

(2021) 03 CESTAT CK 0102

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 61904, 61905 Of 2018, 60527 Of 2019

M/s H L G Trading

APPELLANT

Vs

Commissioner Of Customs, C Ludhiana

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Customs Act, 1962 — Section 25, 25(1), 27, 27A

Citation : (2021) 03 CESTAT CK 0102

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Naveen Bindal, M.S.Dhindsa

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned orders wherein the refund claims filed under Notification No.102/2007-Cus dated 14.9.2007 were granted to the appellant but interest has not paid on delayed refunds as the same were released after 3 months of the filing of refund claims.

2. Heard both sides.

3. After hearing the parties, the only issue arises for consideration whether the appellant is entitled to claim interest on delayed refund under Notification No.102/2007-Cus dated 14.9.2007 or not?.

4. The said issue has been settled by this Tribunal in the appellant's own case for the earlier period vide Final Order No.61258-61265/2017 dated 13.7.2017 wherein this Tribunal observed as under:-

5. I have considered the submissions made by both sides. Para 4.3 of the Circular dated 28.04.2008 reads as under :-

"4.3 With the extension of time limit and the requirement to file claims on a monthly basis, Board feels that the number of refund claims should be manageable for disposal within the normal period of three months. Further, in

the absence of specific provision for payment of interest being made applicable under the said notification, the payment of interest does not arise for these claims. However, Board directs that the field formations shall ensure disposal of all such refund claims under the said notification within the normal period not exceeding three months from the date of receipt."

I find that, in the case of KSJ Metal Impex (P) Limited (*supra*), after considering the said Circular, the Hon'ble Madras High Court passed the following order:-

"10. The petitioner, therefore, is justified in filing refund application in terms of Section 27 of the Customs Act, 1962 and that is not in dispute. However, no order has been passed so far and the Court has already directed the respondents to process the refund application. In such a situation, the present circular has been challenged. On going through paragraph 4.3 of the circular, it is evident that the Board is of the view that there is no specific provision for payment of interest in the Notification No. 102/2007-Customs, dated 14-9- 2007. That reason is not correct as the grant of exemption under Section 25(1) of the Customs Act, 1962 is one facet. The claim for refund is contingent on complying with the requirement as specified in the notification. The exemption from payment of special additional duty as payable under Section 3(5) of the Customs Tariff Act, 1975 is exempted under Section 25(1) of the Customs Act, 1962. Therefore, the refund of duty paid will have to be read in terms of Section 3(8) of the Customs Tariff Act, 1975 and not otherwise. Therefore, the provision that is applicable for refund is Section 27 of the Customs Act, 1962. If the refund is not made as specified, then the consequences will follow with regard to interest.

11. Furthermore, the grant of exemption under Section 25(1) of the Customs Act, 1962 is an independent exercise of power by the Central Government and certain conditions have been imposed in the said notification for seeking refund, but the procedure for refund, as has already been highlighted, will fall under Section 27 of the Customs Act, 1962 as made applicable under Section 3(8) of the Customs Tariff Act, 1975. A conjoint reading of these two provisions makes it clear that the refund application should be filed and entertained only under Section 27 of the Customs Act, 1962 and there is no method or manner prescribed under Section 25 of the Customs Act, 1962 to file an application for refund of duty or interest. To state that no interest on delayed payment is contemplated in the notification issued under Section 25 of the Customs Act, 1962 is a misconception of the provisions of the Customs Act, 1962.

12. When Section 27 of the Customs Act, 1962 provides for refund of duty and Section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the authority cannot override the said provisions by a circular and deny the right which is granted by the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975. Therefore, paragraph 4.3 of the Circular No. 6/2008- Customs, dated 28-4-2008 is contrary to the statute and becomes totally inappropriate. When the circular is contrary to the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975, it has to be struck down as bad.

13. For the foregoing reasons, the writ petition is allowed and paragraph 4.3 of the Circular No. 6/2008-Customs, dated 28-4-2008 insofar as it seeks to restrict or obliterate the claim of interest on belated refunds granted in terms of Notification No. 102/2007-Customs, dated 14-9-2007 is quashed and the pending refund application of the petitioner shall be considered by the respondents in the light of Sections 27 and 27A of the Customs Act, 1962. No costs. Consequently, M.P. No. 1 of 2013 is closed."

5. Therefore, following the decision in the appellants own case for the earlier period, I hold that the appellant is entitled to claim interest of delayed refund after 3 months from the date of filing of refund claims.

6. With these observations, the appeals are allowed with consequential relief.

(Dictated and pronounced in the open court)