CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85890 OF 2025

[Arising out of Order-in-Appeal No: MUM-CUSTM-APSC-APP-105/19-20 dated 23rd May 2019 passed by the Commissioner of Customs (Appeals),Mumbai – III.]

Sagar Impex
311 Mehta Bhavan, Shop No 5,
Opp Charni Road Station, Mumbai – 400096 … ***Appellant***

versus

Commissioner of Customs (Appeals)
Mumbai – III
5th Floor, Awas Corporate Point, Makana Lane
Andheri-Kurla Road, Andheri (E), Marol,
Mumbai - 400059 ***…Respondent***

APPEARANCE:

Shri Kazaan Shroff and Shri Rahul Jain, Advocates for the appellant

Shri Krishna Azad, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86671/2025

DATE OF HEARING: 14/05/2025
DATE OF DECISION: 09/10/2025

PER: C J MATHEW

M/s Sagar Impex is in appeal before us against order[1] of

[1] [order-in-appeal no. MUM-CUSTM-APSC-APP-105/19-20 dated 23rd May 2019]

Commissioner of Customs (Appeals),Mumbai – III, in relation to shipping bill no. 4203/28.12.2014 for export of ‘rough diamonds’ valued at ₹ 28,57,000, that upheld the order of the original authority as undervalued, for which confiscation was ordered under section 113 of Customs Act, 1962, but allowed to be redeemed on payment of fine of ₹ 16,00,000 under section 125 of Customs Act, 1962 subject to goods being sent back to their unit; in addition, penalty of ₹ 5,00,000 was imposed under section 114 of Customs Act, 1962.

2. The appeal thereupon was disposed off by the Tribunal with the direction that valuation should be undertaken by a panel of independent valuers and, in consequence thereof, the adjudicating authority reduced the redemption fine to ₹ 10,00,000 and penalty to ₹ 3,00,000. Once again the appellant came before the Tribunal and the impugned order was set aside. Thereafter, an application was filed for refund which was disposed off thus

> *‘2. Brief facts of the case are that M/s Sagar Impex (hereinafter referred as appellant/exporter) filed a shipping bill no. 4203 dated 28.12.2014 for export of rough diamonds valued at Rs. 25,57,500/- (FOB) to M/s Great Creation, Hong Kong. However the department was of the view that the goods under export are undervalued. Vide adjudication Order No. COMMR/MCT/ADJ/08/05 dated 15.03.2005 the department held that the goods for export have been undervalued and imposed a redemption fine of Rs. 15 lakh and a penalty of Rs. 5 lakh on the exporter and allowed to take back the goods.*

> *Against the said Order exporter went to CESTAT, and Hon'ble CESTAT vide Order No. M/468/WZB/05/C-II and A/465/WZB/05/C-II dated 13.06.2005 held that valuation should be done by independent experts consisting of one member chosen by the appellant exporter and the other by department and remanded the case to the adjudicating authority for the final order after valuation. Following the Order, vide valuation report dated 20.09.2005 the goods were valued at Rs. 58.57 lakh. Vide O-in-O No. COMMR/PVR/ ADJN/19-2005-06 dated 29.03.2006 the goods were confiscated and were allowed to take back to town against payment of fine of Rs, 10 lakh. Penalty of Rs. 03 lakh was also imposed on the appellant Being aggrieved M/s Sagar Impex preferred an appeal before Hon'ble CESTAT and under protest paid the fine of Rs. 10 lakh and penalty of Rs. 03 lakh. The hon'ble CESTAT Vide Order No. A/86817/17/CB dated 08.12,2016 set aside the O-in-O dated 29.03.2006 which was accepted by the Commissioner of Customs, Airport Special cargo. Consequent to this Order the appellant filed refund application before DC/CRC, APSC for refund of Rs. 13 lakh deposited by the appellant under protest. Vide the impugned Order dated 14.12.2017 Deputy Commissioner of Customs, CRC, APSC sanctioned refund amount of Rs. 13 lakh.'.*

3. The appellant sought refund of ₹ 13,00,000, paid 'under protest' which was sanctioned by the Deputy Commissioner of Customs in order dated 14th December 2017. Not satisfied with the refund of the said amount, the appellant sought interest on the amount paid purportedly 'under protest' from the date of deposit to date of sanction by relying upon circular[2] of Central Board of Excise and Customs

---

[2] [no. 984/08/2014-CX dated 16th September 2014]

(CBEC). The order of sanction was challenged, only to the limited extent and taking note of

> *'6. I also find that the relevant provision dealing with the interest is Section 27 A of the Customs Act, which reads as under:*
>
> > *on delayed refunds: If any duty ordered to be refunded under sub-section (2) of Section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that, section, there shall be paid to that applicant interest at such rate {not below five percent) and not exceeding thirty percent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application, till the date of refund of such duty.*
> >
> > *Explanation: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or Deputy Commissioner of Customs under sub-section (2) of Section 27, the order passed by the Commissioner (Appeals), appellate Tribunal or as the case may be. by the Court shall be deemed to be an order passed under that sub-section for the purpose of this Section."*
>
> *As is clear from the above, the interest is applicable only in the case of refund of duty. As the redemption fine and penalty cannot be held to be duty, it can be safely concluded that no interest is payable on refund of redemption fine or penalty. Ajay Exports vs CC(Import), Mumbai 2016 (335) E.L.T. 150 (Tri. - Mumbai); SarangaAgarwal vs CC, Chennai 2010 (258) E.L.T. 461 (Tri. -Chennai); Indian Oil Corporation Ltd vs CC, Ahmedabad 2008 (232) E.L.T. 506 (Tri. - Ahmd.)*

the first appellate authority has held that interest was not payable.

4. The first appellate authority also observed that

> *'7. I also observe that subsequent to order of CESTAT dated 08.12.2016; a letter was written by the appellant to*

> *Commissioner, Airport Special Cargo, Mumbai on dated 28.07.2017 (received on 01.08.2017) requesting for refund of fine and penalty. Para 8 of the refund order dated 14.12.2017 suggest that Order of CESTAT was accepted by Commissioner on dated 21.11.2017 it appears that a deficiency memo dated 14.08.2017 was issued to the appellant and finally on 14.09.2017 a completed refund application with all necessary documents was submitted on 14.09.2017 by the appellant for refund of fine and penalty deposited in pursuance of Commissioner's order dated 29.03.2006. I also observe that as per Customs Refund Application (Form) Regulations, 1995 for the purposes of payment of interest under section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Officer, has been madeand as such there is no delay in allowing refund to claim interest Otherwise also interest is not admissible as the fine cannot be treated as 'pre-deposit' under section 129E, penalty was not deposited as per first proviso to section 129E to attract section 129EE (as existed prior to 06.08.2014) and no interest is applicable in case of refund of fine and penalty under section 27A of Customs Act, 1962.'*

to deny interest.

5. We have heard Learned Counsel for appellant and Learned Authorized Representative.

6. We find that the first appellate authority is correct in recording that no claim for interest on the amount deposited during the course of appeal had been sought by the appellant herein. The order of the refund

sanctioning could not, therefore, have been challenged for want of deficiency which was not there in the application. The first appellate authority has disposed off the appeal on facts and it is open to the appellant herein to prefer application for interest under the authority of Customs Act, 1962 to the extent of eligibility. That has not been done.

7. Learned Counsel has relied on the decision of the Hon'ble High Court of Calcutta in *B Arun Kumar and Co v. Commissioner of Customs [MANU/WB/0407/2004]*, of the Hon'ble High Court of Delhi in *Raj Kumar Batra v. Commissioner of Customs (Preventive) [2024 (388) ELT 577 (Del.)]* and of the Hon'ble High Court of Allahabad in *Hello Minerals Water (P) Ltd v. Union of India [2004 (174) ELT 422 (All.)]* and in the decision of the Tribunal in *Hitesh Industries and others v. Commissioner of Central Goods and Service Tax, New Delhi*, final order[3] disposing off appeal[4] against order[5] of Commissioner of Central Tax (Appeals-II), Delhi.

8. Interest on refund had been allowed by the respective High Courts in writ proceedings which has substantial jurisdiction far in excess of the Tribunal which is a creature of the statute. In *re Hitesh Industries,* it is seen that the claim for interest had been preferred and rejected, owing to which the disposal thereof came under challenge

[3] [no.51631-51633/2020 dated 7th December 2020]
[4] [excise appeal no. 550171 of 2019 and others]
[5] [order-in-appeal no. 270/Central Tax/Appl-II/Delhi/2018 dated 28th November 2018]

before the Tribunal as within the jurisdiction of the second appellate authority. The records before us do not indicate any such claim for interest having been preferred. Therefore, it would not be appropriate for us to issue any directions insofar as the present appeal is concerned.

9. We see no reason to interfere with the impugned order and reject the appeal.

(Order pronounced in the open court on 09/10/2025)

(C J MATHEW)
Member (Technical)

**/as*