

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH - COURT NO. II**

**Customs MISC Application No. 50129 of 2020**

(on behalf of appellant)

**in**

**Customs Appeal No. 50001 of 2017 (SM)**

(Arising out of Order-in-Original No. 04/PPG/BBG/2016 dated 05.10.2016 passed by the Commissioner of Customs, Delhi.)

**M/s Leather Sellers**

14/57-B, Civil Lines,  
Kanpur, U.P.

**Appellant**

*VERSUS*

**Commissioner of Customs And  
Excise, Patparganj**

Patparganj, East Delhi  
Delhi-110096

**Respondent**

**APPEARANCE:**

Mr. Ashish Kumar Shukla, Advocate for the Appellant

Ms. Tamanna Alam, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**MISCELLANEOUS ORDER NO. 50343 / 2022**

**Date of Hearing: 08.07.2022**

**Date of Decision: 08.07.2022**

**ANIL CHOUDHARY:**

The brief facts are that the appellant is a manufacturer-exporter of leather goods. They had re-imported a consignment of goods, which were earlier exported for the purpose of repair etc. and thereafter, re-export. For such re-import, the appellant had filed Bill of Entry dated 10/06/2005 with undertaking to re-export within a period of six months as per Notification No. 158/95-Cus and for the said purpose, they have also submitted a re-export bond and also Bank Guarantee

for Rs. 3,10,000/-. Accordingly, in terms of the notification, they were given the benefit of re-import without payment of Customs duty.

2. Further admitted fact is that the appellant re-exported the goods by filing Shipping Bill dated 08/03/2006. After the re-export, they applied for release of their bond and Bank Guarantee by application dated 15/04/2006. Thereafter, without providing any opportunity of hearing to the appellant, the revenue proceeded to encash the Bank Guarantee by issuing invocation letter dated 20/07/2006. Subsequently, order of adjudication was passed against the appellant, holding that the appellant have failed to comply with the condition of re-export, and the Bank Guarantee was appropriated, holding failure to export within six months. In the said matter, the issue reached before this Tribunal in C/50001/2017. This Tribunal *vide* Final Order No. 56356/2017 dated 29/08/2017 *inter alia* held in favour of the appellant observing that the appellant had applied for extension of time, soon after the re-export of the goods, which had not been rejected by the revenue. Further observed that the said notification provides the facility of re-import within three years from the date of exportation and thus, when the main condition of the notification have not been violated, no adverse view can be taken for exporting within a period of nine months instead of six months. It was further held that the Bank Guarantee executed and the time of re-importation is not required to be confiscated or adjusted. Accordingly, the appeal was allowed with consequential relief. Pursuant to the order of this Tribunal, the appellant approached the department for grant of refund alongwith interest as per rules. The refund application was rejected by the Assistant Commissioner by Order-in-Original dated 29/01/2019.

Being aggrieved, the appellant preferred appeal before the Id. Commissioner (Appeals), who by Order-in-Appeal dated 04/06/2019, was pleased to allow the refund of the Bank Guarantee, which has been credited in the bank account of the appellant on 23/07/2019. However, as regards the interest, there is no finding. Being aggrieved the appellant is before this Tribunal *vide* present miscellaneous application under Regulation 41, for a direction on the respondent for disbursement of interest as per rules. It is also urged that from the date of encashment of Bank Guarantee till the date of refund, interest should be allowed, as on encashment of Bank Guarantee, the amount has been lying with the revenue in the nature of pre-deposit.

3. Learned AR relies on the Order-in-Appeal passed by the Commissioner (Appeals).

4. Having considered the rival contentions, I hold that the amount was lying in the nature of the pre-deposit with the department from the date of encashment of the Bank Guarantee. Accordingly, I hold that the appellant is entitled to interest from the date of encashment of Bank Guarantee, i.e. 21/07/2006 to 22/07/2019 under Section 129EE of the Customs Act @ of 12% P.A., as held by Division Bench of this Tribunal in the case of Parle Agro Ltd. Such interest should be disbursed within a period of 45 days from the date of receipt of a copy of this order. Miscellaneous application is allowed.

(Dictated in open Court)

**Anil Choudhary**  
**Member(Judicial)**