

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE**

HEARD ON : 02.09.2025
DELIVERED ON: 10.09.2025

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CUSTA NO. 14 OF 2025

WITH

I.A. NO. GA 1 OF 2025

COMMISSIONER OF CUSTOMS (PORT), KOLKATA

VERSUS

**M/S. VEDANTA LIMITED (FORMERLY KNOWN AS SESA STERLITE
LIMITED/SESA GOA LIMITED)**

Appearance:-

Mr. Bhaskar Prosad Banerjee, Adv.

Mr. Tapan Bhanja, Adv.

.....For the Appellant

Mr. Rajeev Kumar Agarwal, Adv.

Mr. Sanjoy Dixit, Adv.

.....For the Respondent

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal has been filed by the Customs Department under Section 130 of the Customs Act, 1962 (the Act) challenging the order passed by the Customs Excise and Service Tax Appellate Tribunal, Kolkata (the Tribunal) in Customs Appeal No. 76391 of 2024 filed by the respondent herein dated 07.01.2024. The revenue has raised the following substantial questions of law for consideration:

A. Whether the respondent can approbate and reprobate at this point of time and whether the learned Tribunal acted with perversity, total non application of mind and against the provisions of law, when the respondent has itself prayed for refund by filing application in prescribed form on 05.08.2022 and also accepted that they have done a mistake in filing of the shipping bills and consequently they have even approached the Hon'ble Court for setting aside the orders passed against them and when as per the direction of the Hon'ble Court such shipping bills have been rectified then only the question of grant of refund arises as on the date when the adjudicating authority reassessed the shipping bills and as such the order of the Learned Tribunal cannot be sustained in law?

B. Whether the Learned Tribunal has gone beyond its jurisdiction to award interest @12% p.a w.e.f 11.01.2011 till 5/6.09.2023 when admittedly the amount of excess duty to be refunded to the respondent only crystallized on 05.09.2023 and when the refund amount was crystallized as on 05.09.2023 then the corresponding obligation to pay statutory interest will only commence w.e.f. 06.12.2023 and as such, the order of the learned Tribunal is against the legal principles of law, perverse and in violation of natural justice?

C. When the respondent has itself admitted that there has been mistake on their part while submitting the shipping bills to the department and itself has applied for correction and / or rectification in terms of section 154 of the Customs Act, 1962 of the shipping bills and when after a protracted litigation when the same has been finalized by the adjudicating authority as per the order of the Hon'ble High Court as well as the Learned Tribunal on 05.09.2023 then whether the Learned Tribunal can award interest from 11.01.2011 till 5/6.09.2023 for laches and negligence on the part of the respondent?

D. Whether the respondent is at all entitled for interest on delayed refund of duty when immediately after the refund sanction order dated 05.09.2023 passed by the

adjudicating authority the department in terms of section 27(2) of the Customs Act, 1962 has credited the excess amount of duty of Rs.6,93,69,000/- in favour of the respondent on 06.09.2023 (i.e. within one day from the date of order) and as such direction of the Learned Tribunal to pay interest to the respondent @12% p.a w.e.f 11.01.2011 (i.e. after three months from 11.10.2010) till 5/6.09.2023 is contrary to section 27 and 27A of the Customs Act, 1962?

E. Whether the order of the Learned Tribunal is against the statutory prescription and the legal position as prescribed under section 27 and 27A of the Customs Act, 1962 which stipulates the manner and the mode of granting refund of duty and also award of interest?

F. Whether the awarding of interest by the Learned Tribunal @12% p.a w.e.f 11.01.2011 till 5/6.09.2023 is totally beyond the prescribed statutory interest @6% and the said order of the Learned Tribunal is against the principles of law, perverse and against the provisions of the Customs Act, 1962?

G. Whether the order dated 07.01.2025 passed by the Learned Tribunal is in violation of the principles of natural justice and perverse inasmuch as the Learned

Tribunal has gone against the legal principle and the statutory prescription as prescribed under the Customs Act, 1962?

2. The facts leading to this appeal filed by the respondent before the Tribunal are culled out as hereunder.

3. The respondent had filed 12 shipping bills during the period 05.06.2007 to 17.03.2008 for export of iron ore fines from Haldia Port. In the export consignments the iron (Fe) content was declared as more than 62%. The respondent paid the custom duty as per the self-assessment made which was accepted by the Department and the goods were cleared for the purpose of export. When the exports are affected the duty payable was at the rate of Rs. 300/- per metric ton. In terms of the exemption notification No. 62 of 2007-Customs dated 03.05.2007 the export duty was fixed at Rs. 50/- per metric ton on iron ore fines having iron content 62% and below. In respect of the 12 shipping bills filed by the respondent they had declared the duty payable at Rs. 300/- per metric ton and this self-assessment was accepted by the Department as they declared iron content was more than 62% in every consignment and the respondent had paid the duty accordingly and the goods were allowed to be exported. After a lapse of more than a year of the export shipment, the respondent vide letter dated 1st October, 2009 requested the Assistant Commissioner of Customs, Export Department, Customs House, Kolkata stating that certain errors have occurred in respect of the iron content in the 12 shipping bills and sought for rectification. By reply dated 04.06.2010, the Department informed the respondent that there was no mistake either clerical or arithmetical in

respect of the assessment and the request made by the respondent cannot be considered under Section 154 of the Act which provides for correction, clerical errors etc. arising from any accidental slip or omissions. The respondent challenged the said order before the Commissioner of Customs (Appeals), Kolkata and the order dated passed by the Deputy Commissioner of Customs (Exports) dated 04.06.2010 was set aside and the said authority was directed to dispose of the representation to determine whether the case of the respondent fits in as errors "arising out of omission". The Assistant Commissioner of Customs by order dated 11.05.2015 rejected the request for rectification of error in respect of the 12 shipping bills. Aggrieved by such order dated 11.05.2015 the respondent preferred appeal before the appellate authority and the appeal was rejected by order dated 13.05.2016. The respondent challenged the said order before the learned Tribunal by preferring an appeal and the learned Tribunal by order dated 28.07.2022 set aside the order passed by the appellate authority dated 13.05.2016 and the appeal was allowed by way of remand to the original authority with a direction to pass a speaking order, finalizing the assessment. Direction was issued that relief as per notification No. 62/2007-Cus dated 03.05.2007 be given taking into account the test reports; those consequential benefits, if any, be given to the respondent as per law. The respondent filed an application on 05.08.2007 in Form No. 102 which is a statutory format for filing an application for refund and they claim a sum of Rs. 6,93,69,000/- is liable to be refunded. The respondent also requested for implementation of the order passed by the learned Tribunal dated 28.07.2022. By order dated 05.01.2023, the original authority rejected the refund claim. Aggrieved by

the order passed by the learned Tribunal dated 28.07.2022, the appellant department filed appeal before this court in CUSTA No. 2 of 2023. In the meantime, the respondent also filed a writ petition before this Court in WPO 636 of 2023 challenging the order dated 05.01.2023 rejecting the application for refund. The appeal filed by the department before this Court in CUSTA No. 2 of 2023 was dismissed by order dated 28.06.2023. The writ petition filed by the respondent in WPO 636 of 2023 was disposed of by setting aside the order rejecting the refund application dated 05.01.2023 and remanding the matter back to the adjudicating authority to implement the order of the Tribunal dated 28.07.2022 within a timeframe by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its representative. Pursuant to the directions issued in the writ petition as well as the directions issued by the Tribunal the Assistant Commissioner of Customs (Exports) by order dated 05.09.2023 reassessed the 12 shipping bills and extended the benefit of the Notification No. 6/2007-Customs dated 03.05.2007 and refunded the excess amount paid by the respondent, by sanctioning a refund of Rs. 6,93,69,000/-. After the order dated 05.09.2023 passed by the adjudicating authority the Department on 06.09.2023 refunded the excess duty to the respondent through online bank transfer. Subsequently, the respondents submitted a letter dated 13.09.2023 for payment of interest alleging that interest is payable on account of the delay in effecting refund. The Assistant Commissioner of Customs (Exports) by order dated 27.11.2023 rejected the claim for interest holding that the reassessment of the shipping bills and the subsequent refund of the excess export duty has been completed within 8

weeks from the date of the order of this Court and there is no delay in sanctioning the claim and, therefore, no interest is payable in terms of the provisions of Section 27A of the Act. The respondent challenged the said order by filing an appeal before the Commissioner of Customs (Appeals). The appellate authority by order dated 18.07.2024 remanded the matter to the original authority for compliance of the direction issued by this court as well as the learned Tribunal. The appellate authority opined that the prescribed time limit for sanctioning the interest on delayed refunds might be computed in terms of the order passed by the learned Tribunal dated 28.07.2024. Aggrieved by such order dated 18.07.2024, the respondent preferred appeal before the learned Tribunal. The learned Tribunal by order dated 07.01.2025 directed the appellant Department to pay interest to the respondent at the rate of 12% per annum and that the interest is payable from 11.01.2011 till 5/6. 9.2023 when the amount was finally paid by the respondent, time frame was fixed for compliance. This order dated 07.01.2025 is impugned in this appeal.

4. The contention of the appellant Department is that the finding of the Tribunal fixing the date from which the interest is payable is erroneous as subsequent order of the appellate authority dated 13.05.2016 affirmed the order of the adjudicating authority which had again declined the rectification of the shipping bills. Learned Tribunal on 28.07.2022 set aside the order of the appellate authority dated 13.05.2016 and remanded the matter back to the original authority and upon such remand the original authority rejected the claim of refund by order dated 05.01.2023.

Furthermore, the learned Tribunal by order dated 20th July, 2022 remanded the matter back to the original authority. Thus, it is submitted that on a cumulative reading of all these orders it is seen that there was no direction to effect refund of the alleged amount to the respondent but the matter was remanded back to the original authority for passing appropriate orders. The original authority by order dated 5th September, 2023 reassessed all the 12 shipping bills which were from June, 2007 to March, 2008 and it is submitted that the date of the respective shipping bills are very relevant since the correction/amendment sought by the respondent related to shipping bills filed on various dates and the respondent cannot be heard to say that they have made wrong declarations on various shipping bills on various dates and realized their mistake only on 1st of October, 2009 which is more than one year after the filing of the shipping bills and the exports had already been effected. Therefore, it is contended that the issue as to whether for the fault on the part of the respondent or whether the appellant Department is liable to pay interest on the alleged outstanding sum from 11.01.2011 when the amount to be paid back to the respondent did not crystalize or in other words become payable. It is submitted this aspect of the matter has been totally ignored by the learned Tribunal. Further, it is submitted that the finding rendered by the learned Tribunal that the respondent is not required to file this statutory form No. 102 for refund is an erroneous finding, as there is no other procedure under the Customs Act to claim refund except by way of filing the statutory form. Furthermore, the finding rendered by the learned Tribunal with regard to the order of the Commissioner of Customs (Appeals) dated 06.10.2010 is erroneous, as the

Department never accepted such order, and as such the Tribunal cannot compel the Department to accept the order dated 06.10.2010 to be construed as a rectification order more particularly when by the said order dated 06.10.2010 the matter again stood remanded to the original authority for appropriate decision. Therefore, it is submitted that the order of open remand cannot be construed as a mandate of the correction/ amendment of the shipping bills.

5. It is further submitted that the learned tribunal without any factual basis held that 11.10.2010 should be the date on which consequential refund would accrue and that the revenue could have completed the rectification/reassessment within three months from 11.10.2010 and after allowing three months from 11.10.2010, the interest will be payable from 11.01.2011. According to the revenue, this finding of the learned tribunal is on the basis of assumptions and presumptions. Furthermore, the tribunal ought to have noted that the respondent filed refund application on 05.08.2022 along with that letter and that should be taken to be the relevant date as statutory form was submitted only on 05.08.2022. The adjudicating authority sanctioned refund on 05.09.2023 after reassessment of the shipping bills and also granted the refund to the respondent.

6. It is further submitted that in the earlier round of litigation, the learned tribunal or this Hon'ble Court did not sanction refund, did not reassess the shipping bills and all the decision making process has been left open before the adjudicating authority which has undertaken the same on

05.09.2023. That the learned tribunal erred in preponing the sanction order from 05.09.2023 to 11.10.2010 which is against the law, contrary to the facts and circumstances of the case. Furthermore, the learned tribunal grossly erred in coming to a conclusion that the respondent was not required to file the refund application in the statutory format ignoring that the statute mandates a person claiming refund to do so. Furthermore, the tribunal ought to have noted that it has been admitted from the records that no provisional assessment was done by drawing representative samples of the goods or obtaining bonds with security or surety. The declaration submitted by the respondent was taken, assessment was done by the proper officer by levy of normal rate of duty on the declared weight inclusive of moisture and the same was accepted by the respondent and the duty was paid. The respondent had at no point of time raised any objections and all the documents called for by the department were submitted. Furthermore, the learned tribunal ought to have noted that the adjudicating authority categorically held that there was no provisional assessment on the shipping bills since no dispute was raised by the respondent with regard to the applicable rate of duty at the time of assessment of the shipping bills which were in fact, self-assessed by the respondent by mentioning the weight of the goods. The refund application dated 05.08.2022 was disposed of in terms of the order passed by this court dated 06.07.2023 by sanctioning refund.

7. It is further reiterated that in terms of Section 27 of the Customs Act, it is mandatory for filing an application for refund in the statutory form and such application has to be made before the expiry of one year from the date of payment of such duty or interest and the limitation shall not apply if the duty or interest has been paid under protest. The learned tribunal erred in not considering the period of limitation more particularly, taking note of the sequence of events and interest ought not to have been directed to be paid to the respondent on the facts of the case and also in the light of the statutory mandate. It is submitted that the respondent contented that the amount paid by them to the department is a deposit and not payment and the department retained the money without authority of law. In this regard, it is submitted that the respondent cannot disown their own conduct in filing the refund application in the prescribed statutory format and cannot disown the admission made by them in various letters written to the department. Therefore, the respondent cannot approbate and reprobate and the principles of res judicata and estoppel would apply to the case of the respondent. Therefore, the finding of the learned tribunal that what was paid by the respondent is a deposit is wholly erroneous.

8. In support of their contention, the appellant placed reliance on the decision of the Hon'ble Supreme Court in **ITC Limited Versus Commissioner of Central Excise, Kolkata IV**¹ wherein the Hon'ble Supreme Court held that refund is more or less in the nature of execution proceedings and it is not open to the authority which process the refund to

¹ (2019) 368 ELT 216 (SC)

make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise. It was further held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to appropriate proceedings and it would not be within the power under Section 27 of the Act to set aside the order of self-assessment and reassess the duty for making refund. It is reiterated that in the instant case, initial assessment was not a provisional assessment but a final assessment which was accepted by the respondent and duty was paid and the goods were permitted to be exported and such order of assessment binds not only the respondent but the department as well and unless the said assessment is modified in accordance with law, the refund sanctioning authority cannot sit in appeal over the said assessment. Thus, it is submitted that after protracted litigation when the bills of entry were reassessed in terms of Section 154 of the Act and upon the amount being crystalized the same was immediately refunded to the respondent and the question of payment of interests does not and cannot arise.

9. The learned advocate appearing for the respondent submitted that the respondent in all the shipping bills indicated the iron content to be 63.5% DMT with moisture content of 9% approximate which would be less than 62% in weight metric tonne (WMT) on which the export duty of Rs. 50 per metric tonne would be legally payable. The assessee submitted all relevant documents to establish that export duty of Rs. 50 PMT was payable and this was mentioned in their letter dated 18.05.2009 which was submitted to the department on 26.05.2009. In the said letter, reference was made to the

decision of the Hon'ble Supreme Court in ***Union of India Versus Gangadhar Narsingdas Agarwal***² and also in the assessee's own case in order in appeal dated 18.09.2008 passed by the Commissioner of Customs (Appeals), Kolkata. Further the respondent stated that since the issue is already settled by the Hon'ble Supreme Court in the aforementioned decision and the shipping bills having been assessed without taking note of the decision, the authority was empowered to make rectification of error in assessment by taking recourse under Section 154 of the Act. Since no response was received, the respondent submitted another letter dated 07.12.2009 and also a further representation to the Commissioner of Customs vide a letter dated 15.02.2010. The learned advocate appearing for the respondent referred to the other facts, the various orders passed by the authorities, by the tribunal and this court which we have elaborately set out in the preceding paragraphs.

10. It is submitted that the authorities have consistently defied the order of the appellate authority depriving the respondent of its legitimate refund of excess deposit amount for more than 14 years by denying rectification under Section 154 of the Act. In spite of the direction issued by the Commissioner of Customs (Appeals) vide order dated 11.10.2010, the authorities did not comply with the direction for more than four and a half years and thereafter by order dated 11.05.2015 proceeded to examine the issue afresh beyond the remand direction and denied rectification. Placing reliance on the decision of the High Court of Bombay in ***Dimension Data***

² (1986) 26 ELT 918 (Del)

India Private Limited Versus Commissioner of Customs and Others ³, it is submitted that in the said decision, it was held that Section 17 of the Act cast duty on the proper officer to verify and examine the assessment and that Section 149 read with Section 154 provides for rectification of error or omission. After taking note of the decision of the Hon'ble Supreme Court in **ITC Limited** (supra), it was observed that there is no statutory requirements to prefer appeal in such cases and the decision of the Bombay High Court was approved by the Hon'ble Supreme Court reported in **2022 (379) ELT A 39 (SC)**. Similar view was taken by the High Court for the State of Telangana in **Sony India Private Limited Versus Union of India** ⁴. Further the department was conscious of the fact that assessment was required to be done on weight metric tonne (WMT) basis and in spite of the same, the adjudicating authority rejected the claim for refund inline with its earlier order dated 04.06.2010 ignoring the appellate order and similar order was passed on 05.01.2023 which is third round of litigation. Further, it is submitted that the excess amount that remained with the revenue is "deposit" and not "duty paid" and therefore, Section 27 and 27A of the Act are inapplicable. Reliance was placed on the decision of the High Court of Bombay in **Keshari Steels Versus Collector of Customs, Bombay** ⁵ wherein it was held that when amount was paid in excess due to error which could be rectified under Section 154, there is no applicability of Section 27 and the limitation period therein is not applicable. The special leave petition filed against the said decision was dismissed on the ground of

³ (2021) 376 ELT 192 (Bom)

⁴ (2021) 129 Taxmann.com 251 (Tel)

⁵ (2000) 115 ELT 320 (Bom)

delay as well as on the merits and reported in **2000 121 ELT A139 (SC)**.

The decision in **Keshari Steel** was followed by the High Court of Karnataka in **DHL Express India Private Limited Versus The Commissioner of Service Tax, Bengaluru Service Tax-I** ⁶. Further by placing reliance on the decision in **Commissioner of Central Excise (Appeal), Bangalore Versus KVR Construction** ⁷, it is submitted that the amount was paid erroneously the same would not be a duty or tax and Section 11B of the Central Excise Act which is pari materia to Section 27 of the Customs Act will not apply. The said decision was followed by the High Court for the State of Telangana in **Vasudha Bommireddy Versus Assistant Commissioner of Sales Tax, Hyderabad** ⁸.

11. With regard to the rate of interest, it is submitted that the High Court of Allahabad in **EBIZ.Com Private Limited Versus Commissioner of Central Excise, Customs** ⁹ held the assessee was entitled to interest at 12%. Similar rate of interest was awarded in the case of **Commissioner of Central Excise, Panchkula Versus Riba Textiles Limited** ¹⁰ wherein the decision of the Hon'ble Supreme Court in **Sandvik Asia Limited Versus Commissioner of Income Tax- I, Pune**, ¹¹ was relied on.

⁶ (2021) 377 ELT 594 (Kar)

⁷ (2012) 26 STR 195 (Kar)

⁸ (2020) 35 GSTL 52 (Tel)

⁹ (2017) 49 STR 389 (All)

¹⁰ (2022) 62 GSTL 136 (P&H)

¹¹ (2006) 150 Taxmann 591 (SC)

12. It is submitted that similar rate of interest was granted in the case of ***Reliance Transport and Travel Private Limited Versus Union of India***¹² which decision was followed in ***Rachana Garments Private Limited Versus Commissioner of Customs, (Preventive), Mumbai***¹³, it is submitted that with regard to the contention of the revenue that the refundable amount crystalized only in 2023 when refund was sanctioned vide order dated 05.09.2023 must be examined in the light of the facts of the instant case where in complete defiance of the principle of judicial discipline, the determination of refund amount was inordinately delayed for 14 years without any reasonable cause. In this regard, the learned advocate reiterated the various orders passed by the adjudicating authority, the appellate authority as well as the tribunal at this court.

13. Further it is submitted that in CUSTA 2 of 2023 filed by the department at the time of hearing the revenue pleaded that the appeal has become infructuous as the original authority has passed the order dated 05.01.2023 but the department contested the legal issue of applicability of Section 154 of the Act. The Division Bench vide order dated 28.06.2023 held that the authority having accepted the order of remand passed by the appellate authority on the first occasion, it is too late to take such a plea at an advanced stage of litigation which is practically the second round of litigation though commenced from the original cause. Further in the said case, the arguments of the revenue on self-assessment by the respondent

¹² (2022) 62 GSTL 33 (Bom)

¹³ (2022) 1 Centax 190 (Bom)

under Section 17 was also considered and the Division Bench held that reliance placed on Section 17 is misplaced as the said section has undergone a radical change with effect from 08.04.2011 whereas the exports pertain to period prior to 2011. With this reasoning the appeal filed by the revenue was dismissed observing that no substantial questions of law arose.

14. Reliance was also placed on the decision of the Hon'ble Supreme Court in ***Union of India Versus Kamlkashi Finance Corporation Limited***¹⁴. Further it is contended that the department cannot place any reliance on the statutory rate of interests at 6% considering the facts and circumstances of the case and in as much as the revenue withheld the amount for 14 years and at best, the same can be considered to be "deposit" and not "duty paid". Therefore, the learned tribunal was fully justified in directing the payment of interests at 12%. In this regard, reliance was placed on the decision in ***Sandvik Asia Limited*** (supra), ***Commissioner of Income Tax Versus Gujarat Fluoro Chemicals***¹⁵ which clarified the decision in ***Sandvik Asia Limited*** and the decision in ***Union of India Versus Willowood Chemicals Private Limited***¹⁶. Reliance was also placed on the decision of this Court in ***Dulichand Shreelal Versus Collector of Central Excise and Others***¹⁷ and ***Parimal Ray and Others Versus The Commissioner of Customs (Port), Customs House and Others***¹⁸ wherein it was held that the duty which was paid under mistake was legally not payable, which could not be

¹⁴ (1991) 55 ELT 433 (SC)

¹⁵ (2014) 14 Taxmann.com 1 (SC)

¹⁶ (2022) 60 GSTL 3 (SC)

¹⁷ (1987) 32 ELT 388 (Kol)

¹⁸ (2015) 318 ELT 379 (Kol)

retained by the revenue and the same cannot be considered to be “duty” and thus the limitation prescribed in Section 27 of the Act/Section 11B of the Central Excise Act cannot be made applicable. With the above submissions, the learned advocates prayed for dismissal of the appeal.

15. In reply, the learned Senior Standing Counsel appearing for the department sought to distinguish the decision relied on by the respondent before learned tribunal as well as before this Court. It is submitted that the decision in ***Union of India Versus Aluminium Industries Limited***¹⁹ is not applicable to the case on hand as in the said case the error resulting in charging of lesser duty due to the omission to a new rate of duty is error rectifiable under Section 154 of the Act. It is submitted that in the present case, the assessing officer assessed the shipping bills acting on the respondent’s own declaration and the respondent paid the duty voluntarily. It is further submitted that the decision in ***Ranbaxy Laboratories Limited Versus Union of India and others***²⁰ is not applicable to the case on hand as in the said case, the issue involved was whether liability of the revenue to pay interest under Section 11BB of the Act, commences from the date of expiry of three months from the date of receipt of application for refund or on expiry of period from the date on which the order of refund is made. While deciding such issue, the Hon’ble Supreme Court held that liability of the revenue to pay interest under Section 11BB commences from the date of expiry of three months from the date of receipt of application for refund

¹⁹ (1996) 83 ELT 41 (Ker)

²⁰ (2011) 11 GSTR 321 (SC)

under Section 11B(1) of the Act and not on the expiry of the said period from the date on which the order of refund is made. It is submitted that in the instant case the application for refund under Section 27 of the Act was filed by the respondent in the prescribed statutory format only on 05.08.2022 and pursuant to the orders passed by the tribunal as well as by this court while reassessing the shipping bills a communication was issued by the department dated 17.08.2023 calling upon the respondent to submit all connected documents and the respondent in response submitted the required documents and immediately thereafter the adjudicating authority sanctioned the refund on 05.09.2023 and the same was paid to the respondent on 06.09.2023 and therefore, the question of payment of interests does not arise.

16. It is submitted that the decision in **Sandvik Asia Limited** will not apply to the respondent's case as in the case on hand the assessing officer assessed the shipping bills based on the respondent own declaration and the duty was paid by the respondent voluntarily to get goods cleared for export. Therefore, the inaction and/or omission on the part of the respondent cannot be shifted to the department. It is further submitted that the decision in **Riba Textiles** and **EBIZ.Com Private Limited** are not applicable to the cases on hand as in those case the issue was whether interest was payable when the amount/duty was paid/deposited during investigation and adjudication and at the time of entertaining the stay application or payment made involuntarily under threat of arrest during investigation. These decision are factually distinguishable.

17. In *Commission of Central Excise, Hyderabad Versus ITC Limited*

²¹, the Hon'ble Supreme Court directed the payment of interests on delayed refund of pre-deposit, at 12% per annum from three months after disposal of the dispute between the parties, however in the instant case it is not the case of pre-deposit, rather voluntarily payment of duty. In ***Sony India***, the facts pertain to amendment of bill of entry under Section 149 of the Act and the High Court for the State of Telangana held that Section 149 does not prescribe any time limit for amending the bill of entry filed and assessed. In the instant case, the bill of entry were assessed by the proper officer as per the declaration of the respondent and there is no omission on the part of the assessing officer moreover, the respondent has paid the duty on such assessment which has been accepted by the department.

18. The decision in ***Keshari Steels*** is also distinguishable on facts as in the said case there was excess recovery by the department and the petitioner therein made an application for refund on account of error in calculation. In ***Gujarat Fluoro Chemicals*** the case pertains to inordinate delay on the part of revenue refunding certain amount which included statutory interest and it was ordered that the revenue has to pay compensation for the same and not the interest on interest. It is submitted that in the case on hand once the amount was crystalized upon the re-assessment of the bills of entry, in terms of the Section 154 of the Act, the amount was refunded immediately and the question of payment of interest does not arise. It is further submitted that the decision on the ***Willowood***

²¹ (2005) 179 ELT 15 (SC)

Chemicals Private Limited arose out of an writ petition filed for payment of interest on delayed refund which was held to be maintainable and it was also held that the case has to be decided purely in the light of the concerned statutory provisions and in the light of the statute and the respondent therein was held to be entitled to interest at the rate of 6% per annum only. It is further submitted that the decision in **Reliance Transport and Travel Private Limited** is also not applicable to the case on hand since in the said case it pertains to the amount deposited during the investigation. In the case of **Rachana Garments Private Limited**, it pertain to delay in adjudication of the show cause notice for 25 years which was held to be in contravention of procedural fairness and therefore, therein was held to be entitled to be refund of the amount deposited in the course of investigation with 12% interest per annum from the date of deposit upto the date of refund. With the above submissions, the learned advocate appearing for the appellant prayed for allowing the appeal, setting aside the order passed by the learned tribunal and answering the substantial questions of law in favour of the revenue.

19. We have elaborately heard Mr. Bhaskar Prosad Banerjee, learned Senior Standing Counsel and Mr. Tapan Bhanja, learned Standing Counsel for the appellant Department and Mr. Rajeev Kumar Agarwal, learned Advocate assisted by Mr. Sanjay Dikshit, learned Advocate appearing for the respondent.

20. The issue which falls for consideration is whether the respondent was entitled to interest on the amount refunded to them and if they are so entitled from what date the interests is payable and at what percentage.

21. Section 27 of the Customs Act, 1962 (the Act) deals with claim for refund of duty. Sub Section (1) states that 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 the Deputy Commissioner of Customs before expiry of one year from the date of payment of such duty or interest. Thus, it is seen that time frame has been prescribed under the statute for making an application in such form and manner as may be prescribed for refund. Therefore, the court even in exercise of its powers under Article 226 of the Constitution cannot direct the authorities to do something which is not provided in the statute.

22. Furthermore, Section 27(1) prescribed the procedure for claiming refund and also provides the period within which refund should be sought for and it does not speak about as to whether refund is permissible or the ground on which the refund could be sought. Thus on a plain reading of the Section 27, it is amply clear that refund if any arising under the Act are regulated by the provisions of Section 27 and the intention of the legislature does not envisage any refund except in accordance with the procedure prescribed thereunder. Equally, there is no question of application of any other law to enable the Customs authorities to consider the claim for refund

of duty. That apart, Section 27(1) also prescribes the authorities before whom the refund application has to be made in such form and manner as may be prescribed and those authorities being the Assistant Commissioner of Customs or Deputy Commissioner of Customs and therefore this court is of the view that there cannot be an order for refund without an application and such an application has to be made within the time prescribed under the statute. Assuming for the sake of argument, the direction issued by the court in a writ petition holding that the assessee therein is entitled to refund of duty paid which according to the court was retained by the department without the authority of law, even if such direction is issued the assessee has to make an application in such form and manner as may be prescribed before the appropriate authority who will then proceed to comply with the direction issued by the court. Therefore, we are unable to persuade ourselves to agree with the findings of the learned tribunal that the formal form 102 filed by the respondent along with the covering letter is not required to be filed since the refund is only consequential action after the rectification is carried out. This finding virtually negates the statutory provisions namely Section 27(1) of the Act and therefore has to be held to be erroneous finding.

23. Having held that the refund claim cannot be processed without the application in the statutory form, it is required to be seen as to how such a form should be processed by the prescribed authority. In **Sandvik Asia Limited**, it was held that the award of interest on the refunded amount is per statutory provisions of the law as it stood and on the peculiar facts and

circumstances of each case. It was further held that a specific provision has been made under the statute, such provision has to govern the plea and therefore the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

24. Therefore, two things have to be borne in mind namely the statutory provisions and the facts of the case on hand to determine the issue as to whether the respondent would be entitled to payment of interest and if the question is answered in the affirmative then the date from which he is entitled for interest and the rate of interest.

25. While on this issue, we take note of the Section 27A of the Act which deals with interest on delayed refund. It states that 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 the application under Sub Section (1) of Section 2, there shall be paid to the applicant interest at such rate not below 5% not exceeding 30% 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. The explanation states that where any order of refund made by the Commissioner (Appeals) the appellate tribunal or any court against the order of Assistant Commissioner of Customs or Deputy Commissioner of Customs under Sub Section (2) of Section 27, the order passed by the Commissioner (Appeals), the 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 purpose of Section 27A. Thus, the language used in the explanation in Section 27A of the Act also covers the case where the order passed by the Assistant Commissioner of Customs or the Deputy Commissioner of Customs under Section 27(2) of the Act is challenged before the appellate authority or the tribunal or the court and the order passed either by the appellate authority or by the tribunal or by the court, the same shall be deemed to an order passed under Sub Section (2) of Section 27 for the purpose of Section 27A.

26. The Customs Act is an Act to consolidate and amend the law relating to customs. The Act aims to sternly or expeditiously deal with smuggled goods and curbs the dent on revenue thus caused. The Act provides for confiscation of goods and conveyance and imposition of penalties where any goods which are imported contrary to any prohibition imposed or under the Act or any other law for the time being enforced. This is the object and the scheme of the Act as explained by the Hon'ble Supreme Court in ***Commissioner of Customs (Preventive), Mumbai Versus M. Ambalal and Company*** ²².

27. Section 27A was inserted by the Act 22 of the 1955 with effect from 26.05.1995, till insertion of Section 27A there was no statutory right to claim payment of interest on delayed under the Act and it is only after the insertion this statutory provision was incorporated in the statute. Thus, a

²² (2011) 2 SCC 74

combined reading of Section 27(1) and (2) and the explanation in Section 27A manifest that any person claiming refund of the duty or interest paid by him or payment by him is required to make an application in such form and manner as may be prescribed for such refund to the authority which has been specified namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs within the time stipulated under the statute. On compliance with these requirements under Sub Section (1) of Section 27 in terms of Sub Section (2) of Section 27, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the fund. In terms of the proviso, instead of the amount being credited to the fund it will be paid to the applicant if such amount relates to any of the payments as contained in Clauses (a) to (g) in Sub Section (2) of Section 27 of the Act.

28. Bearing in mind, the scheme of the Section 27(1)(2) if read along with the explanation in Section 27A of the Act, the date of effecting refund gets postponed in cases where order has been passed by the Commissioner (Appeals) or the appellate tribunal or the court. Such circumstances would arise if the authority namely the Assistant Commissioner of Customs or the Deputy Commissioner of Customs rejects an application for refund filed under Section 27(1) in such form and such manner as may be prescribed within the time limit and the assessee carries the matter on appeal before the Commissioner (Appeals) and when he is unsuccessful before the

tribunal carries the matter on appeal to the High Court and in the event of he succeeding in such appeal and held to be entitled to a refund such order passed by the Court or the tribunal or the Commissioner of Appeals as the case may be shall be deemed to be order passed under Sub Section (2) of Section 27 for the purpose of Section 27A of the Act. In such circumstances, the right to claim interest under Section 27A of the Act shall be from the date immediately after the expiry of three months from the date of receipt of such application (in terms of Section 27(1) till the date of refund of such duty.

29. The above understanding of the law is required to be applied to the facts and circumstances of the case. The tribunal has elaborately referred to all earlier proceedings and in paragraph 37 as set out the factual matrix in a tabulated form and what is conspicuously missing is that the date on which the application for refund was submitted by the respondent which has been omitted to be mentioned. It is admitted fact that the respondent submitted the application for refund only on 05.08.2022. The tribunal was conscious of this fact, yet it proceeds to hold that there is no necessity for filing such an application which in the preceding paragraphs, we had held to be erroneous finding. The Act provides for a hierarchy of remedies. The assessee as well as the department are entitled to avail those remedies. No person can be faulted or penalized for availing an appellate remedy or preferring an appeal before the tribunal or the court of law. The mistake committed by the learned tribunal is precisely on this issue by finding fault with the department while passing orders of rejection of request for

rectification made under Section 154 of the Act. The department cannot be prevented from raising their contentions both legal and factual. The consistent case of the department till date of grant of refund by order dated 05.09.2023 is that the request made by the respondent cannot be processed under Section 154 of the Act. In law, if the department is entitled to take such stand, they cannot be penalized for doing so and availing the hierarchy of remedies and though ultimately, they were unsuccessful the time spent while exercising the statutory remedies available cannot be reckoned and put against the department alleging inordinate delay.

30. The department is right in contending that the amount of refund got crystalized for the first time only after Order-in-Original dated 05.09.2023 was passed. Prior to that neither the order of the Commissioner of Appeals nor the tribunal nor the court quantified the amount or crystalized the amount of refund to which the respondent was entitled to. Therefore to allege that the department had slept over the matter is a wrong conclusion considering the facts and circumstances of the case. As could be seen from the dates and events filed by the learned advocates of both sides, it is seen that the department had been consistent in its stand that the request made by the respondent cannot be entertained under Section 154 of the Act. The department is entitled to raise legal and factual contention as the statute provides for such avenue. Ultimately, the matter was put to rest after the appeal filed by the revenue was dismissed challenging the order passed by the tribunal and there was a direction issued in writ proceeding and ultimately the application for refund dated 05.08.2022 was processed under

Sub Section (2) of Section 27 order was passed on 05.09.2023 and on 06.09.2023. Refund was paid to the respondent. This payment being well within time permitted no interest is payable to the appellant. The learned tribunal erred in shifting the date from which the respondent would be entitled to interest to a date much prior to the application for refund was made in terms of Section 27(1) of the Act which was made only on 05.08.2022 and therefore the award of interest from 11.01.2011 is not sustainable.

31. As pointed out earlier that the learned tribunal was conscious of the fact that the respondent had filed the application for refund in the statutory form No. 102 which it held is not required to be filed which is a erroneous finding. Not stopping with that, the learned tribunal holds that the appellant letter dated 18.05.2009 submitted to the department on 26.05.2009 attains the final status of a refund claiming letter. This finding is wholly erroneous as it seeks to rewrite the statutory provisions namely Section 27(1) of the Act, such finding is set aside. One other fact which we are required to taken note is as to what is the date on which the finding was rendered in favour of the respondent that erroneously excess export duty was collected. Before we answer this issue we consider the submissions made by the learned advocate appearing for the respondent that the amount of excess export duty paid by the respondent was a deposit not a payment. This submission has to be outrightly rejected on the facts and circumstances of the case on hand. The respondent had filed 12 shipping bills ranging from 05.06.2007 to 17.03.2008. They would contend that they made a wrong declaration with

regard to the iron content that too after more than one year after the shipping bills were assessed, duty paid and exports effected. Though much could be said on the conduct of the respondent, we are precluded from doing so since the order of refund has already been passed by the authority. Nonetheless the conduct of the respondent also has to be borne in mind. The delay as to why they submitted a letter for rectification only on during October 2009 is not forthcoming. The respondent contended that the bills of entry were provisionally assessed and what was paid by them is not payment but a deposit. This submission is contrary to the facts as the bills of entry were self-assessed and such assessment was accepted by the department and based on such assessment duty was computed, the same was voluntarily paid by the respondent and the goods were permitted to be exported. Therefore, it would be too late in the day for the respondent to contend that the assessment of the bills of entry at the first instance was a provisional assessment. Furthermore, the respondent cannot dispute the fact that they deposited the export duty voluntarily and not under protest nor claimed the benefit of notification No. 62/2007 dated 03.05.2007. The question of provisional assessment would come in when contingency as mentioned in Section 18 of the Act arise. Section 18 of the Act deals with provisional assessment and Sub Section (1) commences with a non obstante clause stating that notwithstanding anything contained in the Act without prejudice to the provisions contained in Section 46 the proper officer may direct the duty leviable on such goods be assessed provisionally under the circumstances mentioned in Clauses (a), (b) and (c) if the importer or the exporter as the case may be furnishes such security as the proper officer

deems fit for the payment of deficiency if any between the duty finally assessed and the duty provisionally assessed. Therefore, the provisional assessment is permissible only when the three circumstances mentioned in Sub Section (1) of Section 18(1) (*as it stood then*) are attracted. Therefore, the theory as propounded by the respondent that the assessment made at the first instance was a provisional assessment is outrightly rejected.

32. We are also prompted to examine as to what would fall within the scope of Section 154 of the Act which deals with correction/clerical errors etc. Section 154 states that clericals or arithmetical mistake in any decision or order passed by the Central Government, the Board or any Officer of Customs under the Act, or errors arising therein from accidental slip or omission made, at any time to be corrected by the Central Government the Board or such officer of Customs or successor in office of such officer as the case may be. The respondent would contend that the proper officer committed a mistake in not calculating the duty by applying the law laid down by the Hon'ble Supreme Court in **Gangadhar Narsingdas Agarwal**, rather it is the respondent who is to be blamed and held responsible since it is they who self-assessed the bills of entry mentioning the iron content etc. which was accepted by the department. However, we do not wish to render any opinion on this ground as already the order has been passed in favour of the respondent granting refund and refund is also been effected on 06.09.2023.

33. It is worth reiterating that there was no dispute regarding the applicable rate of duty at any point of time during the assessment of the

shipping bills and the respondent did not raise any objection on the rate of duty as assessed by the proper officer as per the weight mentioned by the respondent and they agreed with the assessment, paid the duty and the goods were permitted to be exported. It is also not in dispute that there was no provisional assessment by the proper officer and no representative samples was drawn for analysis at the authorized laboratory. The respondent had filed WPO 636 of 2023 challenging the adjudication order dated 05.01.2023 passed pursuant to the order of remand by the tribunal dated 28.07.2023. The tribunal after referring to the decision of the Hon'ble Supreme Court in **Gangadhar Narsingdas Agarwal** set aside the original authority order allowed the appeal by way of remand to the original authority with a direction to pass a speaking order, finalising the assessments. There was also a direction of granting a relief as per the Notification No. 62/2007-Cus dated 03.05.2007 by taking into account the test report; needless to reiterate that consequential benefits if any, be given to the respondent herein as per law. It appears that the tribunal was not apprised at that juncture that no representative were drawn and there was no tests report. The learned writ court took note of the direction/observations made by the Division Bench in CUSTA No. 2 of 2023 dated 28.06.2023 and by order dated 06.07.2023 disposed of the writ petition holding that the Order-in-Original dated 05.01.2023 is not sustainable and it was set aside and the matter was remanded back to the adjudicating authority to implement the order of the tribunal dated 28.07.2022 strictly as per findings/observations and directions given by the tribunal and in particular giving relief as per Notification No. 62/2007-Cus

within a time frame. A reading of the direction issued would evidently show that it is open remand to the original authority to follow the directions of the tribunal which had directed finalising the assessments and by passing a speaking order and granting relief of the notification.

34. At this juncture, it would be relevant to take note of the order passed at various stages of the proceedings. The learned tribunal in the impugned order directed payment of interest to the respondent at 12% per annum from 11.01.2011 to 5/6.09.2023 which is date on which the refund was paid to the respondent. In paragraph 43 of the impugned order, the learned tribunal states that the respondent had filed the first letter seeking the finalisation of assessment on 26.05.2009 for the export duty paid during 2007-2008 and subsequently requested for rectification in terms of Section 154 on 01.10.2009. According to the tribunal, though the rectification order was passed on 05.09.2023, such rectification was first ordered by the Commissioner (Appeals) vide order dated 06.10.2010. Further the High Court in all their orders and the tribunal in their orders have taken cognizance of the order passed by the Commissioner and have made specific reference that no appeal was preferred by the revenue against the order passed by the Commissioner. Further, the orders passed by this Court and by the tribunal holds that the rectification under Section 154 also emanate basically from the order passed by the Commissioner (Appeals) dated 11.10.2010. Therefore, the learned tribunal came to the conclusion that 11.10.2010 should be taken as the date on which consequential refund would accrue. Further the tribunal opined that all the supportive documents

were available with the department and the department could have completed the rectification/re-assessment within three months from 11.10.2010 and after allowing the said three months period, interest would be payable from 11.01.2011. The revenue on the other hand would contend that refund payable to the respondent got crystalized only on and after the order-in-original dated 05.09.2023 and in terms of the said order the refund was effected to the respondent on 06.09.2023.

35. To arrive at the correct factual and legal position, we propose to examine the scope of the orders passed by the various authorities from time to time. Though it is stated that the respondent had filed a letter on 26.05.2009, the request made in the letter could not have been acted upon by the department as the application is required to be filed for invoking the power under Section 154 of the Act. This application was filed by the respondent on 01.10.2009. The Deputy Commissioner (Exports) by order dated 04.06.2010 held that on verification of the related documents it is seen that the shipping bills in question were assessed based on the declaration of the exporter (respondent). With regard to the description of the goods, percentage of iron content, quantity etc. and the related documents submitted at the time of assessment included the invoice, pre-shipment inspection certificate etc. and it is seen that there was no mistake clerical or arithmetical on the part of the assessing officer in the assessment of the said shipping bills. Therefore, the authority stated that it is not the case covered by Section 154 of the Act which is confined to clerical or arithmetical mistake in a decision or to error arising therefrom and

accidental slip or omission. The respondent challenged the same by filing an appeal before the Commissioner of Customs (Appeals), Kolkata. The appeal was disposed of by order dated 06.10.2010 which was issued to the respondent on 11.10.2010. The appellate authority took note of the decision in **Gangadhar** and the decision of the High Court of Kerala in **Union of India Versus Aluminium Industries Limited** ²³ and held that the original authority namely Deputy Commissioner has not rendered any decision whether the case of the respondent herein is covered by error arising from accidental slips and error arising from accidental omission and the authority thus, required to render decision on this as well.

36. The appellate authority took note of the decision of the tribunal in **Bennet Coleman and Company Limited Versus Commissioner of Customs, Bangalore** ²⁴ wherein it was held that the goods when assessed to higher customs duty on account of omission by assessing officer to take note of the customs notification, the same cannot be corrected under Section 154 of the Act. The appellate authority further held that the assessing officer was duty bound to correctly apply the law laid down by the Hon'ble Supreme Court and determine the iron content based on the weight of the iron exported including the weight of the moisture all details which are available in the stuffing bills / supporting documents and since no such determination has been made by the assessing officer the same should be done. Though such observation was made the appellate authority while

²³ (1996) 83 ELT 41

²⁴ (2008) 232 ELT 367 (Tri-Bang)

setting aside the order of the Deputy Commissioner dated 04.06.2010 ordered that the Deputy Commissioner shall dispose of the representation of the respondent under various letters and determine whether the case of the respondent herein fits in under error arising out of omission. Further the direction was that the Deputy Commissioner should consider the ratio of the judgment referred to in his order and the name given to the term “omission” in various dictionaries and thereafter passed the order/give decision after providing opportunity to the appellant. Thus the appeal was allowed on the above terms.

37. On plain reading of the order passed by the appellate authority dated 06.10.2010 it is clear that the direction issued to the Deputy Commissioner did not divest his powers to take a decision on merits and the appellate authority had guided the Deputy Commissioner to consider and determine whether the case of the respondent fits under the error arising out of an omission and in doing so, the Deputy Commissioner was required to take note of the decisions referred to by the appellate authority in his order which are essentially the decision which were relied on by the respondent at the time of personal hearing. Therefore, the tribunal erred in coming to the conclusion that the rectification was first ordered by the Commissioner (Appeals) in his order dated 06.10.2010. This finding is factually incorrect.

38. The original authority upon such remand passed the order-in-original dated 11.05.2015 noted the facts of the case, Section 154 of the Act, the

Board Circular No. 4/2022-Cus dated 17.02.2012 and held that at no point of time there was any omission on the part of the assessing officer.

39. Further it was noted that identical goods were exported by the respondent in May 2008 wherein they have declared iron percentage in actual received condition that is weight basis (including moisture) and also mentioned applicable rate of duty as Rs. 50/- per metric tonne. The assessing officer while assessing the shipping bills rejected the declaration made by the respondent and assessed the case considering the iron content on high metric tonne basis which was challenged by respondent by filing the appeal and whereas in the subject export, the respondent exporter himself declared iron content on deemed basis and thereafter seeks for grant of benefit of the exemption notification by resorting to Section 154 of the Act. Further it was pointed out that the respondent should have declared the iron content in actual received basis that is weight basis (including moisture) to avail the benefit of the exemption notification No. 62/2007-Cus and therefore the omission if any, was on the part of the respondent but not on the part of the assessing officer. In this regard, the authority placed reliance on the decision of the Hon'ble Division Bench of the Delhi High Court in **Indo Rama Synthetics Versus Union of India** ²⁵ wherein it was held that Section 154 applies only if mistake or error will be made by the department and not clerical mistake or error made by the assessee. Thereafter, the authority proceeded to discuss about judgments which was relied on by the respondent before the appellate authority.

²⁵ (2002) 143 ELT 299

40. The authority placed reliance on the decision of the tribunal in ***Minerals and Metals Trading Corporation of India Limited Versus Collector of Customs, Bombay*** ²⁶ wherein it was held that correction of clerical or arithmetical mistakes under Section 154 and Section 27 of the Act to be interpreted harmoniously so that it is not rendered negatory. Rectification under Section 154 should not be involved in refund or short levy demand for which Section 27 and 28 of the Act have to prevail. Further refund or demand of short levy requires substantive review of the earlier assessment order and such review should be made by an appropriate higher officer. The authority also placed reliance on the decision of the tribunal in ***Jindal Saw Limited Versus Commissioner of Customs, Kandla*** ²⁷ wherein it was held that not claiming exemption benefit is not a clerical error, and it can be brought into when there is accidental omission arithmetical error, calculation error, exchange rate not calculated and incorrect currency noted and payment of customs duty without claiming exemption benefit is not covered under Section 154. In the light of the said discussion, the authority namely Assistant Commissioner of Customs by his order dated 11.05.2020 rejected the request for rectification of the shipping bills under Section 154 of the Act as there was no clerical or arithmetical error or accidental slip or omission made by the assessing officer. The respondent carried the matter on appeal before the Commissioner of Customs (Appeals), Kolkata. The appeal was dismissed by order dated 13.05.2016.

²⁶ (1987) 28 ELT 128 (Tribunal)

²⁷ (2006) 202 ELT 800

41. In the interregnum, the respondent filed the writ petition before this Court challenging the order dated 11.05.2015 passed by the Assistant Commissioner rejecting the prayer for rectification. The learned advocate for the respondent is not able to place the copy of the order passed in the writ petition nor the case number or date but would submit that the writ petition was dismissed on the ground that the respondent has an alternate remedy. It is thereafter the appeal was filed before the appellate authority which was dismissed by the order dated 13.05.2016. The respondent challenged, the order passed by the appellate authority before the tribunal. The tribunal in its order dated 28.07.2022 held that the order of the Assistant Commissioner was not in tune with the order passed by the appellate authority against which order the department did not prefer any appeal.

42. Further the tribunal observed that the correct iron content was required to be determined on the basis of the guidelines contained in the judgment of the Hon'ble Supreme Court in **Gangadhar** . The tribunal further held that not following the order passed by this court or the Hon'ble Supreme Court would amount to mistake/error which is rectifiable under the provisions of Section 154 of the Act. The tribunal recorded the stand taken by the respondent that the assessment was provisional and therefore set aside the order passed by the appellate authority and the original authority with a direction to the original authority to finalise the assessment adhering the guidelines of the Hon'ble Supreme Court in case of **Gangadhar**. Accordingly, the orders were set aside and the matter was remanded to the original authority to pass a speaking order finalizing the

assessments with a direction that relief as per Notification No. 62/2007-Cus dated 03.05.2007 to be given effect taking into account the test report, to grant the consequential benefits, if any, to the respondent as per law.

43. It is no doubt true that in the body of the order passed by the learned tribunal more particularly paragraph 5 and 6 there are certain observations which wholly enure in favour of the respondent. Nonetheless, while setting aside the order passed by the appellate authority and the original authority, the matter was remanded to the original authority to pass a speaking order and finalising the assessments. It is not clear as to whether it was brought to the notice of the learned tribunal that there was no provisional assessment made at the first instance as the respondent did not seek for any provisional assessment nor any bond or security was given and the assessment were final assessments based on the value weight and description as declared by the respondent, accepted by the department, duty paid voluntarily and the goods permitted to be exported. Thus, the order passed by the learned tribunal dated 28.07.2022 is not a positive direction to the authority by directing re-assessment of the shipping bills and calculating the correct amount of duty payable and computing the excess duty paid by applying Notification 62/2007 and refunding the excess duty collected from the respondent. In the absence of any such positive direction, direction issued by the tribunal it cannot be interpreted to be a direction to carry out re-assessment when the matter stood remanded to the original authority. After considering the direction issued by the learned tribunal and the submissions of the respondent the original authority passed an order on

05.01.2023 stating that none of the shipping bills the respondent claimed benefit of Notification No. 62/2007-Cus. Further there is no mention of any test report in the shipping bills and the corresponding documents submitted by the respondent. The assessment was done on the basis of declaration made and related documents submitted by the respondent and duty was levied at the rate of Rs. 300/- per metric tonne on the declared iron content which was more than 62% and the assessment was done in accordance with the decision of the Hon'ble Supreme Court. Furthermore, it was noted that no sample was drawn by proper officer and the assessment were done on the basis of the declared iron content which was more than 62% and the related documents submitted at the time of export and applicable export duty at Rs. 300/- per metric tonne was levied on the declared weight (WMT). Further the respondent did not challenge the assessment order by filing an appeal but sought for a rectification under Section 154 after one and a half years from the date of assessment. Further the respondent neither deposited the export duty under protest nor asked for exemption under Notification No. 62/2007-Cus. The assessment was not provisional as the assessing officer did not ask for drawing any sample for determination of moisture content and therefore there is no scope left except to finalise finalisation of the assessment by the assessing officer. Further it was pointed out that the respondent did not file any refund application under Section 27 of the Act within six months from the date of payment of duty.

44. Ultimately, the application was rejected holding that there was no clerical, arithmetical error or accidental slip or omission on the part of the Assessing Officer at the time of assessment and there is no scope of any consequential relief to be granted to the respondent by way of finalization of the assessment and also due to the bar of limitation.

45. The Department had filed an appeal before this court in CUSTA 2 of 2023 challenging the order passed by the learned Tribunal dated 28.07.2022. The Hon'ble Division Bench by order dated 28th June, 2023 dismissed the appeal filed by the revenue on the ground that no question of law, far less, substantial question of law is involved in the appeal. Essentially, the Hon'ble Division Bench opined that it will be too late in the day for the revenue to take such plea with regard to whether it was an error or omission since the Department did not challenge the order passed in the appeal. Thus, a careful reading of the judgment of the Hon'ble Division Bench would show that there was no positive direction to the Department to pass a re-assessment order and consequentially grant refund.

46. The respondent filed WPO 636 of 2023 challenging the order-in-original dated 05.01.2023 by which the refund application was rejected by the original authority. The learned writ Court while disposing of the writ petition by order dated 28th June, 2023 opined that the adjudicating authority has not acted strictly as per the findings, observations and directions given by the Tribunal, rather it has given its own reasons and opinion and not implemented the order of the Tribunal in its letter and spirit

and accordingly set aside the order-in-original dated 05.01.2023 and remanded the matter back to the adjudicating authority to implement the order of the Tribunal dated 28.07.2022 strictly as per findings, observations and directions given by the Tribunal and particularly giving relief to the respondent (petitioner therein) as per notification 62/2007-Cus as per paragraph 8 of the order of the Tribunal within a timeframe by passing a reasoned and speaking order after giving opportunity of hearing to the respondent or its authorized representative. Thus, a plain of the order passed in the writ petition dated 06.07.2023 it is seen that there was no positive direction for refunding the excess duty paid but the matter was remanded back to the original authority with a direction to him to act in a particular manner and in terms of the letter and spirit of the order passed by the Tribunal. Thus, it is clear that the reassessment of the originally assessed shipping bills had not taken place upto the date on which the writ petition was disposed of (i.e) on 06.07.2023. In other words, the factual position clearly demonstrate that no refund was computed/ determined for it to become payable. To put it in a different manner the amount of refund never got crystalized until the date of the disposal of the writ petition. After the disposal of the writ petition, the original authority took up the matter for de novo consideration and passed a reassessment-cum-refund order dated 05.09.2023 and in terms of the said order refund was effected to the respondent on 06.09.2023. By the said order dated 05.09.2023, it was for the first time the benefit of the notification 62/2007 was extended to the respondent and the excess duty paid was computed and refund was ordered. After receiving the refund, the respondent submitted a letter on

03.10.2023 claiming interest on the refunded amount. The said request was rejected by order-in-original dated 28.11.2023 referring to Section 27A of the Act stating that there is only one provision under the Act for granting the interest wherein it has been prescribed that only in case of delayed sanction of refund of duty after expiry of the prescribed time limit of three months from the date of receipt of refund application interest is to be paid. Reference was also made to Sub-Section (2) of Section 27 which we have dealt with in the preceding paragraphs.

47. The authority came to the conclusion that there is no delay in sanctioning the claim and hence, no interest is payable in terms of Section 27A of the Act. The respondent preferred an appeal before the Commissioner of Customs (Appeals) Kolkata. The appellate authority by order dated 18.07.2024 disposed of the appeal by remanding the matter holding that the time limit for sanction of interest on delayed refund might be counted in terms of the Tribunal's order dated 28.07.2022, and accordingly, directed the authority to re-examine the matter in terms of the court's direction. Aggrieved by the same, the respondent preferred appeal before the Tribunal which was allowed by order dated 07.01.2025, impugned in this appeal.

48. To be noted that the Tribunal in the impugned order granted larger relief to the respondent by allowing interest from 11.01.2011 whereas the appellate authority directed to compute the time limit for sanction of interest from the date of the Tribunal's order dated 28.07.2022.

49. Entire facts and purport of the various orders which have been set out above will clearly demonstrate that the refund payable to the respondent got crystalized only after the order dated 05.09.2023. Therefore, to shift the date to an anterior date prior to the date on which refund got crystalized would tantamount to rewriting the statutory provision and rendering Section 27 and 27A negatory. That apart, by operation of law (i.e.) in terms of Sub-Section (2) of Section 27, the date gets postponed to the date of reassessment order which was passed on 05.09.2023.

50. At this juncture, it is beneficial to take note of the decision of the Hon'ble Supreme Court in **ITC Limited** wherein the Hon'ble Supreme Court held that it is apparent from the provisions of refund that it is more or less in the nature of execution proceedings and it is not open to the authority which processes the refund to make a fresh assessment on merit and to correct assessment on the basis of mistake or otherwise. Furthermore, after referring to Section 128 of the Act, it was held that an order of self-assessment is an assessment order passed under the Act and it would be appealable by any person aggrieved. The expression "any person" is of wider aptitude, the revenue as well as the assessee can also prefer an appeal aggrieved by an order of assessment. Further, it was held that the provisions of Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. It was pointed out that the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. Refund proceedings are in the

nature of execution for refunding the amount, it is not assessment or reassessment proceedings at all. Further, while processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated and reassessment is permitted only under Section 17(3), (4) and (5) of the amended provisions. Further it was held that similar was position prior to the amendment. Further, the scope of the provisions of refund under Section 27 cannot be enlarged and it has to be read with a provision of Sections 17,18, 28 and 128. After taking note of the overall effect of the provisions prior to the amendment and post amendment under Finance Act, 2011 it was held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 154 or under other relevant provisions of the Act. Thus, the judgment of the Hon'ble Supreme Court has vividly explained the scheme of Section 27 and if the law laid down in **ITC** is applied to the respondent's case, it has to be held that the refund got crystalized in favour of the respondent only on and after the order-in-original dated 05.09.2023 by which the assessment of the shipping bills was reassessed/ modified. Therefore, the Tribunal fell in error in directing payment of interest from an anterior date when the refund did not get crystalized in favour of the respondent. The learned Advocate appearing or the respondents had relied upon various decisions before the Tribunal some

of which were also relied upon before this Court, namely, **Sandvik Asia Ltd.**, **Riba Textiles Ltd.**, **Parle Agro Pvt. Ltd.**, **Keshari Steels**, **DHL Express India Pvt. Ltd.**

51. In **Sandvik Asia** the facts are different and it was not a case where the assessment of the shipping bills was made based on the declaration of the assessee. The decision in **Riba Textiles** is also distinguishable on facts as it pertained to payment/ deposit of duty during investigation and adjudication. In **Keshari Steels** the matter pertained to excess recovery by the Department which was on account of error in calculation. This decision cannot be of any assistance to the respondent. The decision in **Gujarat Fluoro Chemicals** in which the Hon'ble Supreme Court on facts found inordinate delay in refunding certain amounts which included statutory interest and a revenue was ordered to pay compensation and not interest on interest. In **Willowood Chemicals Pvt. Ltd.** a writ petition was held to be maintainable for payment of interest. However, it was observed that the case has to be decided purely in the light of the connected statutory provisions and in the light of the statute and the rate of the interest was fixed at 6% only. In the case of **DHL Express India Ltd.**, it was a case of customs duty mistakenly paid by the company on account of erroneous calculation based upon details published by banks. In the case of **KVR Construction** was a case where the refund claim was rejected on the ground it was filed beyond the period of limitation prescribed under Section 11B of the Central Excise Act, 1944. In the facts of the said case, the Court noted that what was sought as refund was the amount paid under mistaken motion which even

according to the Department was not liable to be paid. Therefore, the Court came to the conclusion that the amount paid by the petitioner therein under mistaken motion would not be a duty of service tax payable in law.

52. In the case on hand the Department never accepted the stand taken by the respondent, rather the entire litigation was focused on the scope of Section 154, whether the original assessment order which was not a provisional assessment but a final assessment based on self-declaration with regard to the weight, quantity etc. could be rectified in exercise of powers under Section 154 of the Act. Therefore, we are of the view that this decision will not assist the respondent.

53. In the case of ***Reliance Transport and Travel Ltd.*** it was a matter pertaining the amount deposited during investigation and amount was directed to be refunded with interest at 12% when the Department failed to adjudicate show-cause notices for several years and kept it pending in the call book without intimation to the assessee. This decision is wholly inapplicable to the facts of the present case. Other decisions relied on by the learned Advocate appearing for the respondent with regard to the rate of interest are not required to be gone into in the light of our conclusion that the respondent is not entitled for any interest as there is no delay in effecting the refund.

54. Therefore, for all purposes the refund stood crystalized in favour of the respondent only on and after 05.09.2023 when the re-assessment order was passed.

55. For all the above reasons, the appeal is allowed and the order passed by the learned tribunal is set aside and the substantial questions of law are answered in favour of the appellant revenue.

(T.S. SIVAGNANAM, CJ.)

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]

(P.A.- PRAMITA/SACHIN)