
(2021) 11 CESTAT CK 0062

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 63 Of 2011

Bochasanwasi Shri Aksharapurushottam Swaminarayan Sansth	APPELLANT
Vs	
C.C.-Ahmedabad	RESPONDENT

Date of Decision : 18-11-2021

Acts Referred:

Customs Act, 1962 — Section 27(A)

Citation : (2021) 11 CESTAT CK 0062

Hon'ble Judges : Ramesh Nair, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. The issue involved in the present case is as follows:-

1. Whether the interest on refund has to be calculated from expiry of three months after passing of the Tribunal's final order or it has to be calculated from the date of final order of the tribunal.

2. Whether the rate of interest should be 6% or 15% or any other rate.

3. Whether the appellant is entitled for interest on interest.

2. Shri S.Sunil, Learned counsel appearing on behalf of the appellant filed written submission dated 15.11.2021 and argued the same.

3. Shri G.kirupanandan, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order and has also submitted written submission dated 15.11.21 which is taken on record and considered.

4. We have carefully considered the submission made by both the sides and perused the records. As regard the first issue we find that in the earlier round of litigation in the same case this tribunal in the order No A/1641/WZB/AHD/08 dated 19.08.2008 held that interest liability arises from the date of the order of the tribunal and not the date of judgment of the Hon'ble Supreme Court. The

relevant para of the order is reproduced below:-

"3. In the normal course pre- deposit should be refunded as soon as the Tribunal order was passed by finalizing the assessment. In the absence of a stay by the Hon'ble Supreme Court and the Board's instruction finalization of assessment and refund was warranted and therefore, interest liability arises from the date of the order of the tribunal and not the date of judgment of the Hon'ble Supreme Court. In this view of the matter we hold that the impugned order of the Commissioner (Appeals) is to be upheld and accordingly, we reject the appeal filed by the Revenue against the order."

In the above order of the tribunal though the order of the commissioner (Appeals) was upheld but at the same time it was stated that interest liability arises from the date of order of the tribunal. Against the said order of the tribunal revenue had filed Tax Appeal No 218 of 2019 wherein the Hon'ble High Court vide order dated 10.03.2010 passed the following order: .

"8. Vide order dated 3.1.2006, the Tribunal had finalized the assessment and had directed that the value of the marble blocks imported by the respondent should be assessed at US \$ 95 PMT, hence there was nothing left for the original authority to finalize except quantification of duty, which he appears to have done at a belated stage. As per the Board's instructions interest liability arises from the date of finalization of assessment. In the present case the assessment came to be finalized by the order dated 3.1.2006 of the Tribunal as the said order was not stayed at any point of time and the appeal against the same came to be dismissed. Hence, liability to pay interest would arise from the date of the order of the Tribunal. In the circumstances, the impugned order of the Tribunal confirming the order made by Commissioner (Appeals) does not suffer from any legal infirmity so as to warrant interference

9. In absence of any question of law, much less any substantial question of law, the appeal is dismissed."

In the above order of the Hon'ble High Court also it was stated that liability to pay interest would arise from date of order of the Tribunal. In view of the concurrent orders of Tribunal as well as Hon'ble High Court since it was held that the interest arises from the date of order and this finding was not challenged by the revenue, it attains finality. Therefore, the appellant is entitled for interest from the date of order of the tribunal and not from expiry of three months from the date of order. Accordingly, the order of the learned Commissioner (Appeals) on this issue is not sustainable.

4.1 As regard the second issue i.e. rate of interest, the rate of interest is statutorily prescribed under section 27 (A) read with Notification issued there under according to which 6% as rate of interest was prescribed. The departmental officer is bound to follow the statutory provision strictly and therefore, no interest more than 6% can be calculated. Even this tribunal which is creature under the statute of Customs Act cannot decide the rate of interest

out of the statutory provisions. Accordingly, the rate of interest i.e. 6% decided by the Lower Authority is correct and legal. As regard the judgment cited by the appellant for higher interest, we find that all those cases have been decided either by the Hon'ble Supreme Court or Hon'ble High Court which having inherent powers can fix any rate of interest but this tribunal has no power to decide any rate of interest different than prescribed under the statute. Therefore, Learned Commissioner (Appeals) has rightly held that the Adjudicating Authority has rightly applied simple rate of interest as 6% P.a. Therefore, the assessee cannot be granted interest at the rate of 15% or any other rate above 6%.

4.2 As regard the issue whether the appellant is entitled for interest on interest amount. We find that the appellant has heavily relied upon the Hon'ble Supreme Court Judgment in Sandvik Asia Ltd CIT 2006 (196) ELT 257 (SC). The Learned Commissioner (Appeals) on this issue given the following finding:

"6.4. The adjudicating authority has rejected another amount of refund claimed by the appellant, which turned out to be interest on interest. The appellant has relied upon the decision of the Hon'ble Supreme Court has, in Sandvik Asia Ltd. V/s CIT [2006(196) ELT 257(SC), in which the Hon'ble Supreme Court has held that interest is payable on interest so wrongfully withheld, even in absence of any provision in statute to that effect. I have examined the decision of the Hon'ble Supreme Court to ascertain if the said decision can be applied to the present case. I have found that in the said case, the Hon'ble Supreme Court was dealing with the matter relating to the provisions of Income Tax Act. In the case of International Industrial Gases Ltd. Versus Commissioner of C. Excise, Bhopal [Final Order No. 208/2010-EX(PB)] dated 8-4 2010 in Appeal No. E/1889/2009] reported at [2010 (254) E.L.T. 518 (Tri. - Del.)], the Tribunal has examined the aforesaid case of Sandvik Asia Ltd and found out the following:

"The decision of the Supreme Court in Sandvik Asia case was on the subject of claim for interest on interest which was withheld for very long period about twenty years, and that too without any justification. Besides, that was a case under the Income Tax Act, as also that bare reading of the decision would disclose that the same was granted essentially in exercise of powers under Article 142 of the Constitution of India. This is apparent from the decision of the Apex Court."

Besides, I have also in hand the ruling of the Hon'ble Apex Court in Dai Ichi Karkaria case whereby it was observed that the judgement relating to the Income Tax or other statutes have no relevance while considering a provision in an Excise statute. Even though we are not concerned in the matter in hand regarding the interpretation of any statutory provision in Customs Act as such, to ascertain the scope of powers of the statutory authorities functioning under the Customs Act, we cannot have assistance of the decision which was delivered in relation to the scope of powers of the authorities functioning under Income Tax Act or other taxing statutes. Having said so, I am also guided by the Larger Bench decision in the case Sun Pharmaceuticals Industries Ltd. v. Commissioner

[2005 (185) E.L.T. 253 (Tribunal-LB)], which has also been relied upon by the Tribunal in the aforesaid case of International Industrial Cases Ltd., which reads as under:

"In the light of what has been discussed above, on the basis of the above referred two judgments of the Gujarat High Court, which are under different Tax statute, interest on delayed payment of interest, cannot be held to be permissible under the Central excise Act and the Rules made thereunder, for want of any specific provision in the Act or the Rules. Therefore, the Tribunal has no power to award such interest to the assessee. The law laid down in Hindustan Motors v. C.C.E. (supra), to the contrary, being not a good law, stands overruled. The reference stands accordingly answered".

The provisions of Central Excise Act, 1944 and the Customs Act, 1962, relating to interest on delayed payment of refunds, are in pari materia, and hence this decision can be squarely made applicable to the present case. Being a creature of statute, I hold that the Commissioner (Appeals) has no power to award interest on the interest amount to the appellant.

From the above finding of the learned Commissioner (Appeals) it can be seen that Learned Commissioner (Appeals) has concluded that being a creature of the statute he has no power to allow interest on interest amount to the appellant. We do not find any infirmity in the above finding. Even this Tribunal also being a creature under statute of customs Act cannot decide anything beyond the provisions of the statute of the Customs Act. There is no statutory provision for granting the interest on interest. Therefore, the decision on this issue by the Learned Commissioner (Appeals) is legal and correct.

5. As per our above discussion and finding we concur with the Commissioner (Appeals) on the issue of rate of interest and interest on interest. However, we do not agree with the order of the Commissioner (Appeals) regarding the first issue.

6. Accordingly, the impugned order stands modified. Appeal is partly allowed in above terms.

(Pronounced in the open court on 18.11.2021)