CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86244 OF 2016

[Arising out of Order-in-Appeal No: MUM-CUSTM-SMP-80/2015-16 dated 25th June 2015 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Borsara Machines
Hirala Colony, AK Road, Surat - 395008 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87655 OF 2017

[Arising out of Order-in-Appeal No: MUM-CUSTM-SMP-44/2017-18 dated 29th June 2017 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Borsara Machines
Hirala Colony, AK Road, Surat - 395008 ***…Respondent***

APPEARANCE:

Shri Ram Kumar, Deputy Commissioner (AR) for the appellant

Shri Stebin Mathew and Ms Drishya Pandey, Advocates for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85852-85853/2025

DATE OF HEARING: 02/12/2024
DATE OF DECISION: 02/06/2025

PER: C J MATHEW

On common ground in these two appeals of Commissioner of Customs (Import), New Customs House, Mumbai is that genesis of duty liability having been fastened upon enhancement of value prompted by alleged relationship of seller and buyer notwithstanding, dichotomy in proceedings, leading to separate appeals before us, is attributable to separate disposal by first appellate authority of rival challenges by both sides to order[1] of original authority granting interest of ₹ 5,99,426 for delayed payment of refund. The combined effect in appeal, against order[2] of Commissioner of Customs (Appeals), Mumbai allowing the claim of the respondent herein, M/s Borsara Machines, to be entitled to interest of ₹ 1,24,88,457 in full, on grounds of computational error is the other, against order[3] of the appeal of Commissioner of Customs (Import) declining interference in sanction of ₹ 5,99,426 as interest, on the ground of refunded revenue deposit in provisional assessment not contemplated for allowing interest under section 27A of Customs Act, 1962.

2. It is also common ground of fact that it was in consequence of

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[1]
[2] [order-in-appeal no. MUM-CUSTM-SMP-80/2015-16 dated 25th June 2015]
[3] [order-in-appeal no. MUM-CUSTM-SMP-44/2017-18 dated 29th June 2017]

decision[4] of the Tribunal, setting aside the tentative loading of value by 'special valuation branch (SVB)' in imports of 107 consignments of 'draw twisting machines' in 1989-92 from M/s Lem Lesseni Mario, Spain, that M/s Borsara Machines was entitled to refund ₹ 74,72348 for which the appropriate authority had been approached and, apparently, to little avail owing to which miscellaneous application was filed before the Tribunal under rule 41 of Customs Excise Service Tax Appellate Tribunal (Procedure) Rules, 1982 for implementation. In order[5] thereupon, the Tribunal noted that the refund had, in the meanwhile, been sanctioned for release on 9th December 2014 and, taking note of the plea of the appellant therein for interest too, it was directed that

> *'2. When the matter came up today, the learned Dy. Commissioner (AR) for the Revenue as also the counsel for the appellant, submits that the appellant has been given a cheque for Rs 74,72,348/- towards the refund. The learned counsel for the appellant, however, submits that, in terms of the provisions of law and Circular No. 670/61/2002-CX dated 01/10/2002, interest is also liable to be paid if the refund is not granted within a period of three months from the date of filing of the refund claim. In the present case, the refund became due in February, 2013 in pursuance to the Tribunal's order and therefore, interest should have been paid on the delayed refund in terms of the above Circular which has not been complied with by the Revenue.*
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> *3. In these circumstances, we direct the Revenue to pay interest to the appellant on the delayed refund in accordance*

[4] [final order no. A/1330/13/CSTB/C-I dated 20th February 2013]
[5] [miscellaneous order no. M/2125/14/CSTB/C-I dated 11th December 2014]

with law, within a period of one week from today.

4. The learned Dy. Commissioner (AR) is present in the Court, and that constitutes sufficient notice to the Revenue to comply with this order.'

3. The original authority, thereafter, computed interest of ₹ 5,99,426, as due, for elapse of time between receipt of the order allowing appeal on 8th May 2013 and disbursal of refund on 8th December 2014 after excluding three months permitted in section 27A of Customs Act, 1962. This, not satisfactory to the respondent herein, prompted appeal that was allowed by the first appellate authority leading to the first of the appeals before us. The first appellate authority had not noticed the pendency of the other appeal of the jurisdictional Commissioner of Customs adverting to lack of statutory provision, in the light of restriction in section 27A of Customs Act, 1962, for applicability to refunds arising from disputes other than pertaining to assessment under section 17 or recovery ordered under section 28 of Customs Act, 1962 and the disposal thereof of finality on law and fact from failure to challenge miscellaneous order of the Tribunal is now before us. Thus computational illogicality and legal sustainability are agitated for remedying.

4. We have heard Learned Authorized Representative and Learned Counsel for respondent at length.

5. It is seen that direction of the Tribunal on 11th December 2014

on payment of interest did not arise from disallowance of claim for interest either preferred with application for refund or preferred after release of refund, and upon proven delay in sanction. The original authority and first appellate authority had, by then and before them, only directions of the Tribunal. In seeking intervention of the Tribunal, there was no grievance of statutory provision for entitlement to interest having been misapplied or that they had, unwarrantedly, been imposed from claiming interest. Indeed, much like section 12 of Customs Act, 1962 and section 3(1) of Customs Tariff Act, 1975, interest on delayed payment of refund has no existential confusion; it is in the statute triggering applicability of its own and in accordance with the framework of section 27A of Customs Act, 1962. There was, thus, no grievance, in manner contemplated in section 129A of Customs Act, 1962, emanating from the lower authorities for disposal in accordance with section 129B of Customs Act, 1962. The relief was sought for the very first time, as appendage to plea for speeding up consequence of duty liability having been set aside, and disposed off accordingly. The legality and propriety of that disposal was never challenged; its consequence indelible. Interest, as provided by law, was not to be denied.

6. The original authority had merely adopted the start and the finish enshrined in section 27A of Customs Act, 1962; denial of interest was ‘beyond his pay grade’ – literally and metaphorically. The appeal filed

by the jurisdictional Commissioner of Customs against the sanction was disposed off by the first appellate authority on the finding that it would be tantamount to reopening of order of the Tribunal that had attained finality. By miscellaneous order, under the authority of law enabling establishment of procedures, the direction was, thus, inseparable from the mandate of refund. Neither was there any scope for distinguishment on facts at the lower levels.

7. There is no doubt that the order of the Tribunal entitling the respondent herein to refund of ₹ 74,72,348 was entailed as consequential relief. That interest may be thus entailed is an assertion perfectly within the empowerment of the Tribunal and, not being amendment of order of the Tribunal issued under section 129B of Customs Act, 1962, which, as fresh cause of action, could have been challenged appropriately or clarifications sought from the Tribunal by appropriate statutory instrument, was to be implemented. A lower authority may contrarily be obdurate at its own peril and it was inconceivable that they should have been expected to do otherwise. There was no option but to dismiss the appeal, founded solely on non-applicability of interest liability to refund of revenue deposit, as ‘point of no return’ was crossed by failure to challenge the clarification by the Tribunal.

8. With ‘revenue deposits’, proffered by importer as consequence of direction of the ‘special valuation branch (SVB)’, held as

unauthorized by law and entitled to refund, subsequent cause of action that led to the doors of the Tribunal, was entitlement to secure refund for themselves. That it was not a refund of duties, to which section 27A of Customs Act, 1962 was indubitably applicable, had ceased to be *lis* and, if refund was due, operation of section 27(3) of Customs Act, 1962 precluded assigning any other hue to the collection for any purpose whatsoever. At the same time, the lower authorities did not have before them any dispute, on the duty from which the said liability would accrue, other than the recorded outcome on the action impugned before the Tribunal; the original authority proceeded to decide the liability with effect from the date that such order was made available to the jurisdictional officials. As interest liability stemmed from a direction of the Tribunal, and not from position taken while sanctioning refund and for which no separate application had been filed, we do not find any infirmity with the order of the original authority and it would appear that the impugned order, setting the sanction aside to allow the appeal of M/s Borsara Machines *in toto* has not examined legal restriction, if any, that bound down the original authority. The order of the Tribunal had no pretence to be the law; it proceeded to direct that which was within the law and the composition of the direction assumed legality from lack of challenge. All that the lower authorities could do was to work the law. The claim of the appellant-Commissioner is that excess allowed by the first appellate authority has not been tested against provisions of law.

9. Accordingly, we find that the challenge to order of the first appellate authority rejecting the ground of disentitlement for interest to be without merit. As far as the appeal against the order enhancing interest liability, we find that there is no examination of the facts to which the provisions of section 27A of Customs Act, 1962 should have been applied. To enable that we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the appeal of M/s Borsara Machines against the order limiting sanction to ₹ 5,99,426.

10. The appeals are disposed off in the above terms.

(Order pronounced in the open court on 02/06/2025)

(AJAY SHARMA) ***Member (Judicial)***	**(C J MATHEW)** ***Member (Technical)***

**/as*