



2024:DHC:1420-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 20 February 2024**
Judgment pronounced on: 23 February 2024

+ **W.P.(C) 2711/2023 & CM APPL. 28919/2023**

RAJ KUMAR BATRA

..... Petitioner

Through: Mr. Akhil Krishan Maggu,
Advocate

versus

COMMISSIONER OF CUSTOMS (PREVENTIVE) Respondent

Through: Mr. Harpreet Singh, Senior
Standing Counsel with Ms.
Suhani Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present Writ Petition has been filed, seeking directions to the respondent to refund the pre-deposit amount of Rs. 9,30,000/- paid by the petitioner along with applicable interest in terms of Central Board of Indirect Taxes & Customs [hereinafter referred to as "CBIC"], Circular No. 984/08/2014-CX dated 16.09.2014 and for the refund of the seized cash amount of Rs. 14,10,990/- along with applicable interest to the petitioner in compliance to the Final Order No. 51110-51111 of 2022 dated 29.11.2022 passed by Customs Excise & Service Tax Appellate Tribunal [CESTAT], New Delhi. Petitioner also seeks the quashing of the impugned Corrigendum dated



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10.04.2023 issued by Assistant Commissioner (Refund) and directions to the respondent to disburse interest amounting to Rs. 7,41,146/- to the petitioner as originally sanctioned vide Order-in-Original No. 13KK/AC/2022-23 dated 23.03.2023, issued by Assistant Commissioner (Refund).

FACTS

2. Petitioner, Raj Kumar Batra, is a trader of musical gadgets like car stereo, amplifiers, speakers etc., having its shop under the name and style of M/s. Music Palace at Kashmere Gate, Delhi. He deals in the goods which are manufactured in India as also the goods of foreign origin.

3. On the basis of a specific information, Officers of Customs conducted search of the shop of petitioner situated at 597, Hamilton Road, Kashmere Road, Delhi as also at a godown of the said firm at 599, Hamilton Road, Kashmere Gate, Delhi, on the basis of Search Authorization issued by Assistant Commissioner of Customs (Preventive). The search resulted in the recovery of huge stock of electronic goods of foreign origin and the Indian Currency of Rs. 14,10,000/-. The same were seized under Section 110 of the Customs Act, 1962 on the reasons to believe that the same have been imported/acquired/possessed and kept in custody in contravention of EXIM Policy, Chapter-1A of FTP-ITC (HS) Classification 2004-09 read with Standards of Weight & Measures (SWM Act), and Packaged Commodities Rules, 1977, and thus were liable to confiscation under the provisions of the Customs Act, 1962.



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4. Statement of petitioner was recorded under Section 108 of the Customs Act, wherein, he admitted the recovery of cash and seizure of goods of foreign origin collectively valued at Rs. 92,73,350/- and Rs. 14,10,900/-.

5. The seized goods were released provisionally to the petitioner on 11.09.2008 and 12.09.2008 upon furnishing a bond of Rs. 92,73,350/- and a bank guarantee of Rs. 9,30,000/-.

6. Show Cause Notice dated 03.07.2008 was issued to the petitioner, wherein, he was asked to show cause as to why the electronic goods of foreign origin valued at Rs. 92,73,350/- and the Indian Currency amounting to Rs. 14,10,990/-, belonging to the petitioner, should not be confiscated under Section 111 (d) and Section 121 of the Customs Act, 1962 and why penalty should not be imposed upon him under Section 112 of the Customs Act. Petitioner filed his reply dated 24.12.2008 to the above-mentioned Show Cause Notice.

7. The above SCN was adjudicated vide OIO No. 20-Commr./HKT/2009 dated 29.10.2009, wherein, the Commissioner of Customs, Preventive, Commissionerate, ordered for confiscation of the seized goods worth Rs. 92,73,350/- and also gave an option to redeem the same after paying a redemption fine of Rs. 7 lakhs. The Adjudicating Authority also ordered for the confiscation of Indian Currency amounting to Rs. 14,10,990/- under Section 121 of the Customs Act, 1962 and imposed a penalty of Rs. 2 lakhs upon the petitioner under Section 112 of the Customs Act, 1962.



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8. Vide letter dated 03.12.2009, petitioner requested the department to encash the bank guarantee of Rs. 9,30,000/- to pay the fine of Rs. 7 lakhs and penalty of Rs. 2 lakhs imposed upon the petitioner.

9. Being aggrieved with the Order-in-Original dated 29.10.2009, petitioner preferred an appeal before the CESTAT. Vide its final Order No. 55110-51111 dated 29.11.2022, CESTAT has set aside the Order-in-Original dated 29.10.2009 and held that petitioner is entitled to consequential benefits including the refund of the amount seized/confiscated.

10. Petitioner then filed an application dated 16.02.2023 for the refund of the pre-deposit in terms of CBIC Circular No. 984/08/2014-CX dated 16.09.2014. He filed yet another application dated 11.02.2023 for the refund of the seized amount of Rs. 14,10,990/- along with applicable interest.

11. Assistant Commissioner (Refund) vide order dated 23.03.2023, sanctioned refund of Rs. 16,71,146/- {Rs. 9,30,000/- (principal amount) along with Rs. 7,41,146/- (interest amount)} to the petitioner. Later, a Corrigendum dated 10.04.2023 was issued by the Assistant Commissioner (Refund), thereby sanctioning only a refund of Rs. 9,41,954/-, {Rs. 9,30,000/- (principal amount) along with Rs. 11,954/- (interest amount)} to the petitioner.

SUBMISSIONS



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12. Learned counsel for the petitioner has argued that till date, he has neither received the refund nor the interest. It is submitted that respondent is not adhering to the CBIC Circular despite the clear time lines given therein. It is also submitted that respondent without any statutory or legal authority, passed Corrigendum dated 10.04.2023 and arbitrarily reduced the interest to Rs. 11,954/-. It has also been argued that despite the orders by the Tribunal, seized currency of Rs. 14,10,990/- has also not been released. It is submitted that the petitioner is being made to run from pillar to post, but the refund and interest has not been granted despite the orders passed by the Tribunal.

13. Learned counsel for the respondent has argued that the redemption fine of Rs. 7,00,000/- and penalty amount of Rs. 2,00,000/- was imposed on the petitioner vide Order dated 29.10.2009, and as such, as per Section 129-E of the Customs Act, 1962, the amount of pre-deposit at the rate of 7.5% of Rs. 2,00,000/- for filing the appeal comes to Rs. 15,000/- and accordingly the interest amount of Rs. 11,954/- on Rs. 15,000/- has been sanctioned to the petitioner vide Corrigendum dated 10.04.2023. Insofar as the interest on the seized cash of Rs. 14,10,990/- is concerned, it has been submitted that the seized cash was lying deposited with the Disposal Branch of the office of the respondent as case property and was never deposited with the Government Exchequer and was thus not in the nature of duty. It is submitted that Section 27-A of the Customs Act deals with interest on delayed refund of duty and Section 129-EE of the Customs Act deals with interest on delayed refund of deposit made under Section 129-E and in the Customs Act, there is no provision for the payment of



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interest on refund of the seized currency which is in the nature of case property, and as such, no interest is payable on the seized currency. It is submitted that the interest on delayed refund is payable under Section 27-A of the Customs Act only on the duty and not on the goods including currency under Section 27-A of the Customs Act.

ANALYSIS & CONCLUSION

14. So far as the seized currency is concerned, on the basis of the statement of the learned counsel of the respondent, we had noted in our order dated 20.02.2024 that the seized cash has already been remitted to the petitioner vide Sanction Order dated 08.11.2023. We have already observed that the petitioner would not be entitled to any interest on the said amount as the same was lying deposited with the Disposal Branch of the respondent as case property and was never deposited with the Government Exchequer.

15. A short question which now arises for consideration in the present Writ Petition is whether the petitioner is entitled to the claim of interest on the entire amount of Rs. 9,30,000/- deposited by him as redemption fine and penalty.

16. In this regard, Section 27-A of the Customs Act, 1962 is reproduced below:-

“[27-A. 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 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.

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.]”

17. Section 27-A clearly provides for the payment of interest on the delayed refund on customs duty. If there is any delay in sanctioning the amount of refund, if any available as per the Tribunal’s order, the applicant in such cases can make a claim for the same from the department and such interest shall not be below 5% and not exceeding 30% per annum as is fixed by the Central Government by Notification in the Official Gazette. It is manifest from the Section that deposit of penalty, redemption money or bank guarantee do not fall within the ambit of Section 27-A of the Act, not being custom duty. Thus, Section 27-A is not attracted in the facts and circumstances of the case.

18. Section 129-E of the Customs Act, 1962 is reproduced below:-

“[129-E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal, --

(i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half percent of the duty in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;



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(ii) against the decision or order referred to in clause (a) of sub-section (1) of Section 129-A, unless the appellant has deposited seven and a half percent of the duty in case where duty or duty and penalty are in dispute, or penalty where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 129-A, unless the appellant has deposited ten percent of the duty, in case where the duty or duty and penalty are in dispute, or penalty where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this Section shall not exceed rupees ten crores:

Provided further that the provisions of this Section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014:]"

19. The right to appeal is a statutory right and pre-deposit requirement under Section 129-E is a procedural requirement.

20. Section 129-EE provides for the payment of interest on delayed refund of the amount deposited under Section 129-E. It provides as under:-

“[129-EE. Interest on delayed refund of amount deposited under Section 129-E.—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 percent, and not exceeding thirty six percent 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.]”



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21. In view of Section 129-EE, interest at such rate not below 5% and not exceeding 36% per annum is payable on the delayed refund of amount deposited under Section 129-E. Circular No. 984/08/2014-CX of Central Board of Excise & Customs dated 16.09.2014, clarifies in Para No. 5.1 that where the appeal is decided in favour of the party/assessee, he shall be entitled to the refund of the amount deposited along with interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35-FF of the Central Excise Act, 1944 or Section 129-EE of the Customs Act, 1962. Para 5.2 of the said Circular further clarifies that pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11-B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962 and therefore in all cases where the Appellate Authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the applicant seeking refund irrespective of whether order of the Appellate Authority is proposed to be challenged by the department or not.

22. A combined reading of Section 129-EE and the clarification issued in Para No. 5.1 & 5.2 of the aforesaid Circular dated 16.09.2014, makes it clear that the interest is payable on the amount deposited for filing the appeal.

23. However, Para-3.1 of the said Circular provides as under:-



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“Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfilment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.”

24. In the present case, petitioner was required to deposit only 7.5% of the redemption and penalty for filing the appeal, and therefore, as per learned counsel for the respondent, interest is payable not on the entire amount of Rs. 9,30,000/- but on the pre-deposit amount which was the statutory requirement for filing the appeal.

25. We are in agreement with the argument of the learned counsel for the respondent that the petitioner is not entitled either under Section 129-EE or CBIC Circular No. 984/08/2014-CX dated 16.09.2014 to the interest on the entire amount of Rs. 9,30,000/- deposited by the petitioner. However, it is also a fact that the seized goods were released provisionally to the petitioner on 11.09.2008 and 12.09.2008 on furnishing a bond and a bank guarantee of Rs. 9,30,000/-. Admittedly, the redemption money and penalty was paid before filing the appeal by getting the bank guarantee encashed vide letter dated 03.12.2009. Admittedly, the Tribunal has set aside the Order-in-Original and granted the consequential benefits to the petitioner. Revenue cannot be permitted to enrich itself at the cost of the petitioner. It may have earned the interest on the redemption and



the penalty amount deposited by the petitioner, which amount was ultimately found to be refundable. The question with regard to the grant of interest is no longer *res-integra*, inasmuch as, in the case of **Union of India, through Director of Income Tax Vs. Tata Chemicals Limited, reported in (2014) 6 Supreme Court Cases 335**, while dealing with the question of grant of payment of interest on the refund of income tax, it was held as under:-

“Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is a debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the residents/deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.”
(emphasis supplied)

26. Relying upon the decision of the Supreme Court, the Division Bench of the High Court of Judicature at Allahabad in **R.H.L. Profiles Ltd. Vs. Commr. Of Cus., Ex. And Service Tax, Kanpur, reported in 2017 (352) ELT 349 (All.)**, held that on the amount which was illegally confiscated by the Revenue and ultimately refunded, the assessee-appellant is entitled to interest and the department is under obligation to pay the same.



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27. Revenue has retained the redemption money and the penalty amount without any right and therefore in view of the decision of the Hon'ble Supreme Court in the case of Tata Chemicals Limited (*supra*), we are of the view that respondent is under obligation to grant interest to the petitioner on the whole amount of Rs. 9,30,000/- (redemption charges and penalty) and not just on the pre-deposit amount, which was the statutory requirement under Section 129E of the Customs Act, 1962.

28. We accordingly quash the impugned Corrigendum dated 10.02.2023 issued by Assistant Commissioner (Refund) and direct the respondent to refund Rs. 9,30,000/- to the petitioner along with interest at the rate of 6% per annum from the date of the deposit till the date of refund. Respondent is directed to process the refund within two weeks.

29. Petition is disposed of along with pending application.

RAVINDER DUDEJA, J.

SANJEEV SACHDEVA, J.

February 23, 2024

RM