

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.12.2020

CORAM

**THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH**

**W.A.No.1084 of 2020
and
C.M.P.No.13255 of 2020**

1. The Assistant Commissioner of Customs (Refunds),
Office of the Commissioner of Customs,
Custom House, Chennai 600 001.
 2. The Deputy Commissioner of Customs (Gr.2),
Office of the Commissioner of Customs,
Custom House, Chennai 600 001.
- Appellants

Versus

M/s.Dalmia Cement (Bharat) Limited,
rep. by its Deputy Executive Director
R.Gururajan,
'Fagun Mansion' Fourth Floor,
26, Ethiraj Salai, Egmore,
Chennai 600 008.

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 3.1.2020 in W.P.No.9656 of 2019 passed by this court.

For Appellant : Mrs.Aparna Nandakumar,
Senior Standing Counsel

For Respondent : Ms.Jayalakshmi

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Customs Department has filed this Writ Appeal aggrieved by the order passed by learned Single Judge dated 3.1.2020 allowing the Writ Petition of the Petitioner M/s.Dalmia Cement (Bharat) Limited and directing refund of the Extra Duty Deposit (EDD) on the various Bills of Entry of the year 2004 as given in para 1 of the order of the learned Single Judge, under which the Assessee imported Coal from Indonesia.

2. The learned Single Judge held that there is no justification on the part of the Department in delaying the finalisation of the provisional Assessment with respect to these Bills of Entry for all these years despite there being Board Circular No.11/2001 dated 23.2.2001, referred to in para 9 and the Circular dated 16.7.2007 making it beyond the pale of doubt that no Cess or Additional Duty of Customs was leviable on import of Coal in question, In the said Board's instruction dated 16.7.2007 as noted by the learned Single Judge, all the Authorities concerned in various Commissionerates were directed to finalise the issue with regard to provisional Assessment as early as possible

3. Despite that Circular, the Authorities concerned in the present case did not finalise the Provisional Assessment with reference 2004 and refund the EDD payment made by the Assessee. The learned Single Judge found that there was no justifiable cause to delay the refund for all these years

merely on the ground that some investigation is pending and therefore, directed refund of the same with interest in terms of Section 27A of the Act 1962 from the date of Application viz., **17.12.2007** and directed such refund to be made within 4 weeks from the date of that order.

4. Aggrieved by the said order of the learned Single Judge, the Department is in Appeal before us.

5. The learned counsel for the Revenue Mrs.Aparna Nandakumar sought to defend the action of the Customs Officials on the ground that some investigation is pending in the Revenue Intelligence and there was some reasonable cause for not finalising the Provisional Assessment with regard the year 2004 and therefore, the refund of EDD could not be made.

6. Per contra, Ms.Jayalakshmi, learned counsel for the Assessee supported the order of the learned Single Judge and by pointing out the Board's Notification 75/2003-Cus.(N.T.) dated 12th September 2003, emphasised that in case of delay in refund of EDD, the Writ Petitioner is entitled to interest at 6% in terms of Section 27A of the Act as the said Deposit has been kept by the Department without any interest paid to the Importer and the money of the Importer/Petitioner is unnecessarily locked with the Departmental Authorities.

7. Having heard the learned counsel for the parties, we are satisfied that there is absolutely no merit in the present Writ Appeal and we fail to understand the bona fide of the Customs Department to challenge even this

kind of innocuous direction of the learned Single Judge while disposing of the Writ Petition and why the Department should file intra-court Appeals just for the sake of litigation. It is not at all justified and strong action deserves to be taken in this regard as the Government Department cannot be permitted to be a voluntary litigant in the Constitutional Courts especially to challenge the orders of the learned Single Judge without any valid rhyme or reason.

8. The alleged reason assigned by the Department that there was some investigation pending of which no details are placed on record, is not at all a justifiable reason in the light of Board's own Circular as quoted by the learned Single Judge. No such material has been placed before this court to justify the action of the Customs Department not to finalise the Provisional Assessment for 16 years and even by now to keep the EDD a mere Security Deposit by Importer/Petitioner with them like this.

9. The direction of the learned Single Judge, is, therefore, perfectly justified and does not call for any interference by this court in the present intra-court Appeal. Such an innocuous and correct direction of the learned Single Judge is also not complied with by the Revenue Department so far even though there was no interim order in favour of the Customs Department against the order of the learned Single Judge.

10. Section 27A of the Act provides that interest to be paid on such refund to be not below 5% and not exceeding 30% per annum may be fixed.

It has also been brought to our notice that vide Notification 75/2003-

Cus.(NT) dated 12th September 2003, issued under Section 27A of the Act the interest at the rate of 6% has been fixed by the Central Government.

11. Accordingly, we direct refund of the EDD amount to the Petitioner/ respondent herein forthwith within a period of 4 weeks from today with interest at the rate of 6% from 17.12.2007 till the actual refund and if there is a delay in making the refund of EDD beyond 4 weeks from today, interest at the increased rate of 9% would be payable by the Appellant Department and the excess interest in such case would be recovered from the Officer concerned who delays the matter any further.

The Writ Appeal of Revenue is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

(V.K.,J.)(M.S.R.,J)

2.12.2020

Index:Yes/No
Internet:Yes/No

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To:

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Judgment dt.2.12.2020 in W.A.No.1084/2020
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**DR.VINEET KOTHARI, J.
AND
M.S.RAMESH, J.**

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