CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 87404 of 2021

(Arising out of Order-in-Appeal No. MUM-CUS-IMP-52/2020-21 dated 30/31.08.2021 passed by the Commissioner of Customs (Appeals), Mumbai-I)

Uttam Agro Foods India Pvt. Ltd. **Appellant**
3, Mulji House, Ground Floor,
49, P.D'Mello Road, Masjid Bunder,
Mumbai 400 009.

Vs.

Commissioner of Customs (Imp.), Mumbai-I Respondent
New Custom House, Ballard Estate, Mumbai 400 001.

Appearance:

Shri Anil Balani with Shri Devraj Kansara, Advocates, for the Appellant
Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 05.03.2025
Date of Decision: 05.03.2025

FINAL ORDER No. 85292/2025

Heard from both sides.

2. Brief facts of the case are that the appellant imported a consignment and filed an advance Bill of Entry on 22.02.2001 claiming nil rate of duty. The goods were pulses. The goods attracted 5% basic customs duty with effect from zero hours of 01.03.2001. Therefore, there was a dispute about the arrival of goods into country, i.e. entry inwards of the carriage bringing goods to India. Under the orders of Hon'ble High Court dated 08.03.2001, appellant submitted bank guarantee dated 09.03.2001 for Rs.9,75,103/-. The assessment of the Bill of Entry was finalized on 31.03.2007 where the original authority levied 5% BCD. On 24.04.2007 the bank guarantee was encashed by Revenue and the amount was appropriated towards duty, even when the period to prefer appeal before Commissioner (Appeals) was not over. Learned Commissioner (Appeals) rejected the appeal of the appellant on 13.08.2007.

The matter was carried before this Tribunal. This Tribunal vide its final order dated 09.06.2017 remanded the matter to original authority for *de novo* adjudication. Order-in-original dated 15.03.2018 was passed in remand proceedings and the goods were assessed to nil rate of duty. On 13.08.2018 appellant submitted application for refund of the amount recovered through encashment of bank guarantee along with interest. On 21.05.2019 refund of principal amount was allowed, but not that of interest. Appellant preferred appeal against that order claiming interest, before learned Commissioner (Appeals) who has rejected the same through the impugned order dated 30.08.2021. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. He has submitted that the bank guarantee was encased on 24.04.2007 and refund was allowed on 21.05.2019. Therefore, for the period for which Revenue had kept money with itself, Revenue should pay interest @ 12% per annum. He has submitted that the appellant is entitled for interest @ 12% p.a. on the basis of the decision of this Tribunal in the case of Parle Agro Pvt. Ltd. reported at 2022 (380) ELT 219 (Tri.-All.).

4. Heard the learned AR. He has supported the impugned order-in-appeal.

5. I have carefully gone through the record of the case and submissions. I note that the order finalizing the assessment was passed on 31.03.2007 and the period to file appeal against the said finalization was available till 31.05.2007 and before the said period was over, Revenue has recovered duty adjudged through encashment of bank guarantee on 24.04.2007. When an order is passed and the period for filing appeal under limitation provided under law is not over, the said order has not become final in law. Therefore, during the pendency of any order becoming final in law, if an amount is recovered by Revenue, it should be treated as pre-deposit. Therefore, I treat the amount recovered by encashment of bank guarantee as pre-deposit under Section 129E of Customs Act, 1962. Therefore, the

provisions applicable for Section 129EE of Customs Act, 1962 as prevailing during the relevant time would be applicable for calculation of interest in the present case.

6. I, therefore, allow the appeal and direct Revenue to pay interest to the appellant on the amount that was recovered through encashment of bank guarantee, from the date of encashment of bank guarantee i.e. 24.04.2007 to the date of refund i.e. 21.05.2019 as per the rates that were admissible for refund payment of interest under Section 129EE of Customs Act, 1962 during the relevant period.

7. With the above directions, appeal is allowed.

(Pronounced in the open court)

(Anil G. Shakkarwar)
Member (Technical)

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