



W.P.No.1216 of 2021 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	13.09.2024
Pronounced on	24.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1216 to 1218 and 1220 of 2021, 4197 and 4199 of 2021

W.P.No.1216 of 2021

M/s.HLG Trading,
Through its Proprietor
Gagan Goyal

... Petitioner

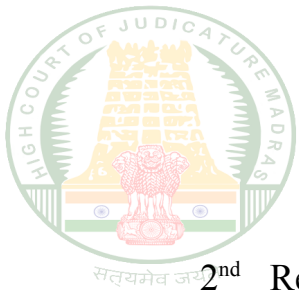
Vs.

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

2.The Deputy Commissioner of Customs (Refunds-II),
Office of the Commissioner of Customs,
Chennai-II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai – 600 001.

... Respondents

Prayer in W.P.No.1216 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in and connected with the order of the



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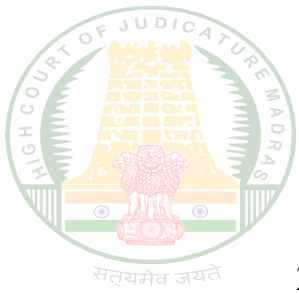
2nd Respondent herein in Order-in-Original No.77052 of 2020 in F.No.SR.No.4458 of 2016 dated 27.11.2020, quash the same insofar as it rejects partially refund of special additional duty of customs to the tune of Rs.5,13,874/- and denies interest in terms of Section 27A of the Customs Act, 1962, direct the said Respondent to restore the said application to its file and pass appropriate orders of refund with interest in terms of Section 27A of the Customs Act, 1962.

For Petitioners : Mr.B.Satish Sundar
(In all W.Ps)

For Respondents : Ms.Anu Ganesan
(In all W.Ps) Senior Standing Counsel

COMMON ORDER

This is the second round of litigation before this Court. Earlier, the Petitioners had suffered six adverse Orders-in-Original that came to be passed by the 2nd Respondent whereby, the refund of Special Additional Duty (SAD) of Customs paid under Section 3(5) of the Customs Tariff Act, 1975 was required.



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2. The rejection was based on the decision of the 2nd Respondent, Deputy Commissioner of Customs (Refunds-II) as affirmed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in its Order No.41872 of 2016 dated 10.10.2016 in “**M/s.Kubota Agricultural Machinery India Private Limited Vs. Commissioner of Customs, Chennai-IV**”. The said decision was rendered by the Single Bench of the CESTAT.

3. The Petitioners had successfully challenged the order in the first round of Writ Petitions in W.P.Nos.20995 to 20998 of 2016 & 2578 to 2581 of 2017 which came to be allowed on 13.07.2020 by Common Order.

The details of the order as under:-

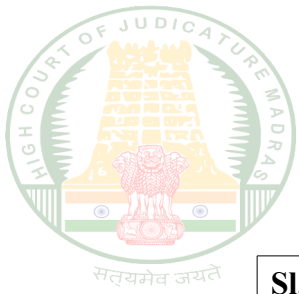
Table-1

Sl. No.	W.P.No.	Date of Claim	Date of Rejection of Claim	W.P.No. (Cases filed after complete rejection of the claims)	Order-in-Original Number and Date
1.	W.P.No.1216 of 2021	22.10.2016 24.10.2016 (acknowledged)	22.12.2016	W.P.No.2580 of 2017	77052 of 2020 in F.No.SR. No.4458 of 2016 dated



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Sl. No.	W.P.No.	Date of Claim	Date of Rejection of Claim	W.P.No. (Cases filed after complete rejection of the claims)	Order-in-Original Number and Date
					27.11.2020
2.	W.P.No.1217 of 2021	27.06.2016 29.06.2016 (acknowledged)	22.12.2016	W.P.No.2579 of 2017	77053 of 2020 in F.No.SR. No.2715 of 2016 dated 27.11.2020
3.	W.P.No.1218 of 2021	17.09.2016 20.09.2016 (acknowledged)	14.12.2016	W.P.No.2578 of 2017	77054 of 2020 in F.No.SR. No.4009 of 2016 dated 27.11.2020
4.	W.P.No.1220 of 2021	18.05.2016 25.05.2016 (acknowledged)	22.12.2016	W.P.No.2581 of 2017	76798 of 2020 in F.No.SR. No.S24/SA D/2151/ 2016 dated 06.11.2020
5.	W.P.No.4197 of 2021	01.06.2016 07.06.2016 (acknowledged)	22.12.2016	W.P.No.2582 of 2016	79050 of 2021 in F.No.SR. No.2351 of 2016 dated 19.01.2021
6.	W.P.No.4199 of 2021	07.09.2016 20.09.2016 (acknowledged)	22.12.2016	W.P.No.2583 of 2017	79046 of 2021 in F.No.SR. No.4010 of 2016 dated



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Sl. No.	W.P.No.	Date of Claim	Date of Rejection of Claim	W.P.No. (Cases filed after complete rejection of the claims)	Order-in-Original Number and Date
					19.01.2021

4. During the interregnum, the one of assessee namely, **M/s.Kubota Agricultural Machinery India Private Limited** had preferred appeal before CESTAT, South Zonal Bench, Chennai against the order passed by the Commissioner of Customs (Appeals) on the subsequent imports made by it. The Division Bench of CESTAT by its order dated **02.06.2017** in “**M/s.Kubota Agricultural Machinery India Private Limited Vs. Commissioner of Customs, Chennai-IV**”, 2017 SCC OnLine CESTAT 4916 in **Final Order Nos.40889 to 40898 of 2017**, allowed the appeals in favour of the assessee.

5. The Division Bench of CESTAT, South Zonal Bench, Chennai in “**M/s.Kubota Agricultural Machinery India Private Limited Vs. Commissioner of Customs, Chennai-IV**”, 2017, SCC Online CESTAT 4916, held as under:-



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“7. In view of the discussion herein above and also following the ratios laid down by the Hon'ble Supreme Court in *Vazir Sultan Tobacco Co. Ltd.* and subsequent judgments cited *supra* and also the ratio of the Tribunal in *Gazal Overseas (supra)*, the appeals filed by the appellants above succeed. It is held that the appellant have discharged appropriate sales tax/VAT for the sale of the goods imported by them. As such the refund claimed by them under Notification No. 102/2007-Cus. cannot be denied to them, as long as the appellants are able to establish that nil VAT/Sales Tax was required to be discharged on the impugned goods. With regard to the mismatch of documents alleged, we find on perusal of records that the adjudicating authority has correlated VAT/Sales Tax with the goods sold and the Chartered Accountant certificate. Therefund has been rejected as VAT/Sales Tax/CST is not paid in the invoices.

8. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.”

5A. Earlier, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in “**M/s.Kubota Agricultural Machinery India Pvt. Ltd., Vs. Commissioner of Customs, Chennai-IV**”, in its Order No.41872 of 2016 dated 10.10.2016 had now held there cannot be any refund of SAD on the ground that where VAT is “Nil” with respect to the imported goods.



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6. Based on the above decision of the CESTAT in “**M/s.Kubota Agricultural Machinery India Private Limited Vs. Commissioner of Customs, Chennai-IV**”, 2017, SCC OnLine CESTAT 4916 vide Final Order Nos.40889 to 40898 of 2017, this Court has allowed the Appeal of the Petitioners in the following cases:-

Sl. No.	W.P.No.	Date
1.	W.P.Nos.3700, 2431 to 2433 of 2017 and 37790, 43838 and 43848 of 2016	23.09.2019
2.	W.P.Nos.254, 255, 256, 257 of 2017 and W.P.Nos.43870 and 43871 of 2016 and W.P.No.14987 of 2017	05.12.2019
3.	W.P.No.37472 of 2016	24.01.2020
4.	W.P.Nos.20995 to 20998 of 2016 and 2578 to 2581 of 2017	13.07.2020

7. In the second round, the 2nd Respondent had rejected a part of the claim and allowed a part of the claim as detailed below:-

Table-3



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Sl. No.	W.P.No.	Original Amount of Claim	Amount of Claim Rejected	Amount of Claim Refunded
1.	W.P.No.1216 of 2021	Rs. 8,36,279/-	Rs. 5,13,874/-	Rs. 3,22,405/-
2.	W.P.No.1217 of 2021	Rs. 6,36,135/-	Rs. 71,909/-	Rs. 5,64,226/-
3.	W.P.No.1218 of 2021	Rs. 8,15,808/-	Rs. 2,56,112/-	Rs. 5,59,696/-
4.	W.P.No.1220 of 2021	Rs. 1,61,774/-	Rs. 85,356/-	Rs. 76,418/-
5.	W.P.No.4197 of 2021	Rs. 2,94,669/-	Rs. 38,672/-	Rs. 2,55,997/-
6.	W.P.No.4199 of 2021	Rs. 8,03,787/-	Rs. 1,46,136/-	Rs. 6,33,861/-

8. Findings/Observations of the Order-in-Original No.77052 of 2020 impugned in W.P.No.1216 of 2021 read identically to other Order-in-Originals in the rest of the Writ Petitions, wherein challenge have been made to the Order-in-Original Nos.77053, 77054, 76798, 79050 and 79046 of 2021.

9. However, it is noticed that orders have been passed by this Court in a batch of Writ Petitions, tabulated in Paragraph 5 of this order, more or less read identically with the following observations:-



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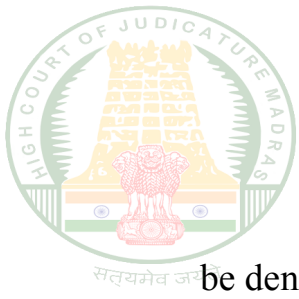
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“2. *Mr.A.P.Srinivas, learned Central Government Standing Counsel for the respondents fairly points out that the issue of refund of special additional duty was considered by the Customs, Central Excise and Service Tax Appellate Tribunal vide order dated 02.06.2017 and the issues decided in favour of the importer. This order has been accepted by the Department.*

3. *These Writ Petitions are thus liable to be allowed and I do so. The petitioners may seek refund of the special additional duty paid by way of an applications to be filed within a period of two (2) weeks from today. Upon receipt thereof, necessary orders for refund shall be passed by the respondent. Connected Miscellaneous Petitions are closed. No costs.”*

10. These Writ Petitions (tabulated in Paragraph 5 of this Order) deal with identical issue.

11. The learned counsel for the Petitioners would submit that once returns have been filed which were duly certified by the Chartered Accountant as was required under Circular No.6 of 2018 dated 28.04.2008 issued by the Central Board of Excise and Customs (CBEC) seeking clarification regarding refund of 4% Additional Duty of Customs leviable under sub-section (5) to Section 3 of the Customs Tariff Act, 1975 cannot



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be denied.
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12. That apart, it is submitted that in this connection, the learned counsel for the Petitioners has also placed reliance on the view of the orders passed by the 2nd Respondent wherein in respect of the Cash Bills, refund of Special Additional Duty (SAD) has been allowed. Details of the orders are as below:-

Sl. No.	Order-in-Original No.	Date	Observations
1.	41688 of 2015	29.09.2015	I order for the sanction of Rs.9,81,575/- (Rupees Nine Lakhs Eighty One Thousand Five Hundred and Seventy Five only) as refund to the claimant M/s.HLG TRADING, HAA, 64, Phase VI, Focal Point, Ludhiana – 110 070, which was paid under TR6 Challans as detailed in respect of the Bills of Entry covered under the refund claim as mentioned in table supra.
2.	59709 of 2017	15.11.2017	I order for sanction of Rs.20,53,034/- (Rupees Twenty



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Sl. No.	Order-in-Original No.	Date	Observations
			Lakhs Fifty Three Thousand and Thirty Four only) as refund to the claimant M/s.HLO TRADING, SPACE E, 3RD FLOOR, SURYA KIRAN BUILDING, 92 THE MALL, LUDHIANA, PUNJAB - 141 001 by way of RTGS/NEFT which was paid under e-receipts as detailed in respect of bills of entry covered under the refund claim as mentioned in table supra.
3.	59861 of 2017	20.11.2017	I order for sanction of Rs.30,41,800/- (Rupees Thirty Lakhs Forty One Thousand and Eight Hundred only) as refund to the claimant M/s.HLG TRADING, HAA 64, PHASE VI, FOCAL POINT, LUDHIANA, PUNJAB - 141 001 by way of RTGS/NEFT which was paid under e-receipts as detailed in respect of bills of



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Sl. No.	Order-in-Original No.	Date	Observations
			entry covered under the refund claim as mentioned in table supra.

13. It has been submitted that once the returns duly certified by the Chartered Accountant are filed, it is not for the Customs Authority to look into each of the individual invoices to deny the refund of the Special Additional Duty (SAD).

14. That apart, the learned counsel for the Petitioners has also placed reliance on the following decisions of this Court:-

- i. **Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association, CSI Cinod Secretariat, Madras, (1992) 3 SCC 1.**
- ii. **BPL Limited and others Vs. R.Sudhakar and others, (2004) 7 SCC 219.**
- iii. **P.P.Products Limited Vs. Commissioner of Customs, Chennai, 2019 (367) E.L.T. 707 (Mad.).**
- iv. **Johnson Lifts Private Limited Vs. Assistant Commissioner of Customs (Refunds), Chennai, 2020 (374) E.L.T. 519 (Mad.)**



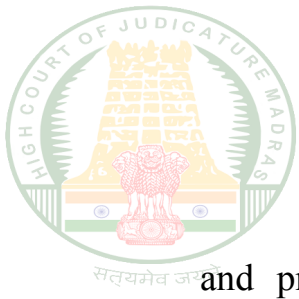
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15. That apart, the learned counsel for the Petitioners submits that once the Impugned Order was passed suffering from infirmity, as interest under Section 27A of the Customs Act, 1962 has been denied, even for the claims which has been sanctioned.

16. In this connection, the learned counsel for the Petitioners has placed reliance on the following decisions of the Hon'ble Supreme Court and that of the High Court of Andhra Pradesh:-

- i. **Ranbaxy Laboratories Limited Vs. Union of India and Others**, (2011) 10 SCC 292 ;
- ii. **KSJ Metal Impex (P) Ltd., Represented by its Managing Director Vs. The Under Secretary (Customs), Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi and 3 Others**, 2013 SCC Online Mad., 250;
- iii. **Principal Commissioner of Custom Vs. Riso India Pvt.Ltd.**, 2015 SCC Online Del 12734;
- iv. **Commissioner of Customs (Import), Raigad Vs. Finacord Chemicals Private Limited and Others**, (2015) 15 SCC 697;
- v. **Micromax Informatics Limited Vs. Union of India and Ors.**, 2018 SCC Online Del 6892;
- vi. **M/s.Dish TV India Limited Vs. Union of India and others**, 2018 SCC Online Del 10793;
- vii. **Commissioner of Customs, Visakhapatnam Vs. Gaytri Timber Pvt. Ltd.**, 2019 (367) E.L.T.772 (A.P.)



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and prays for allowing the writ petitions in the light of the above decisions.

17. On the other hand, the learned Senior Standing Counsel for the Respondents would submit that the Circular cited by the Petitioners itself makes it clear that if Special Additional Duty (SAD) was paid by **remitting duty entertainment pass books steps refund is to be granted byway of credit or not with cash.**

18. That apart, it is submitted that imposition by examining the **officer concerned and thereafter part of the refund claim has been rejected as detailed above for want of particulars of the buyers to whom the imported goods namely, Polyester Knitted Fabric Stock Lot/Mixed Lot Rolls etc.**

19. The learned Senior Standing Counsel for the respondents also submits that the Petitioners have also not filed VAT Return as is contemplated under the Circular mentioned above and therefore on this count also, the Impugned Order does not warrant any interference under



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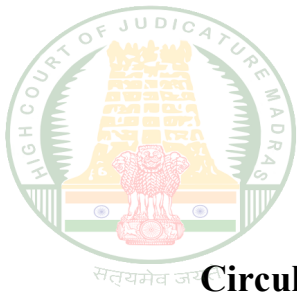
Article 226 of the Constitution of India.

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20. The learned Senior Standing Counsel for the Respondents also submit that there are overwhelming of the evidences indicating that the transaction are not *bona fide* and the learned Senior Standing Counsel for the Respondents also submits that the Respondents have strictly complied with **Circular No.18/2013-Cus.**, dated **29.04.2013** and **Circular No.869/7/2008-CX** dated **16.05.2008**. In **Circular No.869/7/2008- CX** dated **16.05.2008**, it has been stated as follows:-

“2.2. All refund/rebate claims involving an amount of Rs.5 Lakh or above should be subjected to pre-audit at the level of Deputy/Assistant Commissioner (Audit) in the Commissionerate Headquarter Office. In such cases, a suitable Order-in-Original shall be passed by the Deputy/Assistant Commissioner of Central Excise. The Orders-in-Original passed in this regard shall be subjected to review proceedings by Commissioner as per the provisions of Section 35E of the Central Excise Act, 1944.”

21. That apart, it is submitted that the question of refund cannot be granted where documents were incomplete along with refund claim. In this connection, the learned Senior Standing Counsel for the Respondents has placed reliance on **Circular No.18/2013-Cus.**, dated **29.04.2013**. In



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Circular No.18/2013-Cus., dated 29.04.2013, it has been stated as follows:-

“4. Board also reiterates para 8 of Board's Circular No.27/2010-Customs, dated 13.08.2010 wherein it was mentioned that in the interest of ensuring expeditious grant of refund of 4% SAD, the importers may be advised to make the initial payment of 4% SAD, in cash. DGFT has also informed that no re-crediting shall be done if such payment is made by means of scrips. In other words, in future exporters should pay SAD component in cash if they want a refund.”

22. The learned Senior Standing Counsel for the Respondents has also placed reliance on the following decisions of the Kerala High Court and that of this Court:-

- i. **Elite Green Pvt. Ltd., Vs. Under Secretary, Ministry of Finance, (Customs-III/VI/Government of India, New Delhi, 2023 (386) E.L.T. 245 (Ker.)**
- ii. **Shakun Overseas Ltd., Vs. Commissioner of Cus.(Appeals) Chennai, 2013(297) E.L.T.14 (Mad.)**
- iii. **Amicus Communications Vs. Commissioner of Customs (Appeals), Chennai, 2016 (338) E.L.T. 263 (Mad.).**
- iv. **The Under Secretary (Customs), Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi and 3 Others Vs. Parmar International, Represented by its Managing Director in**



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W.A.Nos.927 of 2013 etc., batch dated 25.04.2022.

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23. I have considered the arguments advanced by the learned counsel for the Petitioners and the learned Senior Standing Counsel for the Respondents.

24. In this connection, a reference is made to the following decisions of the Hon'ble Supreme Court, Bombay High Court and that of this Court:-

- i. **Union of India and others Vs. B.T.Patil & Sons, Belgaum (Construction) Private Limited, (2024) 3 SCC 645**
- ii. **Ajay Industrial Corporation Ltd. Vs. Deputy Commissioner of Customs, 2024 SCC OnLine Bom 3324**
- iii. **Karnataka Power Corporation Limited Vs. Commissioner of Customs, 2023 (383) E.L.T. 528 (Mad.) / (2022) 1 Centax 81 (Mad.)**

25. In “**Union of India and others Vs. B.T.Patil & Sons, Belgaum (Construction) Private Limited**”, (2024) 3 SCC 645, involving refund of duty drawback, the Hon'ble Supreme Court held as under:-

“62. As we have already examined, under sub-section (1) of Section 75-A of the Customs Act, where duty



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drawback is not paid within a period of three months from the date of filing of claim, the claimant would be entitled to interest in addition to the amount of drawback. This section provides that the interest would be at the rate fixed under Section 27-A from the date after expiry of the said period of three months till the payment of such drawback. If we look at Section 27-A, the interest rate prescribed thereunder at the relevant point of time was not below ten per cent and not exceeding thirty per cent per annum.”

26. In **“Ajay Industrial Corporation Ltd. Vs. Deputy Commissioner of Customs”, 2024 SCC OnLine Bom 3324**, the Bombay

High Court held as under:-

“17. The respondent's contention about the petitioner's case being covered by the explanation to Section 27A is untenable. This is not a case of an order of refund made by the Commissioner (Appeals). The Commissioner (Appeals) only remanded the matter to the respondent, who ultimately ordered the refund. Assuming we were to accept the respondent's contention, the first part of section 27A provides for the order by which the refund arose. Still, the period for calculating interest provided in the later part of the section states that the starting point is the date of application. Therefore, even on this count, no relief could be denied to the Petitioner. Thus, the explanation to Section 27A of the Customs Act does not apply and based upon a distorted interpretation of the same, the respondent cannot avoid payment of interest at the rate of 6% per annum from 04



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23. *In the context of Sections 11B and 11BB of the Central Excise Act, the Hon'ble Supreme Court, in the case of Union of India v. Hamdard (Waqf) Laboratories—has considered and rejected similar arguments made on behalf of the Revenue. Hon'ble Supreme Court held the liability for the interest payment is statutory, and it is the bounden duty of the Assistant Commissioner to pay interest. Further, the court held that the liability of the Revenue to pay the interest under Section 11BB, which corresponds to Section 27A of the Customs Act, commences from the date of expiry of 3 months from the date of receipt of the application for refund or on the expiry of the said period from the date of which the order of refund is made. Hon'ble Supreme Court followed its earlier decision in the case of Ranbaxy Laboratories Limited v. Union of India.*
24. *The Delhi High Court's decision in S.R. Polyvinyl Ltd. v. Commissioner of Customs, which interprets the provisions of the Customs Act, also supports the petitioner's case. On an identical issue, the Karnataka High Court has held that the period for calculating interest would start from the date of application even if a refund arose on account of appeal orders.*
25. *The decision of the Madras High Court in Global United Shipping India (P) Ltd. v. Assistant Commissioner of Customs (Refund)-also supports the petitioner's case. In the context of the provisions of Section 27 and 27A of the Customs Act, it holds that the intention of the legislature clearly spelt out in the*



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above provision of law was that the interest was liable to be paid after the expiry of three months from the date of receipt of the application for refund and not from the date of passing of the order of refund. The court held that the object behind such provision for the payment from the date of the application was obvious. Once an order of refund is made, the liability to pay the same dates back from the date of its collection. In other words, an amount collected by Revenue without the authority of law or by the erroneous application of the provision of law, if retained by the Revenue all along without having any legal right to retain the same, such collection and retention would amount to unjust enrichment. Thus, liability to return or refund to the person from whom it was collected commences on the day it was demanded and collected. Therefore, when the liability to refund is determined, such liability dates back and commences not from the date of the order for refund but from the date of such collection. Liability to refund begins when it was actually due and not when it is actually determined.

- 26.** *The Madras High Court noted that the adjudicating authority imposes interest and penalty on such duty liability when adjudicating the liability. It is not that such duty alone is collected from the importer from the date of adjudication. On the other hand, such liability to pay duty is fastened on such importer from when it becomes due. Therefore, the revenue collects the interest on such overdue duty payments and the penalty for not paying them at the appropriate time. The same analogy is to be applied in the case of a refund while considering the interest payment. That is why Section 27A of the Customs Act was carefully coined for payment of such interest from the expiry of three months from the date of the application and not*



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from the date of the order.

- 27.** *Mr. Adik relied upon the decision of the CESTAT, West Zonal Bench, Mumbai in the case of Commissioner of Customs & GST, Mumbai West v. Juhu Beach Resort Ltd.-and the decision of Regional Bench in the case of Commissioner of Customs, Mumbai Import-II v. Forever Living Imports (India) Pvt. Ltd.—Both the decisions, apart from they being the decisions of the tribunal, concerned fact situations which are not even remotely comparable to the fact situation in the present petition. Based upon those decisions, therefore, the respondents cannot avoid payment of interest on the delayed refunds.*
- 28.** *The Commissioner of Customs, Mangaluru Customs v. JSW Steel Ltd., the division bench of the Karnataka High Court was concerned with the defective application for refund. Accordingly, the contention of the importer that even if the application was defective, that at the most may amount to irregularity and the department cannot avoid payment of interest, was not accepted. In the present case, as noted above, there was no defect in the petitioner's application. No deficiencies were pointed out within the time prescribed under the Regulations or even later. The issue, which was involved before the Karnataka High Court, does not arise in the present petition. Besides, the Karnataka High Court does not appear to have considered the impact of the absence of the provision like Section 244A(2) of the Income Tax Act, 1961 in the Customs Act.*
- 29.** *In Shakun Overseas Ltd. v. Commissioner of Cus. (Appeals), Chennai, the concerned facts which have no relevance to the issue involved in the present case. In fact, Madras High Court has held that Section 27A*



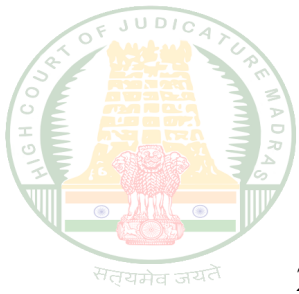
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of the Customs Act provides time limit within which the application for refund to be disposed of failing which the assessee would be entitled to claim interest.

- 30. Thus, on facts and in law, this Petition deserves to succeed. The revenue's entire approach has been far from fair. The petitioner was forced to litigate for the refund's recovery, and after the refund was sanctioned belatedly, the revenue, quite unreasonably, resisted interest payment on the delayed refunds. It is not as if the stakes were high for the revenue. The interest claim of the Petitioner comes to Rs.4,21,940/-.*
- 31. For all the above reasons, we allow this petition and direct the respondent to pay the petitioner the interest amounting to Rs.4,21,940/- on the delayed refund of SAD. The respondent must pay the petitioner this amount within two months of today.*
- 32. Failing this, the respondent is directed to pay the interest at 8% per annum on this amount. This direction for payment at the rate of 8% per annum is without prejudice to any action under the Contempt of Court Act should the respondent willfully and deliberately disobey the direction now made.*
- 33. Further, if Rs.4,21,940/- is not paid within two months from today, additional interest on this amount now ordered will have to be recovered from the officer responsible for the delay instead of burdening the exchequer and, consequently, the taxpayer.*
- 34. The respondent is also directed to pay the petitioner Rs.15,000/- in costs within two months from today."*



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27. In “Karnataka Power Corporation Limited Vs. Commissioner of Customs, 2023 (383) E.L.T. 528 (Mad.) / (2022) 1 Centax 81 (Mad.)”, this Court held as under:-

“12. R2, in the impugned order, has restricted the payment of interest from date of order of CESTAT, which appears contrary to the provisions of Section 27A of the Customs Act, 1962 that deals with claims for refund of duty. Section 27A of the Customs Act reads as follows:-

Section 27A. Interest on delayed refunds. - If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - Where any order of refund is made by



the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

13. As per the aforesaid provision, interest is payable from 3 months from date of receipt of the refund application till date of payment. In this case, the date of refund application is 27-8-1994 and in light of the order passed above holding the refund payable, interest would be applicable on the amount to be refunded on accessories in terms of Section 27A, from 3 months from date of refund application till date of payment. The same reasoning would hold good in respect of coils as well."

28. The issue was re-examined which has now culminated in the respective Impugned Orders which have been passed rejecting part of the refund claims filed under Notification No.102/2007-Cus., dated 14.09.2007. Text of the Notification reads as under:-

“G.S.R. (E). In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale,



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from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty).

- a) The exemption contained in this notification shall be given effect if the following conditions are fulfilled:
- i. the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods.
 - ii. The importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;
 - iii. The importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer.
 - iv. The importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be.
 - v. The importer shall, inter alia, provide copies of the following documents along with the refund claim:

1. document evidencing payment of



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the said additional duty;

2. invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
3. documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

b) The jurisdictional customs officer shall sanction the refund on satisfying himself that the conditions referred to in para 2 above, are fulfilled.”

29. Taking note of the **Final Order Nos.40889 to 40898** of 2017 dated **02.06.2017** in “**M/s.Kubota Agricultural Machinery India Pvt.Ltd., Vs. Commissioner of Customs, Chennai-IV**”, the submissions of the learned counsel for the Petitioners and the learned Senior Standing Counsel for the Respondents, this Court vide its order dated 24.01.2020 in W.P.No.37472 of 2016 had ordered as under:-

"The petitioner has challenged the impugned order passed by the office of The Commissioner of Customs (Appeals-II) vide order dated 20.07.2016 bearing reference No. Order in Appeal C.Cus II No.729 to 733/2016 dated 20.07.2016.



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2. Heard the arguments of the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. By the impugned order, the first respondent-Commissioner of Customs (Appeal) has confirmed the order of the second respondent claiming refund of SAD (Special Additional Duty) in terms of Notification No.102/2007-Cus dated 14.09.2007. Both the counsel fairly submits that the Department has accepted the availability of SAD refund and to that effect, orders have been passed by this Court in W.P.Nos.3700, 2431 to 2433 of 2017 etc., dated 23.09.2019. The operative portion of the order which reads as follows:

"Common Order"

"The petitioners in this batch of writ challenge notices/order-in-original/appellate orders proposing to reject/rejecting the request for refund of special additional duty.

2. Mr.A.P.Srinivas, learned Central Government Standing Counsel for the respondents fairly points out that the issue of refund of special additional duty was considered by the Customs, Central Excise and Service Tax Appellate Tribunal vide order dated 02.06.2017 and the issues decided in favour of the importer. This order has been accepted by the Department.

3. These writ petitions are thus liable to be allowed and I do so. The petitioners may seek refund of the special additional



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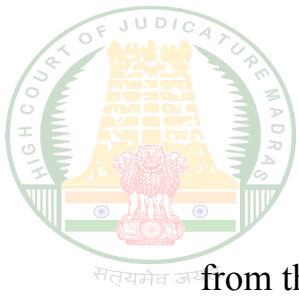
duty paid by way of an applications to be filled within a period of two (2) weeks from today. Upon receipt thereof, necessary orders for refund shall be passed by the respondent. Connected Miscellaneous Petitions are closed. No costs."

4. Since the issue is covered by the aforesaid order passed by the learned Single Judge of this Court, dated 23.09.2019 in W.P.Nos.3700, 2431 to 2433 of 2017 etc., the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed."

30. Since under similar circumstances, the Petitioners' own case ought to be allowed, I see no impediment in following the orders passed in the case of the Petitioners themselves in the writ petitions (*cited supra*).

31. Therefore, these Writ Petitions deserves to be allowed. The further claim of the Petitioners is that the Petitioners are entitled to interest payable under Section 27A of the Customs Act, 1962.

32. Therefore, the Petitioners are entitled to interest under Section 27A of the Customs Act, 1962 from the date of the expiry of three months



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from the date of filing of the refund application.

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33. In the result, all the Writ Petitions are allowed as prayed for.

34. The Respondents are directed forthwith to process the refund claim together with interest under Section 27A of the Customs Act, 1962.

35. Before passing further orders in the refund claim, the Petitioners shall be heard.

36. The amount shall be paid within a period of 3 months from the date of receipt of a copy of this order. No costs.

24.04.2025

Neutral Citation : Yes / No
kkd / arb / msm



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To:

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

- 2.The Deputy Commissioner of Customs (Refunds-II),
Office of the Commissioner of Customs,
Chennai-II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai – 600 001.



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C.SARAVANAN, J.

kkd / arb/ msm

Pre-delivery Common Order in
W.P.Nos.1216 to 1218 and
1220 of 2021, 4197 and 4199 of 2021



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24.04.2025