emphasise)

6. Going by the above para there is no denial of the fact that such amount of Rs. 19,78,485/- deposited earlier in 2013-14 was taken by the Refund Sanctioning Authority as pre deposit for which interest applicable to such refund would be governed by section 129EE of the Customs Act, 1962 prevailing then, the said provision as available during the relevant time reads as under:

"129EE. Interest on delayed refund of amount deposited under the proviso to section 129E

> *"Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellant Tribunal (hereinafter referred to as appellate authority), under the first proviso to section 129E, is required to be refunded consequent upon the order of the Appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a supreme court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount*.

7. Though wordings in the above provision 'there shall be paid to the Appellant interest as specified in section 27A…' dictates that payment of interest is mandatory and that was not sanctioned by the Refund Sanctioning Authority in violation of the Statutory provisions, though the claim of Appellant was that he was entitled to get interest from the date of deposit is not admissible since such provision is applicable only to the payments made post 06.08.2014 after amendment was brought into force. This payment of interest after three months of communication of order being a statutory provision,

not granting such interest to the pre-deposited which the Refund Sanctioning Authority considered rightly as pre-deposit has violated the statutory right of the assesse and therefore, refusal to entertain such a genuine claim by the Refund Sanctioning Authority and by the Commissioner (Appeals) on narrow technical ground cannot deprive the Appellant to get his statutory dues, in exercise of right to appeal, for which it is before this forum. Hence the order.

The order

8. The Appeal is allowed and the order passed by the Commissioner (Appeals) No. MUM-CUS-PK-IMP-271/2020-21 dated 24.03.2021, is hereby set aside with consequential relief of interest on refund of Rs. 19,78,485/- already granted. The Respondent Department is directed to pay the interest after calculating the same as per provision prevailing prior to 06.08.2014 u/s. 129EE of the Customs Act, 1962 within two months of receipt of this order.

(Dictated and pronounced in the open court.)

(Dr. SUVENDU KUMAR PATI
MEMBER (JUDICIAL)

Arti