IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.858 of 2020
and
C.M.P.No.10677 of 2020

The Assistant Commissioner of Customs (Refund),
Chennai Customs House,
Rajaji Salai,
Chennai - 600 001. ... Appellant

-Vs-

M/s.Global United Shipping India (P) Ltd.,
4th Floor, AKDR Tower,
3/281 Rajaji Gandhi Salai (OMR),
Mettukuppam,
Chennai - 600 097. ... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.17506 of 2019 dated 15.10.2019.

For Appellant : Mr.Sai Srujan Tayi

For Respondent : Mr.R.Subramaniam

J U D G M E N T

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This intra Court appeal has been directed against the order passed by the writ Court dated 15.10.2019 made in W.P.No.17506 of 2019.

2. By the impugned order, the writ Court has allowed the writ petition filed by the respondent herein. The writ petition was filed against the order in Original No.67686/19 dated 22.02.2019 passed by the Assistant Commissioner of Customs (Refund).

3. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

4. We have also perused the records and have gone through the impugned order passed by the writ Court on 15.10.2019. The operative portion of the order reads as under:

> *"20. Perusal of the facts and circumstances of the above case before the Apex Court and the present case would show that they are identical in nature and only*

difference is that the interest claim before the Apex Court arises under the Central Excise Act whereas in the present case, it arises under the Customs Act. I have already pointed out that Section 11BB of the Central Excise Act and Section 27A of the Customs Act are pari materia and therefore, I find that the above decision is squarely applicable to the present facts and circumstances of the case, which the Adjudicating Authority has failed to apply and follow.

21. Therefore, it is evident that the liability to pay interest would commence from the date of expiry of three months from the date of application for refund and not on the expiry of the said period from the date on which the order of refund was made. In this case, admittedly, the refund application was made by the petitioner on 20.09.2012. No doubt, the said application was rejected by the Original Authority and the same was confirmed by the Appellate Authority. However, before the CESTAT, the petitioner succeeded and got the matter remanded back to the refund sanctioning authority, who ultimately granted the refund on 02.07.2018. Merely because the petitioner has not succeeded before the Original and Appellate Authority, it does not mean that the date of his application for refund gets altered as the one in pursuant to the order of the CESTAT. In other words, his application for refund dated 20.09.2012 was ultimately considered and granted *on 02.07.2018 and therefore, the interest under Section 27A of the Customs Act, 1962 is liable to be paid to the petitioner from the date of expiry of three months from the date of receipt of their refund application. The Adjudicating Authority in this case has erroneously rejected the interest claim by misconstruing the payment as deposit instead of duty and also by misinterpreting the law laid down by the Apex Court in Ranbaxy case.*

22. Therefore, I find that the order of the respondent, impugned in this writ petition, cannot be sustained. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the respondent is directed to pay interest with permissible percentage under law, from the date of expiry of three months from the date of receipt of the refund application dated 20.09.2012. Such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs."

5. The facts are not in dispute. The amount was collected pursuant to the circular of the Board. The amount which was collected in the Bill of Entry No.000649 dated 04.07.2011 was refunded. However, no interest was paid on the ground that the amount collected was only deposit and not as duty. However, the amount that was collected was appropriated towards duty

collected provisionally. Therefore, while refunding the excess amount collected, the Department has to refund it along with interest. In our view, the order of the writ Court is therefore well reasoned one and does not warrant any interference. Hence, we are therefore inclined to dismiss the appeal.

6. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(C.S.N., J.)**
23.10.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
vji

To

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