

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 60442 Of 2022**

[Arising out of OIA No. 10-14/App/Customs(D)CampChd/13 dated 21.02.2013 passed by the Commissioner (Appeals) of Customs, Delhi (Camp Chandigarh)]

**M/s Saraswati Knitwear Pvt. Ltd. : Appellant (s)**

Plot No. 1200, Kashmir Nagar, Gaushala Road, Ludhiana

Vs

**Commissioner of Customs, Ludhiana : Respondent (s)**

ICD GRFL, G.T. Road, Sahnewal, Ludhiana

APPEARANCE:

Shri N. K. Sharma, Advocate for the Appellant

Shri Amandeep Kumar, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**ORDER No. A/60376/2023**

Date of Hearing:18.05.2023

Date of Decision:13.09.2023

**Per : S. S. GARG**

The present appeal is directed against the impugned order dated 21.02.2013 passed by the Commissioner (Appeals) of Customs, Ludhiana whereby the Ld. Commissioner (Appeals) has rejected the appeal of the appellant by holding that the appellant is not entitled to interest on refund.

2. Brief facts of the case are that the appellant had filed 05 Bills of Entry on 09.06.2011 for clearance of 100% PCT Polyester Spun NE 30/1, Yarn Raw White on Cones falling under CTH 55094190. The value declared by the Appellant @ USD 1.25 per Kg appeared on lower side and thus B/Es were provisionally assessed @ USD 2.60 per Kg.

The duty so assessed was paid by the Appellant vide various challans dated 29.11.2011 & 30.11.2011.

- Being aggrieved with the provisional assessment of the Bills of Entry @ USD 2.60 per Kg, the appellant filed an appeal before the Commissioner (Appeals) protesting against the excess duty charged.

- The Commissioner (Appeals) vide OIA No 10-14/Appl/Cus(D) Comp Chd/13 dated 21.02.2013 directed the assessing officer to finalize the assessment at the earliest and opined that question of refund of excess duty paid, if any, will arise only after the adjustment of provisionally assessed duty under clause(a) of sub-section (2) of Section 18 of Customs Act, 1962.

- In pursuance to the Order-in-Appeal dated 21.02.2013, Assessing Officer finalized the assessment of Bills of Entry on 29.12.2021 @ 1.40 USD/Kg, which was accepted by the appellant. Thereafter, the appellant filed the refund application on 12.01.2022 of excess duty paid over \$1.40 per kg. On refund application, some deficiencies were raised and after meeting out the queries Adjudicating Authority vide order-in-original dated 14.03.2022 sanctioned the refund claim of Rs 13,22,041/- Rs. 1237420/- excess duty paid + excess Interest Paid of Rs.84621/-).

- Hence, the present Appeal.

3. Heard the parties and perused the records.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellant is entitled to interest on the refund amount which was paid during investigation or during adjudication proceedings. He

further submitted that the department took undue long period of more than 8 years in finalizing the assessment which has caused delay in granting of refund. He further cited number of decisions holding that the amount deposited during investigation, if ultimately found not sustainable, is to be treated as revenue deposit and the same is to be refunded with interest. In support of this submission, he relied upon by the following decisions:-

- Calcutta Iron & Steel Company vs. CESTAT Chennai
- JK Cement vs. CCE & CGST
- Sandvik Asia Ltd. vs. Commr. Of Income Tax
- Parle Agro Pvt. Ltd. vs. CCE, Noida
- Supertron Electronics Pvt. Ltd. vs. UOI

5. On the other hand, the Ld. DR reiterated the findings in the impugned order and submitted that the provisional assessment and final assessment are common phenomena in Customs and are governed under Section 18 of the Customs Act, 1962. He further submitted that Section 18 prescribes all the provisions w.r.t. provisional assessment and final assessment and grant of refund and interest thereon as the case may be. He also submits that Sub-section 4 of Section 18 clearly specifies that interest is payable only if refund is not granted within 3 months from the final assessment. He further submits that the interest rate has also been prescribed in this sub-section at the rate specified in Section 27A of the Act. He further submitted that there is no delay in granting the refund.

- He further submitted that the assessment in this case was finalized on 29.12.2021 @1.40/kg which were accepted by the appellant. In pursuance to this final assessment, the appellant filed

refund claim dated 12.01.2022 seeking refund of differential excess duty and the said amount was refunded to the appellant vide OIO dated 14.03.2022 i.e. within 3 months from the final assessment. He further submitted that once the refund has been granted as per Section 18 and 27A of the Act within 3 months from the date of final assessment then the appellant cannot claim any interest. For this Submission, the Ld. DR relied upon the following decisions:-

- Ajay Exports Vs CC Import Nhava Sheva [2015 (330) ELT 225 (Tr. Mum)]
- CC Vs IOCL [2012 (282) E.L.T368 (Del)]
- Bochanwasi Shri Aksharapurushottam Swaminarayan Sanstha Vs CC Ahmedabad [2022 (380) E.L.T82 (Tri. -Ahmd.)
- Ajay Exports Vs CC Import Mumbai [2016 (335) ELT 150 (Tr. Mum)
- Pride Foramer Vs CC Import Mumbai [Order dated 14.06.2010 in WP No. 2629/2006
- CC (Export) Chennai Vs Sayonara Exports Pvt Ltd. [2015 (321) ELT 583 (Mad.)
- M/s.. Nirma Ltd. Vs. CC Jamnagar (Prev.) [MANU/CS/0008/2022
- Veer Overseas Ltd. Versus CCE, Panchkula [2018 (15) G.S.T.L. 59 (Tri. - Lb)
- UOI vs. Cosmo Films Limited vide order dated 28.04.2023 (SC)

Ld. DR submits on the question of delay in finalizing the assessment which could not be done due to alert Circular No. 09/2011-CI dated 26.07.2011 issued by the DRI on such import consignment, due to which this provisional assessment was kept pending.

Ld. DR further submitted that the decision relied upon by the appellant are not applicable in the facts and circumstances of the case because none of the judgements relied upon by the appellant are under provisional assessment as provided under Section 18 of the Customs Act, 1962.

6. After considering the submissions of both the parties and perusal of material on record, I find that in the present case, the assessment was finalized on 29.12.2021 and in pursuance to the final assessment refund was sanctioned to the appellant vide OIO dated 14.03.2022 which is within the time limit of 3 months from the date of final assessment. The original authorities rejected the request of interest and vide impugned order; the Commissioner has also rejected the appeal seeking grant of interest on delayed refund. Further, I find that the appellant was provisionally assessed under Section 18 of the Customs Act. The relevant provisions of the Customs Act are reproduced herein below:-

**Section 18. Provisional assessment of duty**

<sup>1</sup> [(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 <sup>2</sup> [and section 50],--

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

**the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for**

***the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]***

<sup>2</sup> [(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, **and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.]**

(2) When the duty leviable on such goods is assessed finally<sup>3</sup> [or re-assessed by the proper officer] in accordance with the provisions of this Act, then--

(a) .....,

(b) .....,

<sup>6</sup> [(3) The importer or exporter shall be liable to pay interest, .....

***(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.]***

7. Further, I find that the decisions relied upon by the Ld. Counsel for the appellant are not applicable to the present case because they were not decided under the provisions of Section 18 read with Section 27(A) of the Customs Act, 1962.

8. Further, I find that the decisions relied upon by the Ld. DR are applicable in the present case.

In this regard, I may refer to the decision of CCE vs. IOCL 2012 (282) E.L.T368 (Del) wherein it has been held by the Hon'ble Delhi High Court that in the case of provisional and final assessment, the refund is payable in terms of Section 18 of the Customs Act, 1962. The relevant portion of Para 20 of the judgement is reproduced herein below:-

"20.. In the first situation the assessee has paid provisional duty which gets reduced on final assessment. The assessee, therefore,

*becomes entitled to refund which is payable in terms of Rule 9B of the Excise Act [(sic) Rules], 1944 or Section 18 of the Act."*

9. Further, I find that the appellant is entitled to interest if the refund is payable after the expiry of 3 months from the date of final assessment as per Section 18 (4) of the Customs Act whereas in the present case the refund was granted within 3 months as prescribed under Section 18 (4) of the Act. Therefore, in my considered view, the appellant is not entitled to any interest in view of the statutory provisions and the case laws cited (supra)

10. In view of above, I do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the appellant.

*(Pronounced on 13.09.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

G.Y.