



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13314 OF 2024

M/s Ajay Industrial Corporation Ltd.
Having Office at: B-II/29
Mohan Co-operative Industrial Estate
Badarpur Border, New Delhi 110 044 ...Petitioner

VERSUS

Deputy Commissioner of Customs,
CRC-I, JNCH
Nhava Sheva
Taluka Uran, Dist. Raigad
Navi Mumbai, Maharashtra 400 707
email: crcjnch@gmail.com ...Respondent

Appearances-

Ms Raminder Kaur, i/by Mr Sunil, for the Petitioner.
Mr Karan Adik, a/w Ms Mamta Omle, for the Respondent.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 08 October 2024

PRONOUNCED ON : 15 October 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.

2. Rule. The rule is made returnable immediately at the consent of and at the request of the learned counsel for the parties.

3. The petitioner seeks a writ of mandamus directing the respondent to pay interest at the rate of 6% per annum on the delayed refund of Special Additional Duty (“**SAD**”) in terms of Sections 27 and 27A of the Customs Act, 1962 (“**Customs Act**”).

4. The petitioner manufactures various products related to water management. On 04 August 2014, the petitioner filed a claim for a refund of SAD in the amount of Rs.7,40,458/— under notification No. 102/2007–Cus dated 14 September 2007. The respondent rejected the above application by order in the original dated 17 February 2017. Aggrieved, the petitioner appealed to the Commissioner (Appeals) vide Appeal No. 403 of 2017.

5. The Commissioner (Appeals) allowed the petitioner’s appeal, set aside the order dated 17 February 2017 and remanded the matter to the respondent to consider again the petitioner’s representation/application dated 04 August 2014. The respondent, by yet another order in original dated 16 October 2020, once again rejected the petitioner’s claim for refund. The petitioner, once again, appealed to the Commissioner (Appeals) vide Appeal No. 1858 of 2020.

6. The Commissioner (Appeals) vide order dated 30 June 2022, once again allowed the petitioner’s appeal, set aside the original order dated 16 October 2020 and remanded the

matter to the respondent to consider the petitioner's refund application.

7. Despite the above, the respondent kept delaying disposing of the petitioner's refund application dated 04 August 2014. This forced the petitioner to file a grievance/complaint dated 15 September 2023 on the CPGRAMS portal. In response, the respondent called up the petitioner's counsel and admitted having misplaced the files relating to the petitioner's claim. The respondent has also sent an email dated 25 September 2023 to the petitioner's counsel requesting to supply documents so that the petitioner's refund claim application dated 04 August 2014 could be disposed of.

8. Despite furnishing all documents and case papers respondent did not bother to dispose of the petitioner's refund claim application. Since the petitioner faced similar problems in recovering interest on delayed refunds in six identical cases, the petitioner instituted Writ Petition (C) No. 773 of 2024 before this court. By order dated 19 March 2024, this court directed the respondent to decide the interest claimed within four weeks.

9. After a delay of almost ten years since the petitioner filed the refund application dated 04 August 2014, the respondent made an order dated 01 April 2024, by which the refund of Rs.7,40,458/- was allowed. However, the respondent failed to award any interest on the delayed refund. The petitioner has pleaded that there was a delay of 09 years and 182 days since the petitioner applied for a refund on 04 August 2014. Therefore, the petitioner was

entitled to interest at 6% per annum on the delayed refund amounting to Rs. 4,21,940/-.

10. Section 27 of the Customs Act deals with the refund of duty. Section 27A deals with the interest on delayed refunds. Section 27A of the Customs Act reads as follows:-

“27A. Interest 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 per cent and not exceeding thirty per cent 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:

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation.—Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.”

11. The Central Government issued a notification in the official gazette specifying a rate of 6% per annum as the interest rate on delayed refunds. Accordingly, the petitioner

has reached the figure of Rs.4,21,940/- as payable to it towards interest on the delayed refund.

12. The respondent has not disputed the calculation, but learned counsel for the respondent referred to the communication dated 07 October 2024 addressed by the Assistant Commissioner of the Customs to the senior standing counsel in the case of M/s Ajay Industries Corporation Ltd. (petitioner herein) referring to Section 27A of the Customs Act, and stating that this is a matter where the refund was granted as a consequence of the order dated 30 June 2022 of the Commissioner (Appeals). After this order, the petitioner sought a refund vide letter dated 08 August 2022. Therefore, interest in Section 27A of the Customs Act could be calculated only from 08 November 2022, i.e. three months from the date of the application dated 08 August 2022. This later states that the interest comes to Rs.62,077/-.

13. Learned counsel for the respondent submitted that this is a case where the explanation to Section 27A applies and, therefore, the claim for refund would have to be considered only from 08 November 2022 and not from 04 August 2014, i.e. the date of initial application for claim of refund of SAD.

14. Learned counsel for the respondent also submitted that in terms of Customs Refund Application (Form) Regulations, 1995 (“**the Regulations**”) for payment of interest under section 27A of the Customs 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 made. He submitted that since the application pursuant to the Commissioner (Appeals) order dated 13 June

2022 seeking interest on refund was made only on 08 August 2022, interest can be calculated from 08 November 2022 and not any date earlier.

15. At the very outset, we have listed the chronology of events, which indicates that the petitioner had to secure at least two remands only to adjudicate his refund claim application dated 04 August 2014. Even after two remands, there was a delay in disposing of the refund claim application. Ultimately, it was found that the petitioner was entitled to a refund of Rs.7,40,458/-.

16. Still, the respondent now contends that interest at the rate of 6% per annum is payable not upon expiry of 03 months from 04 August 2014 but only from 08 November 2022, i.e. three months from the petitioner's application dated 08 August 2022, by which, the petitioner merely requested the respondent to follow the Commissioner (Appeals) order dated 10 June 2022 and decide the petitioners refund claim application dated 04 August 2014. All this while the respondent has wrongfully retained and utilised the excess amount of Rs.7,40,458/- and now, the respondent is raising untenable defences to deny interest at a rate of 6% per annum, Section 27A of the customs act notwithstanding.

17. The respondent's contention about the petitioner's case being covered by the explanation to Section 27A is untenable. This is not a case of an order of refund made by the Commissioner (Appeals). The Commissioner (Appeals) only remanded the matter to the respondent, who ultimately ordered the refund. Assuming we were to accept the respondent's contention, the first part of section 27A provides

for the order by which the refund arose. Still, the period for calculating interest provided in the later part of the section states that the starting point is the date of application. Therefore, even on this count, no relief could be denied to the Petitioner. Thus, the explanation to Section 27A of the Customs Act does not apply and based upon a distorted interpretation of the same, the respondent cannot avoid payment of interest at the rate of 6% per annum from 04 September 2014.

18. There is, and there can be, no dispute that the petitioner filed an application claiming a refund of SAD in the amount of Rs.7,40,458/- on 04 August 2014. The respondent never claimed that this application was incomplete or had any deficiencies. The Regulations provide that the application for a refund shall be made in the prescribed form. Such application shall be scrutinised for completeness by the proper officer. Suppose the application is found to be complete in all respects. In that case, the applicant shall be issued an acknowledgement by the proper officer in the prescribed form within ten working days of receiving the application.

19. Where on scrutiny, however, the application is found to be incomplete, the proper officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may re-submit the application after making good the deficiencies for scrutiny. The explanation to these rules provides that for payment of interest under Section 27A of the Customs Act, the application shall be deemed to have been received on the date the

complete application, as acknowledged by the proper officer, has been made.

20. There is no allegation about the initial application for refund being incomplete or containing any other deficiencies. Admittedly, no deficiencies were pointed out to the petitioner either within 10 days or even later. The application dated 08 August 2022 only requested the respondent to implement the order dated 30 June 2022 made by the Commissioner (Appeals). This application/letter was mere in the nature of a follow-up letter or reminder. This application can not be styled or construed as an application for refund under Section 27A of the Customs Act or the Regulations. Based upon such misconceived construction or by referring to the explanation to Section 27A of the Customs Act, the respondent can not avoid payment of interest at the rate of 6% per annum from 04 August 2014, having retained and utilised the amount which was ultimately found to be refundable to the petitioner.

21. Earlier, the respondent had pleaded that the petitioner had not claimed any interest on the refundable amount. In Writ Petition No. 773 of 2024, the Co-ordinate Bench of this Court, in its order dated 19 March 2024, held that there was substance in the contentions as urged on behalf of the petitioner as certainly Section 27A would provide for the payment of interest on the delayed payment of refund amounts, which is a statutory entitlement of the petitioner and which necessarily was required to be considered by the adjudicating officer in considering refund application on remand. This order further holds, *“Even assuming the petitioner had not made a prayer for interest, however, the*

fact remains that it would be statutory entitlement of the petitioner to seek the interest on the refund amount when such applications were allowed". Accordingly, directions were issued to the respondent to decide the claims for refund and interest on the refundable amount.

22. Thus, in this case, we are satisfied that the respondent has delayed granting the refund that was due and payable to the petitioner for almost ten years. Now, the respondent is avoiding the payment of interest on the delayed refund amounts by raising frivolous pleas even though the interest component comes to hardly Rs.4,21,940/—as of the date of institution of the petition.

23. In the context of Sections 11B and 11BB of the Central Excise Act, the Hon'ble Supreme Court, in the case of **Union of India Vs. Hamdard (Waqf) Laboratories**¹ has considered and rejected similar arguments made on behalf of the Revenue. Hon'ble Supreme Court held the liability for the interest payment is statutory, and it is the bounden duty of the Assistant Commissioner to pay interest. Further, the court held that the liability of the Revenue to pay the interest under Section 11BB, which corresponds to Section 27A of the Customs Act, commences from the date of expiry of 3 months from the date of receipt of the application for refund or on the expiry of the said period from the date of which the order of refund is made. Hon'ble Supreme Court followed its earlier decision in the case of **Ranbaxy Laboratories Limited Vs. Union of India and Ors.**².

¹ AIR 2016 SC 1124

² (2011) 10 SCC 292

24. The Delhi High Court's decision in **S.R. Polyvinyl Ltd. vs. Commissioner of Customs**³, which interprets the provisions of the Customs Act, also supports the petitioner's case. On an identical issue, the Karnataka High Court has held that the period for calculating interest would start from the date of application even if a refund arose on account of appeal orders.

25. The decision of the Madras High Court in **Global United Shipping India (P) Ltd. Vs. Assistant Commissioner of Customs (Refund)**⁴ also supports the petitioner's case. In the context of the provisions of Section 27 and 27A of the Customs Act, it holds that the intention of the legislature clearly spelt out in the above provision of law was that the interest was liable to be paid after the expiry of three months from the date of receipt of the application for refund and not from the date of passing of the order of refund. The court held that the object behind such provision for the payment from the date of the application was obvious. Once an order of refund is made, the liability to pay the same dates back from the date of its collection. In other words, an amount collected by Revenue without the authority of law or by the erroneous application of the provision of law, if retained by the Revenue all along without having any legal right to retain the same, such collection and retention would amount to unjust enrichment. Thus, liability to return or refund to the person from whom it was collected commences on the day it was demanded and collected. Therefore, when the liability to refund is determined, such liability dates back and commences not from the date of the order for refund but from

³ 2020 (371) ELT 283 (DL)

⁴ Writ Petition No. 17506 of 2019 decided on 15 October 2019

the date of such collection. Liability to refund begins when it was actually due and not when it is actually determined.

26. The Madras High Court noted that the adjudicating authority imposes interest and penalty on such duty liability when adjudicating the liability. It is not that such duty alone is collected from the importer from the date of adjudication. On the other hand, such liability to pay duty is fastened on such importer from when it becomes due. Therefore, the revenue collects the interest on such overdue duty payments and the penalty for not paying them at the appropriate time. The same analogy is to be applied in the case of a refund while considering the interest payment. That is why Section 27A of the Customs Act was carefully coined for payment of such interest from the expiry of three months from the date of the application and not from the date of the order.

27. Mr Adik relied upon the decision of the CESTAT, West Zonal Bench, Mumbai in the case of **Commissioner of Customs & GST, Mumbai West Vs. Juhu Beach Resort Ltd.**⁵ and the decision of Regional Bench in the case of **Commissioner of Customs, Mumbai Import-II Vs. Forever Living Imports (India) Pvt. Ltd.**⁶ Both the decisions, apart from they being the decisions of the tribunal, concerned fact situations which are not even remotely comparable to the fact situation in the present petition. Based upon those decisions, therefore, the respondents can not avoid payment of interest on the delayed refunds.

⁵ 2020 (371) E.L.T. 622 (Tri. - Mumbai)

⁶ Customs Stay Application No. 85222 of 2020 in Customs Appeal No. 85583 of 2020 decided on 15 December 2023

28. The **Commissioner of Customs, Mangaluru Customs Vs. JSW Steel Ltd.**⁷, the division bench of the Karnataka High Court was concerned with the defective application for refund. Accordingly, the contention of the importer that even if the application was defective, that at the most may amount to irregularity and the department can not avoid payment of interest, was not accepted. In the present case, as noted above, there was no defect in the petitioner's application. No deficiencies were pointed out within the time prescribed under the Regulations or even later. The issue, which was involved before the Karnataka High Court, does not arise in the present petition. Besides, the Karnataka High Court does not appear to have considered the impact of the absence of the provision like Section 244A(2) of the Income Tax Act, 1961 in the Customs Act.

29. In **Shakun Overseas Ltd. Vs Commissioner of Cus. (Appeals), Chennai**⁸, the concerned facts which have no relevance to the issue involved in the present case. In fact, Madras High Court has held that Section 27A of the Customs Act provides time limit within which the application for refund to be disposed of failing which the assessee would be entitled to claim interest.

30. Thus, on facts and in law, this Petition deserves to succeed. The revenue's entire approach has been far from fair. The petitioner was forced to litigate for the refund's recovery, and after the refund was sanctioned belatedly, the revenue, quite unreasonably, resisted interest payment on the delayed

⁷ 2022 (379) E.L.T. 451 (Kar.)

⁸ 2013 (297) E.L.T. 14 (Mad.)

refunds. It is not as if the stakes were high for the revenue. The interest claim of the Petitioner comes to Rs 4,21,940/-.

31. For all the above reasons, we allow this petition and direct the respondent to pay the petitioner the interest amounting to Rs.4,21,940/- on the delayed refund of SAD. The respondent must pay the petitioner this amount within two months of today.

32. Failing this, the respondent is directed to pay the interest at 8% per annum on this amount. This direction for payment at the rate of 8% per annum is without prejudice to any action under the Contempt of Court Act should the respondent willfully and deliberately disobey the direction now made.

33. Further, if Rs.4,21,940/- is not paid within two months from today, additional interest on this amount now ordered will have to be recovered from the officer responsible for the delay instead of burdening the exchequer and, consequently, the taxpayer.

34. The respondent is also directed to pay the petitioner Rs.15,000/- in costs within two months from today.

35. The rule is made absolute in the above terms with costs. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)