***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

+ CEA Nos.208, 214, 215 and 212 of 2018 and WRIT PETITION Nos.42136 and 42155 of 2018

% Date:18.12.2018

Between:

The Commissioner of Customs, Customs House,
Port Area, Visakhapatnam

… Petitioner in all the Appeals and 2nd respondent in the writ petitions.

v.

$ M/s. Gayatri Timber Pvt. Ltd.,
Kurmannapalem Junction, Visakhapatnam.

.. Respondent in all the appeals and Petitioner in the writ petitions.

Union of India, Rep. by its Secretary,
Ministry of Finance, New Delhi and another

… Respondent Nos.1 and 3 in writ petitions.

! For Petitioner : Mr. B. Narasimha Sarma

^ For Respondents : Mr. Karan Talwar

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE P. KESHAVA RAO

CEA Nos.208, 214, 215 and 212 of 2018 and WRIT PETITION Nos.42136 and 42155 of 2018

COMMON JUDGMNET: ***(Per V. Ramasubramanian, J)***

While the assessee has come up with two writ petitions challenging the denial of interest to a particular extent, the Revenue has come up with the above appeals under Section 130A of the Customs Act, 1962, challenging the orders of the CESTAT directing payment of interest on the refund already ordered.

2. Heard Mr. B.Narasimha Sarma, learned Senior Standing Counsel appearing for the Revenue, at whose instance four appeals are filed and Mr. Karan Talwar, learned counsel appearing for the assessee who is the respondent in the appeals and the petitioner in the writ petitions.

3. The petitioner is an importer of Timber Logs classified under Tariff Heading No.4403 of the first Schedule to the Customs Tariff Act, 1975. The petitioner claimed refund of the Special Additional Duty paid on the import of Timber Logs in accordance with Notification No.102/2007 dated 14.09.2007 and made '11' refund applications to the total tune of Rs.83,52,676/- The refund claimed related to the period from May 2009 to November 2011.

4. The refund claim was rejected by the Adjudicating Authority, in respect of Timber logs that were sold after cutting the Timber logs into smaller pieces. The orders of rejection, about 11 in

number, became the subject matter of the 11 statutory appeals before the CESTAT. The CESTAT allowed the appeals by orders passed on various dates in December 2015 and September 2016.

5. Thereafter, the Adjudicating Authority passed two orders in original on 30.11.2016 directing the assessee to furnish Bank guarantee to the extent of 50% of the amount claimed as refund, in relation to '9' out of '11' refund applications. Therefore, the petitioner filed two writ petitions in WP Nos.1707 and 1734 of 2017 on the file of this Court challenging the two orders in original.

6. By an order dated 07.03.2017, this Court allowed the writ petitions and directed the refund to be made within eight (8) weeks.

7. But, in the meantime, the Revenue filed '10' appeals in CEA Nos.57, 60, 61, 62, 66, 69, 71, 72, 74 and 75 of 2017 as against the orders of CESTAT passed in December 2015 and September 2016 directing the grant of refund. But, these appeals were dismissed by a Bench of this Court by an order dated 12.10.2017.

8. However, the Department filed appeals against the orders passed in the writ petitions in WP Nos.1707 and 1734 of 2017 on the file of the Supreme Court. But, the Supreme Court dismissed the appeals in CA Nos.16918 and 16919 of 2017, along with a batch of appeals in CA Nos.10258 to 10296 of 2011.

9. Thus, the orders of CESTAT passed in December 2015 and September 2016 directing the grant of refund, attained finality with this Court rejecting '10' statutory appeals filed by the Department and the orders passed by a Division Bench of this Court directing refund,

in WP No.1707 and 1734 of 2017 attained finality with the dismissal of the Civil Appeals by the Supreme Court. Eventually, the adjudicating authority granted refund, but did not grant interest as provided in Section 27 A of the Act. Therefore, the petitioner filed appeals claiming interest, but the Commissioner (Appeals) rejected the claim. However, the CESTAT allowed the appeals filed by the assessee and directed the Department to grant interest calculated from the date of expiry of the period of '90' days from the date of filing of the application for refund. This order of the CESTAT was dated 25.04.2018.

10. However, the Adjudicating Authority granted interest, only in relation to a portion of the period, calculated from the date of filing of the reminder after the dismissal of the appeals. Therefore, the assessee has come up with two writ petitions seeking the balance of interest. The Department has come up with the '4' appeals against the orders of CESTAT.

11. In all the appeals, filed by the Revenue under Section 130A of the Customs Act, the only substantial question of law that is raised in three different forms is to the following effect:

"Whether or not interest under Section 27A of the Customs Act, 1962, is payable only with reference to an order passed under Section 27 (2) of the Act by the Assistant Commissioner of Customs without reference to the date of application."

12. The answer to the above substantial question of law is too obvious to be noted.

13. Section 27 A of the Act together with the proviso and the Explanation thereto 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:*
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> *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.*
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> *Explanation.—Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal 4[, National Tax Tribunal] or any court against an order of the 5[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 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."*

14. It is true that Section 27 A of the Act opens with the words "any duty ordered to be refunded under sub-Section (2) of Section 27." Section 27(2) of the Act empowers the Assistant Commissioner of customs or Deputy Commissioner of Customs to order payment of duty and interest, if he is satisfied that they are payable.

15. But, the Explanation to Section 27A of the Act makes it clear that the orders passed by the Commissioner (Appeals) and the

Appellate Tribunal are also deemed to be orders passed under Section 27 (2) of the Act. In other words what is recognized by the Explanation to Section 27 A of the Act is nothing but the common law *doctrine of merger*. Even if the Assistant Commissioner of Customs rejects an application for refund under Section 27 (2) of the Act, the moment the said order is set aside on first appeal or second appeal, the order merges.

16. In any case, the last portion of the substantial part of the Section 27 A of the Act makes it clear that the starting point for calculation of interest is the expiry of three months from the date of receipt of the application. The date of commencement of the liability for payment of interest is not relatable to either the date of the original order or the date of the order of the appellate authority but relatable only to the date of expiry of three months from the date of the application. Therefore, it leaves no iota of doubt that the assessee in this case became entitled to interest from the date of expiry of 3 months of the date of application. Hence, the question of law raised by the Revenue is answered against them and the four appeals are dismissed.

17. Coming to the two writ petitions, what the Adjudicating Authority has done is to grant interest from the date of the reminder sent after the disposal of the writ petitions. This is clearly contrary to the mandate of Section 27 A of the Act. The date of expiry of the period of three months from the submission of the application, cannot be the date of expiry of three months from the date of the reminder. It

is the original application that triggers the period, from which the liability to pay interest on the refund arises for the Department. Therefore, the writ petitions are bound to be allowed. Accordingly, they are allowed. The Department shall calculate the interest payable, as per the original order and disburse the same within a period of eight (8) week from the date of receipt of a copy of this order.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

December 18, 2018
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