

(2015) 08 KAR CK 0158
In the Karnataka High Court
Case No : C.S.T.A. No. 4 of 2015

C.C., Air Port & ACC and Others

APPELLANT

Vs

Pfizer Products India P. Ltd.

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11BB
Customs Act, 1962 — Section 27, 27(2), 27A

Citation : (2015) 324 ELT 259

Hon'ble Judges : Vineet Saran and B. Manohar, JJ.

Bench : Division Bench

Advocate : C. Shashikantha, Advocate, for the Appellant; Ganapati Hegde and R.G. Sheth, Advocates, for the Respondent

Judgement

1. This appeal has been filed by the Revenue-Commissioner of Customs, Bangalore, against the order dated 21-5-2014 of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) [, 2015 (317) E.L.T. 786 (Tribunal)] , whereby the appeal filed by the respondent-company, which was with regard to payment of interest under Section 27A of the Customs Act, 1962 (for short "the Act"), has been allowed. The facts of this appeal in brief are that on 4-6-1998 the respondent-company had imported certain items and cleared the same on payment of customs duty. Later, the respondent realized the mistake of having deposited the customs duty, as the goods which were imported were exempted from customs duty under Notification dated 2-6-1998. Thus, the respondent-company filed an application on 24-12-1998 under Section 27 of the Act for refund of customs duty amounting to Rs. 1,06,74,049/-, which was deposited on 4-6-1998. By order dated 23-10-2001, the Deputy Commissioner, rejected the application for refund of customs duty filed by the respondent-company, stating that the goods imported were not exempted and hence the respondent was not entitled to such refund. Challenging the said order, the respondent-company filed an appeal before the Commissioner of Customs (Appeals), Bangalore. By order dated 16-10-2002, the Commissioner held that the respondent-importer was

eligible for benefit of exemption under the Notification dated 2-6-1998 and ordered refund of the amount, being Rs. 1,06,74,049/-, but after holding that the respondent-company had not been able to show that the burden of duty had not been passed on directly or indirectly to some other person, rejected the claim of refund on the ground of unjust enrichment, and directed the said amount to be credited in the account of the Consumer Welfare Fund. Challenging the said order of the Commissioner, the respondent-company filed an appeal before the Tribunal, which was allowed with consequential relief on 27-7-2005 after holding that the claim of refund made by the respondent-company was not hit by unjust enrichment. Aggrieved by the said order of the Tribunal, the appellant filed an appeal before the High Court which was dismissed on 1-4-2010. Further, a Special Leave Petition (SLP) was filed by the appellant before the Supreme Court, which was also dismissed on 21-2-2011.

2. It was only after the dismissal of the SLP that by order dated 13-4-2011, the Assistant Commissioner of Customs, sanctioned refund of Rs. 1,06,74,049/- to the respondent-company, being the excess Customs duty paid by him, but denied the claim of interest made by the respondent-company under the provisions of Section 27A of the Act, presumably on the ground that the respondent-company had, under the said provision, become entitled to the payment of the said amount of refund only within three months from the date of the judgment of the Supreme Court i.e., 21-2-2011 and not from the date of filing of the application under Section 27 of the Act, and that direction for refund had been made on 13-4-2011, which was within three months of the order of the Supreme Court. Being dissatisfied with the non-payment of interest under Section 27A of the Act, which, according to the appellant would be due immediately after three months from the date of application claiming refund (i.e., 24-12-1998), the respondent filed an appeal against the order dated 13-4-2011 before the Commissioner of Customs (Appeals), which was dismissed by order dated 13-1-2012 holding that the respondent-company was not eligible for interest since the refund was sanctioned within three months from the date of the judgment of the Supreme Court and also on the ground that the amount to be refunded was with the Consumer Welfare Fund for substantial period. Aggrieved by the said order, the respondent-company filed a further appeal before the Tribunal, which by a detailed reasoned order, allowed the appeal on 21-5-2014. Challenging the said order of the Tribunal, this appeal has been filed by the Revenue raising the following substantial questions of law:

"i. Whether in case of consequential refund arising out of order of Appellate Authority, Tribunal, High Court or Supreme Court, the time taken in the legal process till the consequential order is issued is to be taken as delay in sanctioning the refund under Section 27 of Customs Act, 1962 and the department is liable to pay interest on refund amount for such delay?

ii. Whether the Explanation under Section 27A is to be read as Explanation relevant for order under Section 27(2) and not relevant for calculation of delay

under Section 27A ?

iii. Whether the Tribunal is right in creating legal fiction that in every case of consequential refund initially rejected on merits by the department, if such rejection is set aside by the appellate fora, the department is liable to pay interest from the date of original claim till the date of sanction notwithstanding the fact that the matter is not pending with the department but is pending with the Courts?

iv. Whether the Department would be liable to pay interest even when the refund amount was lying in the Consumer Welfare Fund for a substantial period?

v. Whether the Department would be liable to pay interest even for the period when the payment of refund was stayed by the Hon'ble High Court in the CSTA No. 4/2006?"

3. We have heard Sri C. Shashikantha, learned counsel for the appellant as well as Sri Ganapathi Hegde and Sri R.G. Sheth, learned counsels for the respondent and perused the record.

4. The entitlement of refund of customs duty deposited by the respondent on 4-6-1998 has been upheld upto the Supreme Court. The claim of the respondent-company initially was that, though it had deposited the customs duty on 4-6-1998, but in terms of the Notification 2-6-1998, it was not liable to pay the same as the items in question were exempted from payment of customs duty, and thus an application for refund was filed under Section 27 of the Act on 24-12-1998. For claiming the refund, the respondent had to wait for nearly three years when, on 24-10-2001, the initial order rejecting the application was passed. The Commissioner, though found that the respondent was entitled for the refund, yet did not refund the amount and directed the same to be deposited in the account of the Consumer Welfare Fund on the ground of unjust enrichment. Then, even when on 27-7-2005, the Tribunal allowed the appeal of the respondent-company with consequential benefits, yet the amount was not refunded and therefore, the matter was taken up by the Revenue before the High Court and further also before the Supreme Court, where the appellant-Revenue had been unsuccessful. It was then, after more than 12 years of filing of the application for refund, on 13-4-2011 an order was passed by the Assistant Commissioner for refunding the amount, but without interest.

5. Here, we may mention that initially itself it took nearly three years for the Department to process the application of the respondent for refund of customs duty and pass an order on the same, which, in our opinion, does not appear to be justified, but we however refrain from passing any further comments on this issue.

6. Even after the amount was found to be payable to the respondent-company, the appellant-Revenue did not pay the interest on the amount to be refunded. Admittedly, the respondent was deprived of the amount of over Rs. 1 Crore

which had been deposited by it, and was found refundable to the respondent-company. Earlier also, the appellant dragged on the matter up to the Supreme Court, and paid the amount only after more than 12 years when the matter was finalized by the Supreme Court. Now again, with regard to the interest part, even when the Tribunal had directed payment of interest from three months after the date of the application, till the date of payment [which order has been passed after relying on the Judgment of the Apex Court specifically on this point in the case of Ranbaxy Laboratories Ltd. Vs. Union of India (UOI) and Others, , yet the Department has not paid the amount and has chosen to challenge the same.

7. On merits all that learned counsel for the appellant has submitted is that the customs duty was required to be refunded within three months, which according to the appellant would be from the order dated 21-2-2011 passed by the Supreme Court, whereby the SLP of the appellant had been dismissed and thus the appellant would not be liable to pay any interest. In support of his submission, he relies on Explanation to Section 27A of the Act. It has also been contended that the appellant would not be liable to pay interest because for a substantial period, the amount was lying with the Consumer Welfare Fund, and further during the pendency of the appeal before the High Court there was a stay order granted.

8. Per contra, learned counsel for the respondent-company has submitted that even the said Explanation clearly provides that the liability to pay interest would be from three months after the date of the application for refund of customs duty which was filed by the assessee on 24-12-1998, and not from the date of the order passed for refund.

9. For proper appreciation of the issue involved in this case, perusal of Section 27A of the Act would be necessary, which is reproduced below.

"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 percent, and not exceeding thirty percent 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 when 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, the 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 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."

10. From plain reading of the said Section, it is clear, that interest would be payable if the amount is not refunded within three months from the date of the application. The rate of interest would vary from 5% to 30% per annum, as may be fixed by the Central Government by Notification from time to time. Explanation immediately after the proviso in the said Section only means that the liability to pay the amount would arise after the order of refund of the amount is finalized, either in appeal or by the Commissioner, Tribunal or the Court, but such liability would be from three months after the date of application. The same cannot be interpreted that the liability to pay interest would be from the date of the order of the Tribunal or the Court, which may be passed in appeal.

11. While considering a similar case under the Central Excise Act, the Apex Court in *Ranbaxy Laboratories Ltd.* (supra) has interpreted under Section 11BB as well as the Explanation of the said Section in the same manner as has been held by the Tribunal. The provisions of Section 11BB of the Central Excise Act, 1944 and Section 27A of the Customs Act are *pari materia* as the Sections in both the Acts, with the same wordings, were inserted by No. 22 of 1995. While considering the Explanation, the Apex Court held that the same "introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act.... The said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable." As such, the contention of learned counsel for the appellant, that the Explanation provides for payment of interest only after the final decision with regard to refund of Customs duty by the Tribunal or Court, does not have any force. The interest has to be paid from three months after the date of the application filed by the respondent. In the present case, the application was filed on 24-12-1998. Thus, the liability to pay interest would be from 24-3-1999 till the date of its actual payment in terms of the order dated 13-4-2011. The rate of interest would be as has been notified by the Central Government in its Official Gazette from time to time.

12. What we now find (which has also been contended by learned counsel for the respondent-Company) is that the appellant has been misinterpreting the law, and thereby depriving the respondent from its rightful claim of interest, even after the order for refund of the amount had been made upto the Supreme Court. Not only that, the interest has been denied to the respondent even though the order

directing payment of interest was made by the Tribunal on 21-5-2014, which was based on a decision of the Supreme Court. Merely because of the pendency of this appeal, though there was no stay order granted, the appellant has thus, without any valid reason, further delayed the payment of interest for a period of over 15 months from the date of the order of the Tribunal dated 21-5-2014. On having been questioned as to whether the appellant would stall recovery proceedings against any defaulting assessee merely if the assessee files an appeal and there is no stay order, the learned counsel for the appellant could not say that the Department would stall any such recovery in the absence of interim order passed by the competent authority or Court. If that be so, if no interim order was granted in favour of the Revenue in this appeal, it is not understood as to why the refund of interest was not paid to the assessee for these 15 months.

13. in such circumstances, we are of the opinion that the respondent would be entitled to costs or compensation for the high-handedness of the appellant, by initially not refunding the amount for over 12 years, and then refusing to pay the interest even after the order of the Tribunal, and dragging the respondent into litigation up to the High Court, although the matter was fully covered by the decision of the Apex Court in the case of Ranbaxy Laboratories Ltd. (supra).

14. As such, while holding that no substantial question of law arises in this appeal for determination by this Court, we dismiss this appeal but with the direction that besides the payment of interest from 24-3-1999 (which is three months after the date of application for refund of customs duty filed by the respondent) till the actual date of the payment, which shall be at such rates notified from time to time, the appellant shall further be liable to pay additional interest at the rate of 9% per annum (besides the notified interest) on the amount which is found liable for payment as on 13-4-2011, till its actual payment. All pending applications stand consigned to file.