IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPO 167 of 2021

V.R. Overseas Pvt. Ltd.
Vs
Commissioner of Customs (Port) & Anr.

For the Petitioner :- Mr. Sudhir Mehta, Adv.
Mr. Anurag Bagaria, Adv.
Mr. Piyal Gupta, Adv.

For the Respondent :- Mr. Vipul Kundalia, Adv.
Mr. Tapan Bhanja, Adv.

Judgment On :- 13.03.2023

MD. NIZAMUDDIN, J.

The Court: Heard learned Counsel appearing for the parties.

This writ petition has been filed by the writ petitioner for relief of direction upon the respondent authorities concerned to pay Rs. 3,05,414/- to the petitioner as interest under Section 27A of the Customs Act, 1962.

Facts in brief involve in this case are as hereunder.

Between 6th June, 2018 to 4th March, 2020, petitioner has filed sixteen separate refund applications under Section 27(1)(a) of the Customs Act, 1962, for refund of alleged excess payment of duty aggregating to Rs. 1,40,49,995/-.

It is the case of the petitioner that all refunds arise out of the appellate order in question passed by the Commissioner of Customs (appeal). According to petitioner, the refund applications were received and acknowledged by the office of the respondent concerned on the dates mentioned in the chart annexed to the writ petition and that those dates were not disputed by the respondents in their affidavit-in-opposition.

It is the case of the petitioner that no application has been returned under the Customs Refund Application (Form) Regulations, 1995, which prescribes

10 days for return of the application with deficiency memo (Regulation 2 (2)) in case it was found incomplete. Few queries were made by respondent concerned after 8-12 months of such applications, for supply of documents for ministerial and administrative function which the petitioner answered. Refunds were made allegedly after delay of more than 90 days of receipt of applications for refund and for which respondents are liable to pay interest under Section 27A of the Customs Act, 1962, according to the petitioner.

Petitioner in support of its claim of interest submits as follows:

Interest provision becomes applicable after 90 days of receipt of application under 27A of the aforesaid Act.

The defective application is to be returned as prescribed under the aforesaid Regulation. The refund claim by the petitioner is based on appellate orders in question. By virtue of deeming fiction provided in Explanation to Section 27A of the aforesaid Act and appellate orders in question are to be treated as refund orders under Section 27 (2) of the Act. The assessing authority is to execute the order and the respondent concerned has no discretion left to consider refund under Section 27 (1) and (2) of the Act and the proceeding before him is only ministerial, according to the petitioner and query after 7-9 months of receipt of the applications are not deficiency and that the respondents are reading extension provision of time to run interest in Section 27A of the Act which is not there.

Petitioner submits that since the respondents have retained the refundable amount for a prolonged period and had unjust gain at the cost of the petitioner it should be made liable to pay interest on interest as damages in the same line as of Sandvic Asia –Vs- Commissioner of Income Tax 196 ELT 273 as there is no provision under Customs Act. Such prayer is absent in this writ petition.

In support of his contention, Mr. Mehta, Learned Advocate appearing for the petitioner relies on the following judgments:-

(a) Ranbaxy Laboratories Ltd. –Vs- Union of India 273 ELT 3 in Para 9,10,11,12, on the proposition of legal fiction relating to interest liability,

(b) Judgment of Bombay High Court in the case of Jindal Drugs –Vs- Union of India 367 ELT 591 relating to interest under Section 27 and 27A of the aforesaid Act.

Mr. Kundalia, Learned Advocate opposing the writ petition submits as hereunder.

Upon scrutiny of the aforesaid refund applications it appears from office record that most of the refund applications submitted by the petitioner/importer, were not complete and several relevant documents pertaining to the refund were missing. Consequently, deficiency memos were issued to the petitioner/importer in respect of the separate refund applications requesting them to submit the documents required. In many cases, the documents were not promptly submitted by the importer causing the undue delay in the refund of the duties. It is relevant to mention here that out of the 16 refund applications, in 14 refund applications the refunds were processed within three months from the complete submission of relevant documents. As such, the question for payment of interest under Section 27A of the Customs Act, 1962, in this case does not and cannot arise at all. Thus on meticulous examination of aforesaid legal provisions it is clear that an application for refund contemplated under the Customs Act, 1962, can be treated as an application only when it is supported by all the requisite statutory documents. All statutory documents means and includes supporting documentary evidence prescribed under Section 27 (1A) of the aforesaid Act.

Mr. Kundalia submits that the Regulation 2 (3) of the aforesaid Regulations, 1995, relied upon by Mr. Mehta, has no manner of application under Section 27A of the Customs Act. He further submits that the Explanation appended to Regulation 2 of the Customs Refund Application (Form) Regulations, 1995, provides that "For the purposes of payment of interest under Section 27 A 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 Officer, has been made."

Learned Advocate for the respondents submits that the Explanation appended to Regulation 2 of the Customs Refund Application (Form) Regulations, 1995, makes it crystal clear that unless an application for refund is filed with all requisite documents the same cannot be treated as a complete application and that even if it assumed but not admitting that the authority has issued the deficiency memo beyond the prescribed period but the moment the petitioner has replied to the said deficiency memo, the petitioner has waived its right to challenge the same and cannot raise any dispute at this belated stage. Furthermore, in the instant case, according to the respondents, in most of the refund applications filed by the petitioner were incomplete due to non submission of relevant documents and as such for delay in submission of requisite/relevant documents on the part of the petitioner, the respondent department cannot be saddled with liability for payment of interest.

Learned Advocate appearing for the respondents submit that the decision of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. (supra) relied upon by the petitioner is distinguishable factually and is not applicable to the present case. In the said case the issue was whether the liability of the revenue to pay interest under Section 11BB of the Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made. In the said case the Hon'ble Supreme Court has held that the liability of the revenue to pay interest under Section 11BB of the said Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made and in the said case the deficiency memo was not issued to the petitioner and the refund application was not disputed by the revenue and as such the aforesaid case is factually distinguishable and not applicable to this case.

Learned Advocate for the respondents submit that the decision of the Hon'ble Bombay High Court in the case of Jindal Drugs Ltd. –Vs- Union of India reported in 2019 (367) ELT 591 (Bom) upon which petitioner has relied, is not applicable in this case since in the said case the petitioners had sought for relief of writ of mandamus to direct the respondents to forthwith sanction and grant interest in respect of refund sanctioned and granted after expiry of three months from the date of refund application viz. 10th October, 2007 till the date of actual refund viz. 16th August, 2017 under Section 27A of the Customs Act, 1962. In the aforesaid case also the deficiency memo was not issued to the petitioners and the refund application was not disputed by the revenue and as such the aforesaid case is factually distinguishable and not applicable in this case according to the respondents.

Learned Advocate for the respondents submit that the decision in the case of Commissioner of Customs, Visakhapatnam –Vs- Gaytri Timber PVt. Ltd. reported in 2019 (367) ELT 772 (AP) is also not applicable in the present case since in the said case it was held by the Hon'ble Court that Grant of interest by Adjudicating Authority from the date of the reminder sent after the disposal of the writ petitions was clearly contrary to the mandate of Section 27A of the Customs Act, 1962, and that liability to pay interest on the refund arises from expiry of three months from the date of receipt of the application and in the aforesaid case no deficiency memo was issued to the petitioner and as such the said case is factually distinguishable and it has no manner of application in the facts and circumstances of the present case.

Learned Advocate appearing for the respondents in support of justification for denial of interest on refund by the respondent customs authority, relies on the following judgments:

(i) Commissioner of Customs, Mangaluru Customs –Vs- JSW Steel Limited reported in 2022 (379) ELT 451 (Kar.), on the proposition of law that no interest is payable under Section 27A of the Customs Act, 1962, on the refund claim when the refund has been sanctioned within the prescribed period of three months from the date of receipt of all requisite documents along with refund application.

(ii) JSW Steel Limited –Vs- Commissioner of Customs, Mangaluru Customs reported in 2022 (381) ELT 443 (SC), the Hon'ble Supreme Court upholding the aforesaid order of the Hon'ble Karnataka High Court in the case of JSW Limited dismissed the Special Leave Petition of the assessee.

Before reaching to the conclusion on the issue of claim of interest by the petitioner, involve in this writ petition, some relevant Sections and provisions of Customs Act, 1962, are quoted herein below:

"27. Claim for refund of duty – (1) Any person claiming refund of any duty or interest, - (a) paid by him, or (b) borne by him, may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest."

"(1-A). The application under Sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in Section 28(C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person."

"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 5%] and not exceeding 30% 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."

Some Regulations and provisions of Customs Refund Application (Form) Regulations, 1995, which are relevant to this case are quoted as hereunder:

"2. Form and manner of filing application for refund. – (1) An application for refund shall be made in the prescribed Form appended to these regulations in duplicate to the Assistant Commissioner of Customs, having jurisdiction over the Customs Port, Customs airport, land customs station or the ware house where the duty of customs was paid.

(2) The application shall be scrutinised 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 acknowledgment by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the 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.

Explanation. – For the purposes 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 Officer, has been made."

Considering the facts and circumstances of the case as appears from record, relevant provisions of law, submissions and judgments relied upon by both the parties, I am inclined to dispose of this writ petition by holding as follows:

(i) The claim of the petitioner under Section 27A of the Customs Act, 1962, for the alleged delayed refunds cannot be granted for the reason that the Section 27A of the aforesaid Act provides the condition that a person is entitled for the refund on receipt of application under Section 27(1) of the Customs Act, and on fulfilling the conditions under Section 27 (1) of the aforesaid Act which in this case is not admitted and is highly disputed as to whether the applications under Section 27 (1) of the Act were made by the petitioner in proper Form and manner as prescribed under the law.

(ii) On a plain reading of Section 27 (2) of the Customs Act it appears that such application for refund can be allowed on the satisfaction of the Assistant Commissioner of Customs and which according to the respondent Customs authority, in this case, has not been fulfilled which is established from the fact that memos were issued pointing out the deficiencies and the petitioner has responded to those memos of deficiencies in the applications for refund, under the aforesaid Act.

(iii) Since out of 16 applications for refund, 14 were not in prescribed manner with proper supporting documents according to the respondents though petitioner claims that the aforesaid applications were complete and proper documents were attached to the applications under Section 27 (1) of the Act which is highly disputed by the respondents Customs authority and since this issue is disputed question of fact and requires appreciation of evidence, writ court in exercise of its constitutional jurisdiction under Article 226 of the Constitution of India, cannot act as evidence scrutinising authority over those applications and attached documents.

(iv) Respondents Customs Authority has paid the refund within the prescribed time under the statute after receiving the appreciation for refund in question in complete Form with requisitioned documents and even if this fact is disputed by the petitioner, it is a matter of evidence regarding what were the requisite documents and in what manner applications for refund in question were complete or not, such facts based on material evidence cannot be reappreciated by this writ court.

(v) Though in support of its claim for interest, petitioner relies on Regulation 2 (2) of Customs Refund Application (Form) Regulations, 1995, but if Regulation 2 (3) of the aforesaid Regulations is read with Explanation thereunder, on plain reading of the same it appears that the applications for refund cannot be accepted automatically and the authority has been empowered to scrutinise for its completeness and the application shall be deemed to have been received only on the date on which a complete application has been submitted along with requisite documents and in this case completeness of such applications are disputed by the respondents which is apparent from record since after receipt of such applications, deficiencies memos were issued and even the petitioner have responded to the said deficiencies memos and as such it is not a clearly admitted and undisputed case of submission of the applications in complete Forms in all respect for refund in question and since the case of the respondents Customs authority is that only on the date of receipt of the refund applications in complete Form and manner along with requisitioned documents refund has been made on the basis of all such Forms within the statutory period, question of claim of interest on account of delay on such refund does not arise at all.

(vi) I am of the considered view that only in those cases where no memos of deficiencies have been issued or pointed out to the petitioner in such applications and admittedly payment for refund has been delayed beyond the statutory period on such application for refund, in such cases petitioner is entitled to get interest on delayed refund for the period from the date of expiry of statutory period till the date of actual payment of refund.

(vii) I am of the considered view, after considering all the relevant provisions of Section 27 (1), 27(2), 27A of the Customs Act, 1962, and Regulation 2 along with Explanation under Regulations 2(3) of the Customs Refund Application (Form) Regulations Act, 1995, that the petitioner is not entitled to get interest on the refund on all those applications submitted by the petitioner making claim of refund, where memo of deficiencies were issued and after compliance of such memo of deficiencies refund has been made within the time prescribed under the statute and petitioner will be entitled to get interest only in those cases in which even after responding and compliance to deficiencies of memos and submitting the requisitioned documents, refund has been made by the respondent authorities beyond the time prescribed under the statute.

(viii) Respondents authorities shall make payment of interest to the petitioner within four weeks from the date of communication of this order if any amount of interest found due after verification from record and after taking into consideration the discussion, observation and law laid down in this judgment.

In view of the discussion and observation made hereinabove this Writ Petition being WPO No. 167 of 2021 is disposed of accordingly. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[MD. NIZAMUDDIN, J.]