IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.11.2024
Pronounced On	25.11.2024

CORAM:

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

W.P.Nos.33051 and 33053 of 2018

M/s.GMMCO Ltd.,
Represented by its Deputy General Manager – Legal
Mr.K.V.Satyan Babu
No.6, GST Road, St.Thomas Mount,
Chennai – 600 016. ... Petitioner in both W.Ps

Vs.

1.The Commissioner of Customs,
Chennai IV Commissionerate
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs (Refunds),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001. ... Respondents in both W.Ps

Prayer in W.P.No.33051 of 2018: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Final Order No.41670 of 2018 dated 31.05.2018 passed by the Customs Excise & Service Tax Appellate Tribunal confirming the order-in-appeal C.Cus II No.57&58/2016 dated 27.01.2016 passed by the Commissioner of Customs (Appeals-II) which in turn confirmed the order-in-original No.41918/15 dated 09.10.2015 passed by the 2nd respondent and quash the same and further direct the 2nd respondent to sanction the interest as claimed by the petitioner.

Prayer in W.P.No.33053 of 2018: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Final Order No.41671/2018 dated 31.05.2018 passed by the Customs Excise & Service Tax Appellate Tribunal confirming the order-in-appeal C.Cus II No.57&58/2016 dated 27.01.2016 passed by the Commissioner of Customs (Appeals-II) which in turn confirmed the order-in-original No.41919/15 dated 09.10.2015 passed by the 2nd respondent and quash the same and further direct the 2nd respondent to sanction the interest as claimed by the petitioner.

For Petitioner (in both W.Ps) : Mr.Hari Radhakrishnan

For Respondents (in both W.Ps) : Mr.Avinash Wadhwani Standing Counsel

COMMON ORDER

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

In these Writ Petitions, the petitioner has challenged the impugned Final Order Nos.41670 and 41671 of 2018 passed by the Customs Excise & Service Tax Appellate Tribunal (CESTAT) in Appeal Nos.C/40815/2016-DB, C/40816/2016-DB dated 31.05.2018. Operative Portion of the impugned order reads as under:-

> " 9. An interdepartmental circular dated 16.7.2001 has been much stressed by the Id. counsel for appellant. The Deputy Commissioner of Customs (SVB) has issued circular dated 16.7.2001 directing to implement the final order of Tribunal dated 25.8.2000. However, the refund claims filed by the appellant on 11.12.2001 was rejected against which another round of litigation was set into motion which travelled upto the High Court. Thus for the entire period till the finalization of assessment, there were litigations pending before various forums and after the finalization of assessment, refund has been sanctioned within a period of three months. When the

statute does not provide to pay interest, the Tribunal which is a creature of the statute cannot grant any amount in the nature of compensation. The Tribunal in a similar issue in the case of Hindustan Photo Films Mgf. Co. Ltd. cited supra, considered the decisions of the Hon'ble Apex Court in Sandvik Asia Ltd. (supra) as well as Gujarat Fluoro Chemicals (supra) and held that Tribunal cannot grant compensation not provided in the statute. The relevant portion of the order passed by Tribunal is reproduced as under:-

> "6. The question now in the present appeal is the eligibility of the appellant for payment of interest on delayed payment of interest on the refund sanctioned to them. The appellant claimed such payment on the ground of long delay even in disbursing the interest. Though the Id. consultant insisted that it can be considered as a compensation for the financial loss and not strictly as interest on interest, we note that the appellant did not quote any statutory provision under the Customs Act, 1962 to support their claim. Any claim of amount from the Government can be disbursed only based on a statutory provision. The Tribunal cannot pass an order for general compensation in the facts of the present case. We note that in Gujarat Fluoro Chemicals (supra), the Hon'ble Supreme Court, examining similar provisions under the Income Tax, held that the payment ordered in Sandvik case (supra) cannot be considered as interest on interest and it was ordered in special circumstances as a compensation for unduly long delay in sanctioning the refund/interest. It is clear that interest as

> indicated under the Customs Act, 1962 only can be paid to the appellant and no other amount which is not covered by the statutory provision can be paid and on this ground, the impugned order cannot be interfered with. Accordingly, the appeal is dismissed.

> 10. Thus, following the above, we are of the considered opinion that the claim of the appellant for interest on delayed refund cannot sustain. The impugned order is upheld and the appeals filed by the appellant is dismissed."

2. The petitioner an importer of spare parts of caterpillar machine had dispute relating to the "transaction value" adopted by the petitioner on the imports made by it from its related person. Thus, the respective Bills of Entry filed by the petitioner during the period in dispute were provisionally assessed as per Circular No.53/1986 dated 08.04.1986.

3. The Department's contention was that imports made by the petitioner from M/s.Caterpillar Far East Limited were to be considered as import from 'related persons' in terms of the Customs Valuation Rules, 1963 and later under Customs Valuation Rules, 1988. Consequently, the Department applied a 20% loading on the declared value and allowed the petitioner to

clear the imported goods provisionally.

4. By an Order No.S/50/39/06-SVB(F) dated 04.09.1991, the then Assistant Collector of Customs held that the value of imports made by the petitioner M/s.General Marketing and Manufacturing Company Limited were liable for loading/adjustment by 8.3% of CIF value both under the Customs Valuation Rules, 1963 and Customs (Determination of Price of imported Goods) Rules, 1988.

5. Aggrieved by the aforesaid Order No.S/50/39/06-SVB(F) dated 04.09.1991, the petitioner had filed an appeal before the Appellate Collector who by Order in Appeal No.C/266/91 dated 06.01.1992 dismissed the appeal with certain observations.

6. Aggrieved by the same, both the Customs Department and the Petitioner herein filed Customs Appeal No.C/381/92-A and Customs Appeal No.C/419/92-A before CESTAT [formerly Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT)].

7. Vide Final Order Nos.667 and 668 of 2000 dated 25.08.2000, CESTAT (formerly CEGAT) allowed the petitioner's appeal and dismissed the Customs Department's appeal and directed the adjudicating authority to pass final orders as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of the said order. Operative portion of the Final Order Nos.667 and 668 of 2000 dated 25.08.2000 of CESTAT (formerly CEGAT) reads as under:-

> "11. In view of what has been stated above, we dismiss the appeal filed by the Revenue and allow the appeal of the importer, namely, GMMCO. We direct the authorities to finalise the assessment on the basis of the transaction value shown in the invoices as the value of the goods worth within the purview of Section 14 of the Customs Act. Since the matter is a long pending one, we direct the adjudicating authority to pass final order as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order. M/s.GMMCO will be entitled to consequential relief."

8. Further Appeal before the Hon'ble Supreme Court by the Department was also dismissed by the Hon'ble Supreme Court vide its order dated 11.04.2001 at the time of condonation of delay in filing the appeal in Civil Appeal Nos.2772 and 2773 of 2001.

9. Accepting the order of the Hon'ble Supreme Court, an internal Circular was also issued by the Deputy Commissioner of Customs (Special Valuation Branch) on 16.07.2001 to comply with the order of the Hon'ble Supreme Court. However, by two orders dated 08.02.2002 and 13.02.2002, the then Deputy Commissioner of Customs (Refunds) rejected the refund claims dated 11.12.2001 filed by the petitioner as time-barred and contrary to the mandate of Section 27 of the Customs Act, 1962.

10. On appeal before the Appellate Commissioner, against the Order dated 08.02.2002 and 13.02.2002 of the Deputy Commissioner, the Appellate Commissioner vide Order dated 11.11.2002 allowed the Appeals with a direction to the Deputy Commissioner of Customs (Refunds) to process the refund claims, after looking into the aspect of “unjust enrichment”.

11. Further appeal before the CESTAT (formerly CEGAT) against the order dated 11.11.2002 of the Appellate Commissioner was also dismissed by

CESTAT on 21.09.2004 vide its Final order Nos.797 and 798 of 2004 along with Cross Objections 17 and 18 of 2006. A further appeal before this Court in C.M.A.Nos.3607 and 3608 of 2008 by the Department were dismissed by this Court vide its order dated 06.11.2008 following the decisions of the Hon'ble Supreme Court in the case of ***Allied Photo Graphic*** case reported in 2004 (4) SCC 34 and ***Sinkhai Synthetic*** V. ***Commissioner of Central Excise*** reported in 2002 (9) SCC 416.

12. Further appeal before the Hon'ble Supreme Court against the order passed by this Court in C.M.A.No.3607 and 3608 of 2005 vide order dated 06.11.2008 were also dismissed at the stage of admission after condoning the delay holding that SLP was liable to be dismissed on the ground of limitation.

13. Under these circumstances, the petitioner filed Contempt Petition before this Court on 05.06.2014. In the said Contempt Petition, the petitioner submitted the Order of this Court dated 06.11.2008 was again violated as the Department did not finalize the provisionally assessed Bills of Entry till that time.

14. In this background, the assessments were finalized under Section 18 of the Customs Act, 1962, an order was passed on 10.10.2015, nearly after 14 years of Final Order Nos.667 and 669 of 2000 dated 25.08.2000 of the CESTAT in Customs Appeal No.C/381/92-A and Customs Appeal No.C/419/92-A by accepting the transaction value declared by the petitioner in the respective Bills of Entry filed for clearance of goods.

15. The Assistant Commissioner by an order dated 09.10.2015 in Order-in-Original No.41918 of 2015 sanctioned a sum of Rs.98,73,350/- and had rejected the claim of Rs.15,70,988/- on the ground that the importer has not submitted the finally assessed Bills of Entry for 27 Bills of Entry out of 238.

16. It appears that the petitioner had filed nearly 238 Bills of Entry during the period in dispute and claimed an amount of **Rs.1,14,44,338/-** as refund of the excess duty paid on account of Order dated 04.01.1991 of the Assistant Collector.

17. Pursuant to the aforesaid Order-in-Original Nos.41918 and 41919 of 2015 dated 09.10.2015, the principal amount was sanctioned by the Original Authority. The petitioner filed an appeal before the Commissioner of Customs (Appeal) against the aforesaid Order-in-Original No.41918 and 41919 of 2015 before the Commissioner of Customs (Appeals) who vide Order-in-Appeal Nos.C.Cus.II No.57 and 58 of 2015 dated 27.01.2016 allowed the petitioner's request for sanction of Refund of the balance amount of Rs.15,70,988, but rejected the request of the petitioner for payment of interest under Section 27A of the Customs Act, 1962.

18. The above decision was also affirmed by CESTAT vide Impugned Order dated 31.05.2018. The respondents in their Counter Affidavit have stated that there is no error in the Impugned Order dated 31.05.2018 passed by CESTAT affirming the Order of the Lower Adjudicating Authority and the First Appellate Authority.

19. It is submitted that interest under Section 27A of the Customs Act, 1962 will apply only after the Bill of Entries are finally assessed and therefore submitted that these Writ Petitions are liable to be dismissed.

20. We have given our anxious consideration to the rival submissions of the petitioner and the respondents. We have also considered various decisions of the Courts rendered in the context of interest on the delayed payment of interest.

21. Admittedly, under Section 27A of the Customs Act, 1962, the starting date for payment of interest is immediately after the expiry of 3 months from the date of receipt of refund application till the date of refund.

22. There are enough material on record to indicate that there was no justification in not completing the assessment in respect of Bill of Entries filed under Section 49 of the Customs Act, 1962 which were assessed provisionally immediately after they were filed.

23. In this case, the assessment were not completed for no fault of the petitioner and the petitioner was driven from pillar to post before the Appellate Authority including CESTAT, before this Court and the Hon'ble Supreme Court not once but more than once as mentioned above.

24. The facts on record indicate that as early as 25.08.2000, CESTAT vide Final Order Nos.667 and 668 of 2000 while disposing of Customs Appeal No.C381/1992-A and Customs Appeal No.C419/1992-A had directed the Adjudicating Officer to pass the Final Order under Section 18 of the Customs Act, 1962. However, the Orders were passed rejecting the same.

25. After the first round of litigation up to the Hon'ble Supreme Court, the petitioner filed a refund claim on 11.12.2002 which were again dismissed as time barred under Section 27 of the Customs Act, 1962. Thus, the petitioner cannot be denied interest on account of delay caused by the Customs Department in finalizing the Bill of Entries in accordance with law. Merely filing of frivolous appeal would not dis-entitle the petitioner.

26. The petitioner cannot be forced to forgo the interest during the period when the Customs Department was in litigation before the higher Forums on frivolous grounds. Therefore, denial of interest for the period after 11.12.2002 up to the date of refund has to be compensated in the form of interest under Section 27A of the Customs Act, 1962.

27. The refund that has been made although pursuant to the Orders of the Courts, CESTAT and the Hon'ble Supreme Court are not directly flowing from the aforesaid Order. They merely recognized the rights of the petitioner that the petitioner was not liable to pay customs duty in excess of the amounts assessed in the respective Bills of Entries on the transaction value declared in the respective Bills of Entries filed at the time of import of goods before their clearance.

28. The rate of interest have been varying rationalized over a period of time. Therefore, to balance the interest of the petitioner and the Customs

Department, this Court is of the view that the respondent can be directed to pay interest at the rate of 7.5% for the delayed payment for the entire period starting from 11.12.2002 till the date of refund.

29. The respondents are therefore directed to pay interest to the petitioner by calculating interest at 7.5% for the period mentioned above within a period of 3 months from the date of receipt of a copy of this order.

30. These Writ Petitions stand allowed with the above observations. No costs.

[R.S.K., J.] **[C.S.N., J.]**

25.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas

To

1.The Commissioner of Customs,
Chennai IV Commissionerate
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

2.The Assistant Commissioner of Customs (Refunds),
Custom House,
No.60, Rajaji Salai,
Chennai – 600 001.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

jas

W.P.Nos.33051 and 33053 of 2018

25.11.2024