IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CUSTOMS EXCISE APPEAL No.16 OF 2021

Between:

M/s.Maithan Ceramics Limited,
P.O.Chirkunda, Dhanbad District,
Jharkhand-828202. --- Appellant.

And

The Commissioner of Central Tax,
Visakhapatnam, GST Commissionerate,
Port Area, Visakhapatnam-530035. --- Respondent.

DATE OF ORDER PRONOUNCED : 29.06.2021

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE K.SURESH REDDY

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Lordships wish to see the fair copy of the order? Yes/No

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

*** HON'BLE SRI JUSTICE JOYMALYA BAGCHI**
AND
*** HON'BLE SRI JUSTICE K.SURESH REDDY**

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! Counsel for the Appellant : Mr.P.N.Sunil Kumar Reddy

^ Counsel for Respondent : Sri Suresh Kumar Routhu
(Senior Standing Counsel for Customs)

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> Head Note:

? Cases referred:

2006 (196) ELT 257 (SC)

This Court made the following:

HON'BLE SRI JUSTICE JOYMALYA BAGCHI

AND

HON'BLE SRI JUSTICE K.SURESH REDDY

CUSTOMS EXCISE APPEAL No.16 OF 2021

JUDGMENT: (*Per* Hon'ble Sri Justice Joymalya Bagchi)

1. The Appeal is directed against the rectification order, dated 23.12.2019, passed in Miscellaneous Application No.C/ROM/30328/2019 in Customs Appeal No.30949 of 2018, by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'the Tribunal'), Regional Bench at Hyderabad, wherein the Tribunal rectified its earlier order to the following extent:

> "Consequently, the interest, as applicable during the period, on pre-deposit under section 129EE, needs to be paid to the appellant."

2. Factual matrix giving rise to the Appeal is to the effect the appellant had appealed before the Office of the Commissioner of Customs, Visakhapatnam (for short, 'the Commissioner') challenging an Order-In-Original, dated 09.09.2005, imposing duty and penalty upon him with regard to incorrect availing of DEPB scrips. During pendency of the Appeal, the appellant had deposited the duty and penalty as per the Order In Original. Upon the Appeal being allowed on 16.09.2006, the appellant sought refund of the duty and penalty along with interest before the Commissioner. The Commissioner allowed refund of the deposit along with interest at the prescribed rate from the date of making the deposit to the date of refund. This order was appealed before the Commissioner of Appeals, who set-aside the interest component ordered in favour of the appellant on the ground that the deposit of duty and penalty made by the

appellant is not a pre-deposit in terms of Section 129E of the Customs Act. Appellant filed appeal before the Tribunal, who reversed the order of the first appellate authority and held that the deposit made by the appellant was pre-deposit under Section 29E of the Customs Act, 1962 and interest as applicable on pre-deposit needs to be paid to the appellant. Department, however, filed an application for rectification claiming there were certain errors apparent on the face of the order. After hearing the parties, the Tribunal rectified its own order, holding as follows:

> "4. Heard both sides and perused the records. I find that in the final order there is no specific direction as to from which date the interest is payable. The only direction was that the amount which has been deposited by the appellant was a pre-deposit and therefore, <u>interest, as applicable on pre-deposit, needs to be paid</u>. However, in Para 8 of the final order, while copying section 129E, the amended version of this section was copied wrongly instead of the un-amended version. In view of the above, the following changes are made in the above final order.
>
> A. In Para 8 of the final order, instead of the extracted section 129E, the following shall be substituted.
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> "**SECTION 129E. Deposit, pending appeal, of duty and interest demanded or penalty levied** - Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied:
>
> **Provided** that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or

penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

B. The last but one sentence in Para 9 of the final order shall be substituted by the following:

"Consequently, the interest, as applicable during the period, on pre-deposit under section 129EE, needs to be paid to the appellant."

5. The application for rectification of mistake is disposed of as above."

3. Against such rectification, the appellant is before this Court.

4. Learned counsel appearing for the appellant submits that the rectification order incorrectly applied Section 129EE of the Customs Act and denied the appellant interest from the date of deposit till the date of payment. It is contended that the deposit was made in 2006 when there was no statutory restriction on the discretion to grant interest from the date of deposit. Hence, the rectification order was incorrect and contrary to the law declared by the Apex Court in ***Sandvik Asia Limited v. Commissioner of Income Tax-I, Pune and others***[1].

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[1] 2006 (196) ELT 257 (SC)

5. Sri Suresh Kumar Routhu, learned senior standing counsel for customs, appears on behalf of the respondent and opposes the contention of the appellant.

6. We are unable to accept such contention of the appellant for the following reasons:

(i) Appellant had made the deposit of duty and penalty in 2006 and at that material point of time, there was no statutory provision in the Customs Act with regard to refund of such deposit.

(ii) By Act 18 of 2008, Section 129EE of the Customs Act providing for refund of pre-deposit was introduced into the Customs Act, which reads as follows:

> "**129EE. Interest on delayed refund of amount deposited under the proviso to section 129E** – Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as appellate authority), under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

7. Subsequently, the aforesaid provision was substituted by Act 25 of 2014, which came into force on 06.08.2014:

> "[1][**129EE. Interest on delayed refund of amount deposited under section 129E** – Where an amount deposited by the appellant under section 129E is required to be refunded

> consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of amount till, the date of refund of such amount:
>
> Provided that the amount deposited under section 129E, prior to the commencement of the Finance (No.2) Act, 2014, shall continue to be governed by the provisions of section 129EE as it stood before the commencement of the said Act.]"

8. An analysis of the aforesaid statutory morphism would show while the original provision stipulated interest would be payable at a rate specified in Section 27A after expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount, the substituted provision provided for interest at a notified rate not below 5 per cent and not exceeding 36 per cent from the date of payment till the date of refund of such amount. Moreover, the proviso to the substituted provision clarified that all amounts deposited under Section 129E prior to the commencement of the substituted provision on and from 2014 would be guided by pre-amended section 129EE. Or in other words, interest on pre-deposits which were made prior to 2014 would be at a rate specified in Section 129EE (prior to its substitution) and for a period commencing after expiry of three (3) months from the date of communication of the order of the appellate authority till the date of refund.

9. We note that in the rectified order the Tribunal has merely clarified this fact as in its earlier order a wrong provision had been quoted. Hence, we reiterate that the interest on the pre-deposit refunded to the appellant is to be determined as pre amended Section 129EE of the Customs Act *i.e.,* for a period commencing after expiry of three (3) months from the date of communication of the order of the appellate authority till the refund

of such amount and not from the date of deposit of the said amount till the date of refund.

10. Reference to ***Sandvik Asia Limited*** (supra) is not apposite. In the said report, the Apex Court was not called upon to decide the impact of amendment to Section 129EE of the Customs Act and was dealing with the issue of refund made under the provisions of the Income Tax Act, 1961.

11. For the aforesaid reasons, we are of the opinion no case for admission of the Appeal is made out. The Appeal is accordingly dismissed. No order as to costs.

12. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JOYMALYA BAGCHI, J

K.SURESH REDDY, J

Date: 29-06-2021
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