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

\+ W.P.(C) 467/2019

S.R. POLYVINYL LTD. ..... Petitioner

Through: Mr. Deepak Anand, Mr.Pramod Kr. Rai and Mr.Aayushmaan Vatsyayana, Advs.

versus

COMMISIONER OF CUSTOMS, ICD TKD NEW DELHI ..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel with Ms.Suhani Mathur, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 04.09.2019

CM APPL. 2101/2019 (exemption)

1. Exemption allowed, subject to just all exceptions.

2. Application stands disposed of.

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3. We have heard the learned counsels. The Petitioner has preferred this writ petition to seek directions against the Respondents to pay interest on the delayed refund of Anti Dumping Duty (hereinafter as "ADD"), from the date of expiry of three months from the making of the applications for refund. The applications for refund were made on 18.01.2013 and 27.02.2013 for Rs.39,46,441/- and Rs. 24,61,739/- respectively .

4. The brief background of the case as set up in the Petition is that the Petitioner was forced to deposit the ADD for clearance of the consignment of PVC paste resin in terms of the notification No. 70/2010-Cus dated 25.06.2010. The CESTAT vide common order dated 06.07.2012 in order No. AD/M/21/12-Customs and order No. AD/A/101/12-Customs, titled as ***Leather Cloth & Plastics MFRS' Association v. UOI***, 2012 (282) ELT 438(Tri- Delhi) quashed the said notification. Consequently, the Petitioner moved applications for claiming refund under Section 27 of Customs Act, 1962 of Rs.39,46,441 and Rs.24,61,739 filed on 18.01.2013 and 27.02.2013 respectively. The sanctioning authority rejected the applications for refund on 17.12.2013. However, the Petitioner's appeal against the said order before the Commissioner of Customs (Appeals) was allowed vide order No. CC(A)CUS/577&578/2014 dated 11.11.2014 and refund was directed in favour of the Petitioner. A further appeal was preferred by the Respondents to the CESTAT which was disposed of on 13.01.2017 and the matter was remanded back to the original authority for a fresh decision on the Petitioner's claim for refund. On 27.02.2018, the Assistant Commissioner of Customs (Refund) passed an order sanctioning refund of Rs.64, 08,180/- (which is an aggregate of Rs.39, 46,441 and Rs. 24,61,739/-). The said amount was disbursed to the Petitioner through RTGS on 27.02.2018. However, Petitioner was not granted interest on the refunded amount in terms of Section 27A of the Customs Act which read 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 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."

5. The Petitioner's application for the grant of interest in terms of Section 27A of Customs Act was rejected by the Respondents vide order dated 14.06.2018 issued by the Assistant Commissioner of Customs (Refund). The stand taken by the Respondents in the said communication is that there was no delay in sanctioning of the refund claim as complete documents regarding the refund claim were submitted by the petitioner only during the personal hearing on 15.12.2017. The said documents said to be submitted by the petitioner are the following:

"(i) Customs Department's amendment letter in r/o one bill of

entry and corresponding challan
(ii) Corrigendum dt. 03.08.2012 to CESTAT's order dated 06.07.2012
(iii) Statutory Auditor's certificate dated 02.11.2017 and
(iv) balance sheets for F. Y. 2015-16 and 2016-17 for satisfying your refund claim from angle of Unjust Enrichment."

6. The Respondents had also taken the stand that the claim for refund filed by the Petitioner was pre-mature. Reliance was placed on the decision of the Supreme Court in ***Priya Blue Industries Ltd. v. Commr. of Customs (Preventive),* (2005) 10 SCC 433** which read as follows:

> "6………Once an order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

7. Learned counsel for the Petitioner submits that once the CESTAT has finally held that no anti dumping duty was payable by the Petitioner, there was no further scope for the Respondents to mull over the issue or to withhold the refund claimed by the Petitioner. The claim having been made on 18.01.2013 and 27.02.2013 as aforesaid, ought to have been processed and refund should have been granted within a period of three months from the date of receipt of the application for refund failing which, Respondents were liable to pay the interest in terms of Section 27A of the Customs Act,1962.

8. Learned counsel for the Petitioner in support of his submission, placed reliance on the decision of the Supreme Court in ***Ranbaxy Laboratories Ltd. v. Union of India, (2011) 10 SCC 292*** . This case was related to the claim for interest for delayed refund under Section 11BB of the Central Excise Act, 1944 which is *pari materia* to Section 27A of the Customs Act, 1962. Section 11BB of the Central Excise Act which read as follows:

> **11-BB.** ***Interest on delayed refunds***.—If any duty ordered to be refunded under sub-section (2) of Section 11-B to any 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 11-B 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 or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of Section 11-B, 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 the said sub-section (2) for the purposes of this section.

9. The Supreme Court interpreted the aforesaid provision. The relevant portion of the judgment read as follows:

> "**12.** It is manifest from the afore extracted provisions that Section 11-BB of the Act comes into play only after an order for refund has been made under Section 11-B of the Act. Section 11-BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11-B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below the proviso to Section 11-BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise but by an appellate authority or the court, then for the purpose of this section the order made by such higher appellate authority or by the court shall be deemed to be an order made under sub-section (2) of Section 11-B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11-BB of the Act."

10. In paragraph 14 of this decision, the Supreme Court observed the below mentioned:

> "18. At this stage, reference may be made to the decision of this Court in *Shreeji Colour Chem Industries* [(2008) 9 SCC 515] , relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11-BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that the application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12-1-2004, the Court directed payment of statutory interest under the said section from 12-4-2004 i.e. after the expiry of a period of three months from

the date of receipt of the application. Thus, the said decision is of no avail to the Revenue."

11. Learned counsel for the Petitioner has also placed reliance on ***Micromax Informatics Ltd. V. Union Of India*** 2018 (361) E.L.T.968 (Del.). In this decision, the Division Bench relied upon a view taken by the Madras High Court in ***KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.)***,2013 (294) E.L.T. 211 (Mad.) which was in consonance with the decision of this Court in ***Principal Commissioner v. Riso India Pvt. Ltd.***, 2016 (333) E.L.T. 33 (Del.). The Division Bench struck down paragraph 4.3 of the Circular No. 06/2008-Cus., dated 28th April, 2008 since it was contrary to Section 27A of Customs Act and denied the payment of interest on the delayed refund.

12. Reference has been made to other decisions which we do not consider necessary to take note of in view of the authoritative decisions of the Supreme Court in ***Ranbaxy Laboratories*** (supra) and the decision of this Court in ***Micromax Informatics Ltd*** (supra).

13. On the other hand, the learned counsel for the Respondents submit that the Petitioner is not entitled to the interest on refund claim since the said claim would arise only after finalization of re-assessment which happened on 31.10.2017 and that the refund claim made prior to the said date was pre-mature.

14. Learned counsel for the Respondents have also placed reliance on the stand taken by the Respondents in the order dated 14.06.2018 whereby the

Petitioner's claim for interest was rejected.

15. Having heard the learned counsels and considered all aspects, we are of the view that the Petitioner is entitled to grant of interest in terms of Section 27A of the Customs Act, 1962 i.e. from the expiry of three months, on amount of Rs.39,46,441/- from the date of the application for refund of the said amount i.e. 18.01.2013 onwards, till the amount was refunded on 27.02.2018**.** Similarly, the Petitioner is entitled to interest on the amount of Rs.24,61,739/- from 27.02.2013 onwards till the date of refund i.e. 27.02.2018. The refund claim of the Petitioner ought to have been processed by the Respondents upon application for refund being made on aforesaid dates and there was no justification for not processing and granting the claim once the issue relating to ADD has been finally adjudicated by the CESTAT on 06.07.2012, in ***Leather Cloth & Plastid MFRS' Association v. UOI***, 2012 (282) ELT 438(Tri- Delhi). In ***Leather Cloth & Plastid MFRS' Association*** (supra)**,** the CESTAT had set aside the Notification No. 70/2010-Cus and remanded the matter to the designated authority for a fresh review. After the review, the DA recommended levy of ADD, and the Central Government accepted the recommendations and levied ADD vide notification No. 15/2013-Cus (ADD), dated 03.07.2013. It is to be noted that the Notification No. 15/2013 –Cus does not anywhere state that it has retrospective effect, therefore the aforesaid notification No. 15/2013 –Cus only has prospective effect with effect from 03.07.2013. Thus during the relevant period in the present case, the ADD was not chargeable. The decision of the CESTAT was in finality and merely because the Respondents decided to undertake some exercise to satisfy themselves with regard to the

claims of the Petitioner, is no reason to deny the Petitioner's interest in terms of Section 27A of the Act.

16. The grounds taken by the Respondents in the order dated 14.06.2018 do not appear to be correct, inasmuch as the documents allegedly not submitted by the petitioner, are such that form part of Respondents' record. Pertinently, Respondents did not demand any such documents from the Petitioner upon the receipt of the refund applications which they were bound to ask for, in case they did not possess the same. In ***Union of India v. Hamdard (Waqf) Laboratories*** (2016) 6 SCC 621 the Supreme Court observed the following:

> "**24.** As far as the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle laid down in *Ranbaxy Laboratories Ltd.* (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in *Ranbaxy Laboratories Ltd.*(supra) commends us and we respectfully concur with the same."

17. Concededly the Respondents have refunded the amount deposited by the Petitioners. Thus on merits, the contention of the Petitioner that it was entitled to refund is not in dispute. With the quashing of notification No.

70/2010 it emanates that during the period of import, the products were not chargeable to ADD. Thus the ADD collected from the Petitioner, ought to have been refunded on an application being filed by the Petitioner. The Respondents' contention that the refund claim arose only after finalization of re-assessment by the proper officer on 31.10.2017 is misconceived.

18. In view of the aforesaid, in our view, the delay in release of the refund claim of the petitioner was not justified and it could not be said that the refund application was made pre-maturely. Accordingly, we allow the present petition and quash the order dated 14.06.2018 passed by the Respondents denying the Petitioner's claim for interest on the refund amount.

19. We direct the Respondents to pay the interest on the aforesaid amounts in terms of Section 27A of the Customs Act within the period of 8 weeks from the date of receipt of the copy of this order.

20. The petition stands disposed of in the above terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 04, 2019
Pallavi