CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. : C/372/2008

(Arising out of OIA-140-2008-KDL-CUS-COMMR-A-AHD dated 16.05.2008 passed by Commissioner (Appeals) Customs, Kandla)

M/s. Vijaya Enterprises : Appellant (s)

VERSUS

Commissioner of Customs, Kandla : Respondent (s)

Represented by :

For Appellant (s) : Shri Pawan Kumar Saraswat, Prop.

For Respondent (s) : Shri S.K. Shukla, Authorised Representative

For approval and signature :

Mr. P.M. Saleem, Hon'ble Member (Technical)

1 Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

No

2Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

YES

3Whether their Lordships wish to see the fair copy of the Order?

Seen

4Whether Order is to be circulated to the Departmental authorities?

Yes

CORAM :

Mr. P.M. Saleem, Hon'ble Member (Technical)

Date of Hearing : 23.09.2016

Date of Decision : 25.10.2016

ORDER No. A/11197/2016 Dated 25.10.2016

Per : Mr. P.M. Saleem

Heard both sides and perused the records.

2. The issue involved in the instant appeal is whether the appellant is eligible for the interest for delay in sanction of refund. The relevant facts of the case are that Tribunal in the main appeal on merits, had set-aside the penalty of Rs. 2,00,000/- on the firm, as also personal penalty of Rs. 50,000/- on the partner. Meanwhile, the department had encashed the bank guarantee of Rs. 6,08,220/- against the liabilities, which ultimately amounted to Rs. 2,39,984/- only. Hence the appellant were eligible for refund of Rs. 3,68,236/- which was duly refunded to them. The appellants claimed interest of Rs. 4,99,946/- on the delayed refund. However, the department sanctioned only Rs. 2,75,438/-.

3. Both, the appellants and Revenue filed appeals before the CESTAT against the said order which was remanded by the Tribunal to the Commissioner (Appeals) who passed the impugned order dated 16.05.2008 wherein he held that refunded amount of Rs. 3,68,236/- consisted of penalty of Rs. 2 lakh, and Rs. 1,68,236/- as excess of dues on account of duty or penalty. He held that no interest can be paid on penalty or on excess dues which are not duty under Section 27A of the Customs Act, 1962.

4. On careful consideration of the arguments of both sides and perusal of the records, we find that the Hon'ble Supreme Court in a recent decision in the case of Commissioner of Customs (Port) Kolkata vs. Coronation Spinning India 2015 (319) ELT 550 (SC) held as follows:-

2.?The respondents had deposited the amount of duty and fine and penalty with the Department under protest. Ultimately the issue was decided in favour of the respondents holding that no such duty, fine and penalty was paid. The question of refund of the said amount was thereafter raised and in the impugned order the Tribunal had directed the Commissioner to pay interest to the respondents at the rate of 12% on the amount of refund.

3.?The only grievance which is made by the Department in these appeals is that an issue to pay interest only on the amount of duty and not on fine and penalty. We find force in the submission of the appellants. These appeals are accordingly partly allowed holding that interest at the rate of 12% shall be paid to the respondents on the amount of duty and not on fine and penalty. The said amount shall be paid to the respondents within two months.

5. In view of the above, we find that no interest would be payable on delayed refund of penalty of Rs. 2 lakh. However, we find that the Revenue had enchased the bank guarantee in excess of liabilities

to the extent of Rs. 1,68,236/-. This amount as mentioned by the Commissioner (Appeals) in the impugned order was in excess of dues on account of duty or penalty. As we have held that no interest would be payable on the delayed refund of penalty of Rs. 2 lakh, the amount of Rs. 1,68,236/- has to be held as in excess of dues on account of duty. If so, then the appellant would be eligible for the interest on the delayed refund of the said amount. We hold accordingly. The adjudicating authority is directed to quantify the refund amount eligible as above.

6. Appeal is allowed on the above terms.

(Order pronounced in the open Court on 25.10.2016)

(P.M. Saleem)

Member (Technical)

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