IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.2476 of 2015
And
M.P.No.1 of 2015

The Commissioner of Customs (Import),
Customs House,
No.60, Rajaji Salai,
Chennai 600 001. ... Appellant

Vs.

1. The Customs Excise and Service
   Tax Appellate Tribunal,
   South Zone Bench,
   Shastri Bhavan Annex 1st Floor,
   26, Haddows Road, Chennai 600 006.

2. M/s.Vardhaman Life Sciences Pvt., Ltd.,
   A-7, SIPCOT Industrial Complex,
   Cuddalore 607 005.
   Tamil Nadu. ... Respondents

Prayer:
Appeal filed under Section 130 of the Customs Act, 1962, against the Final Order No.40550 of 2015 dated 21.05.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai against the order in O.S. No 29919 of 2014 dated 07.10.2014 passed in the Commissioner of Customs (Seaport-Import) Chennai .

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For Appellant : Mr.T.Pramod Kumar Chopda
For Respondents: Mr.N.Viswanathan

J U D G M E N T
(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

Prefatory facts:
1.This is an appeal preferred by the Revenue, against the judgment and order dated 21.05.2015, passed by the Customs,

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Excise and Service Tax Appellate Tribunal (in short, the Tribunal).

2.By virtue of the impugned judgment, the Tribunal has allowed the appeal of the Assessee and set aside the order-in-original passed by the Commissioner of Customs (Seaport – Import) (in short, the Commissioner), dated 07.10.2014/ 10.10.2014.

2.1.By virtue of the order dated 07.10.2014/10.10.2014, the Commissioner denied the request of the Assessee, to extend the period of warehousing, in respect of the subject goods, broadly, on the following grounds:

(i)That the warehousing period had expired.

(ii)Demand notice under Section 72(1) of the Customs Act, 1962 (in short, the Act), had been issued.

(iii)The application, seeking extension of warehousing period, was submitted only after the expiry of the said period and after issuance of demand notice.

(iv)Lastly, the reason proferred for extension of time, did not provide "sufficient cause" for condoning the delay, in filing the application, for extension of time.

3.Accordingly, the Commissioner declined the request made by the Assessee, for waiver of interest, on the ground that the subject goods were not imported under the EPCG Scheme, in the first instance, and that, the warehousing Bills of Entry were assessed to import rate of duty.

3.1.It was further held by the Commissioner that the CBEC Circular 47/2002, dated 29.07.2002, requiring the Revenue to take a lenient view, would not cover those cases, where the warehousing period had expired.

3.2.The Commissioner also came to the conclusion that the goods in issue were improperly removed from the warehouse under Section 72(1)(v) and therefore, were liable for further action, under said Section along with Section 72 (2) of the Act.

3.3.In support of her conclusions, the Commissioner relied upon the judgment of the Supreme Court in the matter of: SBEC Sugar Ltd., Vs. Union of India, 2011 (264) E.L.T. 492 (S.C.).

4.We may, also note that the instant appeal, filed by the Revenue, was admitted on 18.12.2015. At that stage, two questions of law were framed, which according to us, as well as, in the wisdom of the learned counsels for the parties require to be re-framed.

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4.1.Therefore, the following questions of law, are framed for adjudication of the instant appeal:

> (i) Whether the Tribunal mis-directed itself, in coming to the conclusion, that the first proviso to Section 61 of the Act, does not require, that an application be made, prior to the expiry of the warehousing period?
>
> (ii) In case, the answer to question no. (i) above is in favour of the Revenue, whether the Assessee could be called upon to pay interest, as contended by the Revenue?

5.Before we proceed further, it may be necessary, to set out the broad facts, which have led to the institution of the instant appeal.

5.1.The Assessee, as it appears, had set up a manufacturing unit at Cuddalore. The Assessee, proposed to manufacture, at the relevant point in time "intermediates". These intermediates, are, evidently, used to manufacture life saving drugs, which, the Assessee intended to export out of India.

5.2. Towards this end, the Assessee imported capital goods, qua, which, it applied for issuance of licences under the EPCG Scheme. The EPCG Scheme, in issue, is part of the Exim Policy, 2010 – 2015.

5.3.It is important to note that the Assessee applied for the licences, under the EPCG Scheme, post the importation of the subject capital goods.

6.The record shows, that the Assessee had filed three Bills of Entries, at the point in time, when, the subject capital goods were imported.

6.1.Two Bills of Entries bore the date 03.02.2012 (hereafter referred to as the 1st and 2nd Bill of Entry), while the third Bill of Entry (in short, the 3rd Bill of Entry) is dated 03.04.2012.

6.2.The record shows, that it is the Assessee's case that, since, it was facing technical and financial problems, in setting up its units and, because of which the project was getting delayed, upon import of the subject capital goods, a decision was taken, to warehouse the goods covered by the aforementioned Bills of Entry.

6.3.Accordingly, goods which were subject matter of the 1st and 2nd Bills of Entry, were bonded on 07.02.2012, while, the goods which were covered by the 3rd Bill of Entry were warehoused on 10.04.2012.

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7.The record shows that the period for warehousing, which was one year, expired, in respect of the 1st and 2nd Bills of Entries on 06.02.2013, whereas, in respect of the 3rd Bill of Entry, the warehousing period expired on 09.04.2013.

8.The Revenue, immediately after the expiry of warehousing period, in respect of the 1st and 2nd Bills of Entry, that is, on 13.03.2013, served a demand notice on the Assessee under Section 72(1) of the Act.

8.1.By virtue of the said demand notice, the Assessee was called upon to pay, within fifteen (15) days, from the date of its receipt, the duty along with interest, at the rate of 15% per annum, albeit, from the date of expiry of ninety days, commencing from the date of warehousing.

8.2.The Assessee, was put to notice, that it would also have to pay, other charges, that may become due and payable.

9.In response to the said demand, the Assessee, submitted a reply dated 18.03.2013, wherein, it inter alia communicated that it had made an application, to the concerned Authority, for permitting import of the subject capital goods, which were, at that point in time, under bond, against zero per cent duty, as permissible under the EPCG Scheme.

9.1.Via, this communication, the Assessee also communicated that the Joint Director of Foreign Trade, vide letter dated 15.03.2013, had, in fact, served upon it, a deficiency letter and that, in response thereto, the Assessee had provided the necessary clarifications.

9.2.The reply, concluded with the request of the Assessee that the validity of the bond, be extended, till such time, the subject goods were cleared, i.e., upto 31.03.2013, against the licence, which it anticipated, it would be issued, under the EPCG Scheme.

10.The Revenue appears to have disregarded the reply dated 18.03.2013, issued in response to the demand notice dated 13.03.2013.

10.1.This is apparent from the record, which, contains a notice dated 26.03.2013, issued under Section 72 (2) of the Act, whereby, the Assessee was informed that, if, the demand made, via, notice dated 13.03.2013, was not liquidated, within five (5) days of its receipt, the subject capital goods would be disposed of via, auction, without reference to it and without prejudice to its liability qua other charges.

11.It appears that in the interregnum, on 20.03.2013, the Assessee was issued an EPCG licence, which conferred upon it, the right to clear the goods against zero per cent duty.

11.1.The Assessee having been strengthened by the fact that

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it had secured an EPCG licence, filed with the Revenue, a request, in the form of a letter dated 27.03.2013, seeking extension of time, by a period of ninety days. In addition thereto, a request was made for waiver of interest. The requisite documents required to process the request, were also furnished by the Assessee.

11.2.The aforementioned request for extension of time was followed by the another communication dated 03.04.2013, whereby, the Assessee brought to the notice of the Revenue, that it had submitted two applications for the said purpose and therefore, it ought to drop its proposed action under Section 72(2) of the Act. This communication, in fact, was, a reply to the demand notice, dated 26.03.2013.

12.Evidently, by a written communication i.e., 09.04.2013, the Revenue, indicated to the Assessee, that, in respect of two Bills of Entries, dated 03.02.2012, i.e., the 1st and 2nd Bills of Entry, the period of warehousing, had expired on 06.02.2013, and, since, there was a delay of 349 days, as calculated, till 20.04.2013, it would be required, to pay interest, in the total sum of Rs.24,32,179/-.

12.1.In this regard, the Revenue drew the Assessee's attention, to the provisions of Section 61 (2) (ii) of the Act and the CBEC Circular No.10/2006 - CUS dated 14.02.2006.

12.2.What is required to be noticed, is that, there was, in fact, no reference to the 3rd Bill of Entry, dated 03.04.2012 and to demand for duty. Pertinently, this communication of the Revenue, confined the demand, only to interest.

12.3.The Assessee, in response to the same, shot off a reply dated 29.04.2013, wherein, it made submissions, as to why, interest in the sum of Rs.24,32,179/-, ought not to have been demanded.

13.The Revenue, on the other hand, vide communication dated 14.06.2013, informed the Assessee, that its request for extension of time, could not be granted and therefore, there could be no waiver of interest.

13.1.Furthermore, via this communication, the Assessee's attention was drawn to the judgement of the Supreme Court in SBEC Sugar Limited's case.

14.The Assessee, thereafter, wrote once again, to the Revenue, vide communications dated 25.06.2013 and 03.07.2013.

14.1.Via these communications, the Assessee, reiterated its request for extension of time.

15.It appears, that the Commissioner, finally, passed an order dated 17.07.2013, declining the Assessee's request for extension of period of warehousing, in respect of the 1st and

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2nd Bills of Entry.

15.1.Aggrieved by the same, the Assessee, preferred an appeal, to the Tribunal. The Tribunal, vide judgment dated 20.06.2014, allowed the appeal of the Assessee, on the ground, that the said order was passed, without hearing the Assessee and therefore, violated the principles of natural justice.

15.2.The Tribunal, via, its operative directions, remanded the matter to the original Authority, with a direction, to decide the matter afresh, after considering all the grounds raised in the matter, including the issue, relating to the notice issued under Section 72 (2) of the Act.

16.It is, in this background, that the order dated 07.10.2014/ 10.10.2014 came to be passed by the Commissioner, to which, we have made a reference above.

17.As alluded to above, the Assessee, carried the matter, once again, in appeal, to the Tribunal. The Tribunal, via the impugned judgement has held in favour of the Assessee.

Submissions of Counsels:

18. It is, in the backdrop of these facts, that the Revenue has preferred the instant appeal, in support of which, submissions have been made by Mr.Chopda.

18.1. The arguments, on behalf of the Assessee, have been advanced by Mr.Viswanathan.

19.Mr.Chopda, has submitted that the order of the Tribunal is flawed, for the reason, that it failed to take into account the fact, that the Assessee had obtained the licence under the EPCG Scheme, only after the goods had already been imported into the Country.

19.1.Therefore, according to the learned counsel, at the point in time, when the Bills of Entry were filed (i.e., the 1st and 2nd Bills of Entry), the duty element was calculated and only thereafter, goods were warehoused. Thus, according to the learned counsel, the clearance of subject goods, could only be made upon payment of interest.

19.2.Furthermore, Mr.Chopda submitted that the Tribunal had failed to appreciate that, since, the initial warehousing period had expired, the notice of demand, issued under Section 72(1) of the Act was valid and therefore, interest would have to be paid by the Assessee, as was held by the Supreme Court in SBEC Sugar Limited's case.

20.On the other hand, Mr.Viswanathan, submitted that there was no bar under Section 61 of the Act, in extending the period of warehousing, even if the application was moved, for the said purpose, after the expiry of the initial period of one year.

20.1.In support of this submission, the learned counsel relied upon the judgment of the Single Judge of the Bombay High Court in the matter of: Sunil Jugalkishore Gupta Vs. Union of

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India and Others, 1988 (36) E.L.T. 75 (Bom.).

20.2.Furthermore, the learned counsel for the Assessee submitted that since the Assessee had obtained a licence, under the EPCG Scheme on 20.03.2013, no duty could have been levied on the subject capital goods and therefore, there was no question of any interest being levied, as interest could be levied, only if duty was payable, at the time of clearance of goods.

20.3.Learned counsel, for this purpose, relied upon the provisions of Section 61 (2) (ii) of the Act.

20.4.This apart, reference was also made by the learned counsel, to the provisions of Circular No.10/2006 – CUS dated 14.02.2006.

20.5.Furthermore, in support of his submissions, the learned counsel also relied upon the judgment of the Supreme Court in: Pratibha Processors Vs. Union of India, 1996 (88) E.L.T. 12 (S.C.) and the judgment of the Division Bench of the Delhi High Court in U.K.Paint Industries Vs. Commissioner of Customs, 2014 (306) E.L.T. 284 (Del.).

20.6.Thus apart, the learned counsel for the Assessee, brought to our notice, the fact, that out of the three Bills of Entry, one Bill of Entry was assessed on 12.09.2013, while the remaining two Bills of Entry were assessed on 23.06.2015.

20.7.It was, therefore, the learned counsel's submission, that the clearance of goods was under Section 68 of the Act and not under Section 72 of the Act, as was asserted, on behalf of the Revenue.

Reasons:

21.We have heard the learned counsels for the parties and perused the record.

22.According to us, what clearly emerges from the record, is as follows:

(i) At the point in time, when the goods were imported, that is, in early part of 2012, the Assessee had not been issued a licence under the EPCG Scheme.

(ii) The Assessee, had however, got the subject capital goods warehoused. The period of warehouse, in respect of the 1st and 2nd Bills of Entry, expired on 06.02.2013, while, in respect of the 3rd Bill of Entry, it expired on 09.04.2013.

(iii) Since, the period of warehousing had expired, the Revenue, issued a notice of demand, under Section 72 (1) of the Act, on 13.03.2013. The Assessee, filed a reply, with respect to the same and, also, requested for extension of time. This reply was filed on 18.03.2013.

(iv) The Revenue, however, on 26.03.2013, issued another notice under Section 72 (2) of the Act. By this notice, the Revenue threatened auction of the capital goods, unless duty and interest, as demanded via its previous notice, i.e., 13.03.2013, was paid.

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(v) In the interregnum, the Assessee obtained a licence under the EPCG Scheme, which is dated 20.03.2013.

(vi) On 27.03.2013, the Assessee, once again sought extension of time, under Section 61 of the Act. This communication was followed by a response, dated 03.04.2013, issued by the Assessee, to the demand notice, issued by the Revenue, under Section 72(2) of the Act.

(vii)The Revenue, however, most crucially, vide communication dated 09.04.2013, confined its demand, to interest, and that too, vis-a-vis the 1st and 2nd Bills of Entry. The total amount demanded was a sum of Rs.24,32,179/-. This demand, was made, under Section 61 (2) (ii) of the Act read with CBEC Circular No.10/2006 – CUS, dated 14.02.2006.

(viii) The Revenue, finally declined the Assessee's request for grant of extension of time, vide communication dated 14.06.2013. The order-in-original was passed on 17.07.2013, which was assailed before the Tribunal, by the Assessee. The Tribunal, in the first round, allowed the Assessee's appeal, vide order dated 20.06.2014, requiring the Revenue, to re-examine the matter, as there had been a breach of principles of natural justice.

23.It is, in this background, that, in the second round, the order-in-original dated 07.10.2014/10.10.2014 came to be passed.

24.Given these admitted facts, what is required to be examined, by us, is, as to whether there is any impediment under the Act, in the Revenue, extending the warehousing period, after it has expired.

25.A plain reading of the provisions of Section 61 of the Act, as it obtained, at the relevant time, would show that there is no such impediment. The relevant part of the provisions of Section 61 of the Act are set out hereinafter:

> "61. Period for which goods may remain warehoused.—
> (1)Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed,
> (a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking, till the expiry of five years;
> (aa) in the case of goods other than capital goods intended for use in any hundred per cent. export-oriented undertaking, till the expiry of three years; and
> (b) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse: Provided that—

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(i) in the case of any goods which are not likely to deteriorate, the period specified in [clause (a) or clause (aa) or clause (b)] may, on sufficient cause being shown, be extended—

(A) in the case of such goods intended for use in any hundred per cent. export-oriented undertaking, by the [Principal Commissioner of Customs or Commissioner of Customs], for such period as he may deem fit; and

(B) in any other case, by the [Principal Commissioner of Customs or Commissioner of Customs], for a period not exceeding six months and by the [Principal Chief Commissioner of Customs or Commissioner of Customs] for such further period as he may deem fit;

(ii)in the case of any goods referred to in clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the [Principal Commissioner of Customs or Commissioner of Customs] to such shorter period as he may deem fit:

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

(2)Where any warehoused goods—

(i)specified in sub-clause (a) or sub-clause (aa) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods;

(ii) specified in sub-clause (b) of sub-section (1), remain in warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding

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the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days, till the date of payment of duty on the warehoused goods:

Provided that the Board may, if it considers it necessary so to do in the public interest, by order and under circumstances of an exceptional nature, to be specified in such order, waive the whole or part of any interest payable under this section in respect of any warehoused goods:

Provided further that the Board may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

Explanation.— For the purposes of this section, "hundred per cent. export-oriented undertaking" has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excises and Salt Act, 1944 (1 of 1944)."

(emphasis is ours)

26.This view has also found favour with the Bombay High Court in the matter of: Sunil Jugalkishore Gupta Vs. Union of India and Others, 1988 (36) E.L.T. 75 (Bom.), albeit, in the context of Section 61 of the Act, which was some what differently worded. The moot point, however, which was decided by the Court, was that, in the absence of any statutory impediment, the extension of warehousing time application could be entertained, even after the initial period of warehousing had expired. In the said judgment, the Bombay High Court has made the following apposite observations:

"There is nothing in Section 61 to indicate that the application for extension must be made before the expiry of the period of warehousing initially permitted. Counsel refers to the scheme of Chapter IX in support of the contention that the application for extension must come before the expiry of the permitted bonding period. It is true that after the expiry of the warehousing period, the authorities are at liberty to take coercive steps to recover the withheld customs duty and other charges. But when the

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second proviso empowers the Collector and the Board to give extension for a further period of warehousing, a different intention seems to be indicated. Read reasonably, it would appear that unless the authorities have taken recourse to coercive measures to recover customs duty and warehousing or other charges, the authorities are under an obligation to consider the application for extension despite the same having been preferred after the expiry of the permitted warehousing period. It was contended that on 30.03.1985, an order refusing to extend the warehousing period had been passed. Petitioner denied the service of any such order upon him. Respondent No.4 in his supplementary affidavit merely says that the refusal was sent for communication to the petitioner and not that it was in fact communicated. The stand taken by the petitioner is consistent with the subsequent steps taken by him and the proposed transferee Lalit Ltd. Both of them in June and July 1985 executed different documents, which could only have been on the assumption that they anticipated acceptance of the proposed transfer. Therefore, even if it is assumed that the order of refusal was passed on 30.3.1985, it was not communicated to the petitioner. Mr.Ganesh relies upon various authorities in support of his submission that an application for extension could be entertained even after the expiry of initial bonding period. It is not necessary to refer to these cases for the language of the section extracted above, in particular the second proviso, leaves no room for doubt that no limitation as to when the extension should be applied for can be read into the section. That, coupled with the admitted position, that steps had not been taken to recover customs duty or the warehousing charges, indicates that the power to grant an extension had not come to an end. That apart, the initial response of the authorities to the extension applications was different. They did not reject the applications outright. What they required to be done was that the bond period be got extended. This was so endorsed on the

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applications, copies whereof, are at Exhibits "G-1" and "G-2"."

(emphasis is ours)

26.1. To our minds, the ratio of the Bombay High Court judgement can be applied to the issue at hand arising in the instant appeal. In the context of Section 61 of the Act, as obtaining at the relevant point in time, the initial warehousing period could be extended on a "sufficient cause" being shown. There is nothing in Section 61(1)(b)(i)(B), which is suggestive of the fact, that an application, for that purpose, was required to be moved, prior to the expiry of the initial period of warehousing.

27.This brings us, to the other issue, as to whether any interest, as demanded by the Revenue, was payable by the Assessee. The Revenue seeks to claim interest, based on its argument that since the warehousing period had expired and the demand had been raised under Section 72 (1), on 13.03.2013, the clearance would only have been under the provisions of Section 72 of the Act and not Section 68 of the Act.

28.According to us, the argument is misconceived, for the reason that though the demand in the first instance, was raised on 13.03.2013 under Section 72(1) of the Act, and the same was followed by a notice dated 26.03.2013, under Section 72(2) of the Act, it was ultimately dropped, as is evident upon a plain reading of communication dated 09.04.2013. The intent initially expressed by the Revenue, to auction the good by taking recourse to Section 72(2) of the Act, appears to have dissolved.

28.1.Be that as it may. The Revenue confined its demand to interest. Furthermore, what is evident from the record is that the Assessee had obtained a licence, as indicated above, under the EPCG Scheme on 20.03.2013 and, accordingly, the subject capital goods, were cleared from the warehouse, without being mulct with duty. The record shows that the Bills of Entries were assessed on the following dates: 12.09.2013, 23.06.2015 and 23.06.2015.

29.To our minds, in such circumstance, it cannot be said that the clearance of the subject goods, was under Section 72 of the Act, as contended on behalf of the Revenue.

29.1.Since, the goods were cleared against zero per cent duty, in our view, no interest could have been levied.

29.2.This is evident, upon a plain reading of the provisions of Section 62 (2) (ii) of the Act. The provision makes it clear that interest, is to be calculated, only on the "amount of duty payable" at the time of clearance of the subject goods, in accordance with the provisions of Section 15 of the Act.

29.3.The instant clearance, was under the provisions of

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Section 15 (1) (b) of the Act read with Section 68. This view is supported by the observations of the Supreme Court made in: Pratibha Processors Vs. Union of India, 1996 (88) E.L.T. 12 (S.C.). The relevant observations are extracted hereafter:

> "14. In the above backdrop, let us consider the scope and content of Section 61 (2) of the Act as it existed at the relevant time. Section 61(1) prescribes the period during which the goods imported may remain in the warehouse. The normal period in different cases are provided therein. Extension of time in special cases is also provided. If the goods imported remain in warehouse beyond the period provided or extended under Section 61(1), the consequences are specified in Section 61 (2) of the Act. As per the provisions of the Act duty is payable (only) when the goods are cleared. If the goods are not cleared within the time granted under Section 61(1)of the Act, and the goods are cleared later, the payment of duty exigible on the goods gets automatically delayed. It is to meet the said contingency. Section 61(2)provides that if the goods warehoused are cleared beyond the time specified or granted under Section 61(1) of the Act, interest not exceeding 18% per annum shall be payable on the amount of duty on the warehoused goods. It is implicit from the language of Section 61(2) of the Act that the interest shall be payable on the amount of duty "payable or due" on the warehoused goods for the period from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, no duty is payable. The goods are not exigible to duty at that time. Calculation of interest is always on the principal amount. The "interest" payable under Section 61(1) (2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/ payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(1) (2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori,

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> interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable. The interest provided under Section 61(2) has no independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be saddled with the liability to pay interest on a non-existing duty. Payment of interest under Section 61(2) is solely dependent upon the exigibility or factual liability to pay the principal amount, that is, the duty on the warehouse goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either. We hold accordingly.
>
> (emphasis is ours)

30.Mr.Chopda's submission that in the instant case, what would be applicable would be the ratio of the judgment of the Supreme Court in SBEC Sugar Limited's case, according to us, is not tenable for the reason, that the facts obtaining in the said case, are distinguishable, from those which obtain in the instant case.

30.1.In the said case, the Assessee's request for extension of time was rejected. The Assessee, had not challenged the rejection of the request made for extension of time.

30.2.It is, in this background, that the Supreme Court came to the conclusion, that since the clearance of goods, was under Section 72 of the Act and not under Section 68 of the Act, interest would have to be paid.

30.3.According to us, the ratio of the said judgment, is not applicable to the instant case, as the Assessee has challenged the decision taken by the Revenue to decline its request for extension of time.

31.For the aforesaid reasons, we are inclined to reject the appeal.

32.The appeal is accordingly dismissed. The questions of law, as framed, are answered in favour of the Assessee and against the Revenue.

33.Needless to say, the Revenue, would release the subject capital goods, as expeditiously as possible, though, not later than, two weeks from the date of receipt of a copy of the order. However, there shall be no order as to costs. Consequently, the

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connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To

1. The Registrar
   Customs Excise and Service
   Tax Appellate Tribunal,
   South Zone Bench,
   Shastri Bhavan Annex 1st Floor,
   26, Haddows Road, Chennai 600 006.

2. The Commissioner of Customs
   (Seaport-Import)
   Custom House
   No 60, Rajaji Salai
   Chennai 1.

+1 CC to Mr.N. Viswanathan, Advocate sr 41478

C.M.A.No.2476 of 2015
And
M.P.No.1 of 2015

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