CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 86878 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-PAX-APP-1822/2020-21 dated 18.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai-Zone III.)

M/s Sohail Maklai Entertainment Pvt. Ltd. ....Appellant
A1-Raza Apts., 1st Floor,
Flat No. 101-02,
Cyrus Avenue Street,
Agripada, Mumbai – 400 008

VERSUS

Commissioner of Customs, Mumbai (Air Port) ....Respondent
Chhatrapati Shivaji International Airport,
Sahar, Andheri East, Mumbai – 400 099

APPERANCE:

Shri Anil Balani, Advocate with
Ms. Priyasha Pawar, Advocate and
Shri Devraj Kansara, Advocate for the Appellant

Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85741/2025

Date of Hearing: 19.02.2025
Date of Decision: 23.04.2025

Denial of interest on seized traveller's cheques for USD$1,07,642/- that was encashed for ₹47,86,334/-, deposited in the State Bank of India on 19.10.2006, and returned on dated 10.05.2019 is assailed in this appeal.

2. Briefly stated, fact of the case is that Air Intelligence Unit of Customs, CSI Airport, Mumbai intercepted one passenger on 19.10.2006 carrying 106 numbers of traveller's cheques of the above referred amount and after protracted litigation, redemption fine and personal penalty that was confirmed at ₹10,01,000/- (total of both) was being debited from the deposited amount of ₹47,86,334/- plus pre-deposit amount of ₹4,00,000/- and rest of amount of ₹41,85,334/- was sanctioned by the Refund Sanctioning Authority namely the Assistant Commissioner of Customs, Central Refund Cell to the Appellant, who established ownership over the seized property (amount). It has approached the Commissioner (Appeals) seeking applicable interest on the refunded amount since the said amount was kept in the bank after seizer, in the alternative cash equivalent at the current Foreign Exchange rate was sought for, but refused by the Commissioner (Appeals) in granting interest on the said amount, which has brought the dispute to the present forum.

3. During the course of argument learned Counsel for the Appellant Mr. Devraj Kansara, besides placing reliance on the case laws noted in his appeal memo, has drawn attention of this Bench to a decision of this Tribunal passed in its Delhi Bench recently on 02.12.2022 in the case of *Matta Paints and Hardware Store Vs. The Commissioner in Excise Appeal No. 51493 of 2022,* has directed for grant of interest on the amount that was seized and deposited in the bank as fixed deposit. He further submitted that it has been consistently held by different judicial forum including at the Hon'ble Apex Court level since 1997 in the case of *Kuil Fireworks Inds. v. Collector reported as [1997 (95)*

ELT 3 (SC)] that interest @12% was payable on the amount from the date of its deposit till the date of payment. In citing several other decisions including the one passed in the case of *M/s. Calcutta Iron & Steel Co. Vs. CESTAT Chennai reported in 2017 (350) ELT 327 (Madras)*, he further argued that when Revenue has enjoyed the benefit of the money collected from the Assessee, it has to pay interest to the Assessee because by its very nature such collection by Revenue can only be termed as extraction under Ostensive Authority of law and the said finding having been affirmed the Hon'ble Supreme Court as reported in *2018 (360) ELT A257 (S.C.)*, not granting interest on the refunded amount by the Commissioner (Appeals) in his order is unsustainable both in law and facts.

4. Learned Authorised Representative objected the submission and supported the findings of the Commissioner (Appeals) that, the amount that was seized and deposited in the account of the Revenue-Department in the State Bank of India, being not a duty that was due for refund, cannot be refunded with interest, for which he sought for no interference of the Tribunal in the order passed by the Commissioner (Appeals).

5. I have perused the case record and gone through the relied upon case laws. At the outset, it is to be stated that the reason for encashing the travellers' cheque and depositing the same in the Customs Department's account is not available in the case record, so as to justify disposal of the seized documents in the manner prescribed by the Central Government as contemplated in Section 110(1-A) of

the Customs Act since those were not perishable or hazardous in nature and depreciation of their value with the passage of time would not even be a rare probability, as those were Dollars equivalent whose value has been consistently increasing over the years. It is also not understood as to why provisional release of those goods under Section 110-A was not made after obtaining adequate security and bond for the same. Therefore, encashment of those travellers cheque, converting them into Rupees and taking the encashed amount to the Respondent-Department's account can't be said to be free from arbitrariness, apart from the fact that those being not confiscated goods by that time, could have been kept in interest bearing account. However, legality of the same is not challenged here in this appeal apart from the fact that Appellant has sought for interest on those deposited amount, which was taken out of the position of Appellant and kept in the custody of the Respondent. While concurring with the view of this Tribunal passed in the above referred *Matta Paints and Hardware Store (supra)* judgment as it has been consistently held that money and even bank account can be defined as property under Section 100 of the erstwhile Criminal Procedure Code, prevailed at that time, it would be worthwhile to reproduce the findings of this Tribunal in the said decisions, as has been made in para 8, it reads:

> *"8. As per Article 300A of Constitution of India, also no person shall be deprived of his property, save by authority of law. Once confiscation order about impugned currency get set aside. It is clear that currency in question has been appellant's property. He cannot be deprived of the same and is entitled for benefits arising out of said property. Hence interest accrued on the amount in question during the period it was in fixed deposit is the property of the owner of the amount i.e. the appellant herein. I draw my support from the decision of Hon'ble High*

Court of Allahabad in the case of RHL Profiles Ltd. vs Commissioner of Customs, Ex and Service Tax, Kanpur reported as [2017 (352) ELT 349 (All)] has held that once the confiscation has been set aside, confiscation of seized currency has been set aside and the fact is that the Department has earned interest during the period the currency was retained by it, it was held that payment of interest could not be denied merely for the reason that there is no express statutory provision. Bombay High Court also in the case of Union of India vs M P Desai reported as [2019 (366) ELT 251 (Bom)] has held that amount seized in cash by the authorities is to be refunded along with the interest. Though in this case the rate of interest was held to be simple at the rate of 8%. However, there already has been decisions of Kerala High Court in the case of Sony Pictures Networks India Pvt. Ltd. vs UOI reported as [2017 (353) ELT 179 Ker] wherein the decision of Hon'ble Apex Court in the case of Kuil Fireworks Inds. v. Collector reported as [1997 (95) ELT 3 (SC)] is relied and it was held that rate of interest while refunding the amounts has to be 12% of the amount refunded. Hon'ble Apex Court in the case of CCE Hyderabad vs. ITC Ltd. [2005 (179) ELT 15 (S.C] has also confined the interest at the rate of 12% and it was further held in that judgement by the Apex Court that any judgement or decision of any court taking contrary view will be no longer the good law."

6. Therefore, in carrying-forward the judicial precedent set on the issue for decades and while going with the observation made in the above referred paragraph in *Matta Paints and Hardware Store* (*supra)* judgment alongwith observation of the Tribunal that had the amount in question being kept in fixed deposit by the Appellant himself for all these years, it would have earned a handsome amount of interest and therefore, retention of the said interest could be considered as on unjust enrichment on the part of the Respondent-Department as well

as deprivation of Appellant's right to his property, the following order is passed.

THE ORDER

6. The appeal is allowed and the Appellant is entitled to interest on the entire amount of ₹47,86,334/- deposited in the State Bank of India after encashing 106 numbers of travellers' cheque from the date of deposit i.e. on 19.10.2006, after deducting interest on ₹10,01,000/- from the date of adjustment of redemption fine and personal penalty, alongwith interest on pre-deposited amount of ₹4,00,000/- to be made applicable three months after the date of CESTAT's order passed on 30.05.2018 and the Respondent-Commissioner is directed to pay the same within two months of receipt of this order.

(Order pronounced in the open court on 23.04.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad