IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.30212 of 2016

M/s.Adluri Foods
rep. by its Proprietor Shri.A.V.Bhaskar,
181, Defence Officer Colony,
Ekkatuthangal,
Chennai-600 032,
Tamil Nadu. .. Petitioner

Vs.

The Assistant Commissioner of Customs (Refund)
Office of the Commissioner of Customs (Appeals),
Customs House,
No.60, Rajaji Salai,
Chennai-600 001. .. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent in Order in Original No.48134/16 Job No.47133/16, dated 01.07.2016, quash the same and consequently direct the respondent to refund Rs.53,583/- and also pay interest at the rate of 30% from 22.05.2006 to 29.12.2014 on Rs.4,13,115/-.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.S.R.Sundar,
Standing Counsel

O R D E R

The writ petition has been filed by the petitioner laying challenge to the Order in Original No.48134/16 Job No.47133/16, dated 01.07.2016, and consequently seeking a direction to the respondent to refund Rs.53,583/- and also pay interest at the rate of 30% from 22.05.2006 to 29.12.2014 on Rs.4,13,115/-.

2. The petitioner is involved in the business of importing fruit juice. During the relevant period, it filed three Bills of Entry, namely, 838077, dated 20.01.2006 ; 870263, dated 08.09.2005 ; and 765947, dated 07.03.2005 for the clearance of fruit juice, which were assessed for duty under CTH 20098090 at BCD 30%, CVD 16%, Cess 2% and CEX Cess 2% totalling to Rs.8,34,774/- and cleared for payment of duty. Subsequently, the petitioner came to understand that the goods are classifiable under CTH 2001.10 and vide Notification No.6/2002 Sl.No.9, amendment was issued exempting the said goods imported by the petitioner from Countervailing Duty (CVD).

3. Therefore, the petitioner submitted refund application dated 20.01.2006 and also the letter dated 01.03.2006 to the Adjudicating Authority/Assistant Commissioner of Customs seeking trade discount from the assessable value of the import. It also submitted the letter dated 03.03.2006 seeking to grant exemption of CVD and for refund. The Adjudicating Authority vide Order-in-Original dated 22.05.2006 allowed both the claims and ordered refund of Rs.4,13,114/-.

4. The Revenue filed an appeal before the Commissioner of Customs (Appeal) [in short, "CC (A)] on 07.06.2007, which was dismissed on 11.03.2008 on merits, so also on the premise that it was filed beyond the period of limitation. The appeal filed by the respondent before the Tribunal also met with the same fate, as the same was dismissed by the Tribunal on 03.11.2014.

5. After repeated requests made by the petitioner, refund was ordered only on 06.07.2015 for a sum of Rs.3,59,531/-. In fact, it is stated by the petitioner that the respondent lost the papers and it is the petitioner, who had once again submitted the papers for refund. The petitioner learnt that there was a clerical error in placing the note for refund of the bills, as one bill for a sum of Rs.53,583/- was not included in the note and the same has to be issued separately.

6. According to the petitioner, there was an inordinate delay in the refund of the amount. Hence, relying Section 27A of the Customs Act, 1962, the petitioner sought for refund of the balance amount along with interest on the entire refund amount sanctioned by the authority from the expiry of three months from the date on which the refund claim became due.

7. The respondent passed the impugned proceedings in Order-in-Original No.48134/16, Job No.47133/16, dated 01.07.2016 rejecting the claim of refund along with interest. Hence, this writ petition.

8. A counter-affidavit dated 29.11.2016 has been filed by the respondent refuting the allegations. It is stated therein that the process of refund was done within the stipulated time of three months and that the claim of interest would not arise. The relevant portion of the counter-affidavit is extracted as follows :

> "13. Further, it is stated that the paras (2) and (3) of Regulation 2 of Customs Refund Application (Form) Regulations, 1995, stipulate as follows :
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> > "(2) The application shall be scrutinized for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed form appended to these regulations within ten working days of the receipt of application.
> >
> > (3) 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 resubmit the application after making good the deficiencies, for scrutiny."
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> Explanation - For the purpose of payment of interest under Section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Office, has been made.
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> 14. It is stated that in this case, the application for refund has become complete only on receipt of the confirmation/quantification of duty payable/refundable to the importer by the Assessing Group-1 in the O-in-O No.5170/2006 dated 22.05.2006. Therefore, the claim was processed within the stipulated time of three months from the date of completion of the claim and hence question of payment of interest does not arise."

9. The only question that arises for consideration is whether the petitioner is entitled for the relief sought for in this writ petition ?

10. It is contended by the learned counsel for the petitioner that when there is an inordinate delay in refunding the amount, there is a statutory duty on the respondent under Section 27A of the Customs Act to accord refund with interest, which has been upheld by orders of various High Courts. At this juncture, it is relevant to extract Section 27A of the Customs

Act usefully as hereunder :

"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 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. According to the petitioner, during the relevant period of trade the goods imported were exempted from its Trade Import Duty, which is the CVD under Notification No.6/2002 Central Excise Sl.No.9. Therefore, the claim of trade discounts was sought for by the petitioner and the Adjudicating Authority ordered refund of Rs.4,13,114/-, by virtue of the order dated 22.05.2006. The respondent preferred an appeal on 07.06.2006, which was dismissed and the order of the Adjudicating Authority was confirmed. The said order is also put to challenge before the Tribunal, which also agreed with the said authorities by order dated 03.11.2014.

12. Despite the orders in favour of the petitioner and several reminders being given, only a sum of Rs.3,59,531/- was refunded on 06.07.2015 vide Order-in-Original No.39492/15. The

entire amount was not refunded and there appears to be a mistake, as note was not drawn for all the bills and there was an outstanding of Rs.53,583/-. Besides, there was an inordinate delay in refunding the amount. Hence, as per Section 27A of the Customs Act, the petitioner has made his claim.

13. The issue involved is no more res integra as various Courts including the Hon'ble Supreme Court made it clear that the delay in refund on duty attracts interest.

13.1. A First Bench of the Delhi High Court in Hewlett Packard India Limited V. Union of India, 2006 (88) DRJ 238 (DB) dealing with the claim of interest on the belated refund directed the concerned custom authorities to compute the amount of interest and pay the same to the petitioner.

13.2. A Division Bench of this Court in Shakun Overseas Limited rep. by its Managing Director V. The Commissioner of Customs (Appeals) and others, (2013) 297 ELT 14, placing reliance on the decision of the Hon'ble Apex Court in Ranbaxy Laboratories Limited V. Union of India, (2011) 10 SCC 292, in a similar claim, held as follows :

> "18. Thus, the Apex Court held that the liability of the Revenue to pay interest under Section 11BB of the Central Excise Act commenced from the date of expiry of three months from the date of receipt of the application for refund under Section 11B(1) and not on the expiry of the said period from the date on which the order of refund is made. The decision of the Apex Court on Section 11BB of the Central Excise Act has relevance to Section 27A, which is in pari materia with Section 11BB of Central Excise Act. As pointed out by the Apex Court, the Explanation fictionally treating the order passed by the Commissioner (Appeals) or Tribunal as that of the original Authority under Section 27(2) has relevance for the purpose of grant of interest under Section 27A of the Customs Act. Therefore, the liability of the Revenue to pay interest would arise immediately after the expiry of three months from the date of receipt of the application till the date of refund of such amount."

13.3. A Division Bench of the Delhi High Court in Rajan Overseas V. Commissioner of Central Excise, (2014) 308 ELT 443, while dealing with a similar claim of refund, which was repudiated by the authorities under the Central Excise Act, granted interest to the petitioner on the belated payment from the expiry of three months from the date, when the claim was first rejected by the concerned Authority till the refund of the amount.

14. Learned counsel for the respondent produced a recent judgment of the Hon'ble Apex Court in Commissioner of Customs V. Coronation Spinning India, (2015) 14 SCC 769, wherein, it was held that the interest was liable to be paid to the petitioner on the amount on duty and interest is inapplicable only on fine and penalty. It was held as follows :

> "2. The respondent had deposited the amount of duty, fine and penalty with the Department under protest. Ultimately the issue was decided in favour of the respondents holding that no such duty, fine and penalty was paid. The question of refund of the said amount was thereafter raised and in the impugned order the Tribunal had directed the Commissioner to pay interest to the respondents @ 12% on the amount of refund.
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> 3. The only grievance which is made by the Department in these appeals is that an issue to pay interest only on the amount of duty and not on fine and penalty. We find force in the submission of the appellants. These appeals are accordingly partly allowed holding that interest @ 12% shall be paid to the respondents on the amount of duty and not on fine and penalty. The said amount shall be paid to the respondents within two months."

15. In view of the above decisions and the submission of the learned counsel for the respondent/Revenue, the impugned order is liable to be quashed and the petitioner is entitled for interest not only on the amount already refunded, but also on the amount of Rs.53,583/- qua which note was not drawn and was omitted from refund, as prayed for.

16. Accordingly, this writ petition is allowed and the impugned order is quashed. Consequently, the respondent is directed to refund Rs.53,583/- and to pay interest at the rate of 24% on Rs.4,13,115/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Customs (Refund)
Office of the Commissioner of Customs (Appeals),
Customs House, No.60, Rajaji Salai,
Chennai-600 001.

+1 cc to Mr.S.Ravee Kumar, Advocate, Sr.No. 45636
+1 cc to Mr.S.R.Sundar, Advocate Sr.No.45318

W.P.No.30212 of 2016

CSL/24.06.2019