

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5**

CUSTOMS APPEAL NO. 86892 OF 2021

(Arising out of Order-in-Appeal No. MUM-CUS-PK-IMP-243-2020-21 dated 19-03-2021
passed by the Commissioner of Customs (Appeals), Mumbai-I.)

**PARESH DAXINI,
501-502 NAMAN APARTMENT,
22, DADABHAI ROAD,
ANDHERI EAST,
MUMBAI-400058.**

.....Appellant

VERSUS

**COMMISSIONER OF CUSTOMS-MUMBAI
IMPORT-I.
2ND FLOOR,, NEW CUSTOM HOUSE,
BALLARD ESTATE,
MUMBAI-400001.**

.....Respondent

APPERANCE:

Shri Devraj Kansara, Advocate for the Appellant
Shri Krishna Azad, Addl. Commissioner, Authorised Representative, for the
Respondent

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

FINAL ORDER NO. A/85769/2025

Date of Hearing : 19.02.2025
Date of Decision: 06.05.2025

This appeal is restricted to the narrow issue of non-payment of interest while refunding pre-deposit made by the Appellant.

2. Facts of the case would go to reveal that there were allegations against the Appellant in helping one importer M/s. Vikram Projects Limited to sale imported goods brought, under duty free import license, in the local market. Appellant was subjected to adjudication process after completion of legal formalities and was imposed with penalty of Rs. Five Lakhs by the Adjudicating

Authority on 20.06.2000, against which it preferred an appeal before the CESTAT, on whose directions pre-deposit of Rs. 2,50,000/- u/s. 129 E of the Customs Act, 1962 was made .

3. Appellant had succeeded partly in its appeal by way of reduction of penalty vide CESTAT order No. A/248 & 249/WZB/06CII (CSTB) dated 28.02.2006 to Rs. One lakh from Rs. Five lakhs. Appellant sought for refund of balance Rs. 1,50,000/- after adjustment of the adjudged penalty amount of Rs. One lakh by submitting an application on dated 5.12.2006 but after repeated persuasion, it got the amount refunded on 20.03.2019 vide Order-in-Original No. 583/NJW/AC/CRARS/2018-19 but without any interest. Claiming that appellant was also entitled to interest, it preferred an appeal before the Commissioner (Appeals) that was rejected on 19-03-2021 vide above referred order, which is assailed before this forum.

4. I have heard submissions at length from both the sides, gone through their written note of submissions, perused relevant provisions of law enabling grant of interest on pre-deposit to the Appellant after disposal of the appeal from the date of pre-deposit if made after date 01.10.2014 and from three months after the date of order if made prior to 01.10.2014, as contemplated u/s. 129-EE of the Customs Act, 1962. In the instant case, Appellant was denied interest on the ground that pre-deposit was made against confirmed penalty amount and in view of decision passed by this Tribunal at its Ahmedabad Bench on 25.10.2016 vide order No. A/11197/2016 that had relied on the decision of the Hon'ble Supreme Court passed in the case of Commissioner of Customs (Port) Kolkata V/s. Coronation Spinning India, reported in 2015 (319) ELT 550 (S.C.), interest on penalty was not payable, as

noted in the order passed by the Commissioner (Appeals) and also reiterated in the written submission of Ld. Authorised Representative.

5. Ld. Counsel for the Appellant Mr. Devraj Kansara argued at length that refund of pre-deposit with interest is a statutory provision which should have been honoured by the Refund Sanctioning Authority and the Commissioner (Appeals) but disregarding the same, they denied interest to the Appellant. On the other hand, Ld. Authorised Representative put emphasis on the relied upon decision.

6. Submissions made by parties are well taken but the fact remains that section 129-EE proviso clearly states that the amount deposited u/s. 129-E, prior to commencement of Finance Act (No. 2) Act, 2014 shall continue to be governed by the provision of section 129-EE, as it stood before the commencement of the said Act on dated 01.10.2014, in which interest was directed to be paid after the expiry of three months from the date of communication of the order of the Appellate Authority till it is paid. What is required to be noted here is that without reference to the terms duty, interest, penalty etc., the statute had used the word "amount deposited u/s. 129-E" that would naturally cover also the penalty aspect. Therefore, there is no denying of the fact that if pre-deposit is made while challenging the penalty alone, interest is payable.

7. On going through the judgment passed by the Hon'ble Supreme Court in the case of Coronation Spinning India (Respondent), cited supra that was referred by Ahmedabad Bench of this Tribunal, it could be noticed that duty, interest and penalty were deposited on protest by the Respondent therein, who sought for its refund alongwith interest after it succeeded in the appeal

preferred by the Department and that refund was admissible u/s. 11B, in which interest was payable u/s. 11BB of the Central Excise Act, which corresponds to section 27 & 27 A of the Customs Act respectively but in the instant case what was being paid as 'pre-deposit' which is neither a duty nor a penalty since paid u/s. 129E against which payment of interest is a statutory remedy available to the Appellant after it succeeds in its appeal, apart from the fact that circular issued by the CBEC, Department of Revenue, Ministry of Finance dated 16.09.2014 on pre-deposit by its circular No. 984/08/2014 – CX, would go to show under para 5.2 that pre-deposit for filing an appeal is not a payment of duty and it would not be governed under section 11B of the Central Excise Act and therefore, refund with interest should be paid to the Appellant within 15 days of receipt of letter from the Appellant seeking refund and para 5.3 states that even if Department contemplates appeal also, such refund alongwith interest would still be payable unless stay is granted by the Competent Appellate Authority. This being the facts on record and the position of law, Respondent Department is duty bound to pay interest after expiry of three month from the date of passing of order by CESTAT on 28.02.2006, as provided in the statute u/s. 129-EE of the Customs Act, 1962.

8. Now the question comes as to who shall bear the interest. The answer lies in para 5 of the CBCE circular No. 802/35/2004-CX issued on 8-12-2004.

The said paragraph reads as follows;

Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers. All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers.

(underlined to emphasise)

9. Above circular being self-explanatory, Respondent Department may apply the relevant provisions of the circular against the erring official but since deposit was made by the Appellant in favour of the Respondent Department it is duty bound to pay the interest as per provision of section 129-EE existing during the period, prior to amendment was brought into force in October, 2014. Hence the order;

The Order

10. The appeal is allowed and the order No. MUM-CUS-PK-IMP-243-2020-21 dated 19-03-2021 passed by the Commissioner of Customs (Appeals), Mumbai-I, disallowing interest on pre-deposit is hereby set aside. Respondent Department is hereby directed to pay the interest as directed above in terms of section 129-EE of the Customs Act, 1962 existing then, within two months on receipt of this order. It may recover the same from the concerned Officer who failed to comply with the circular dated 08.12.2004.

(Order pronounced in open court on 06.05.2025)

(Dr. Suwendu Kumar Pati)
Member (Judicial)