(2023) 12 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 42085, 42086, 42087, 42088 Of 2013

M/S. National Synthetics And Others APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 12-12-2023

Acts Referred:

Central Excise Act, 1944 — Section 11B(2), 11BB

Citation : (2023) 12 CESTAT CK 0027

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : Akshit Malhotra, Anandalakshmi Ganeshram

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. These appeals are filed against the common Order-in-Appeal Nos. 135 & 136/2013 dated 16.07.2013 and the common Order-in-Appeal Nos. 141 & 142/2013 dated 30.07.2013 passed by the Commissioner of Customs and Central Excise (Appeals), Tiruchirappalli whereby the first appellate authority has rejected the appeal of the assessees thereby upholding the denial of interest on the refund sanctioned.

2. Heard Shri Akshit Malhotra, Ld. Advocate, for the appellants and Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner, for the respondent. After hearing both sides, we find that a common issue is involved in all these appeals, and therefore, all the appeals are taken up for common disposal.

3. The details of the refund claims filed by the appellants are as under: -

? M/s. National Synthetics (Appeal Nos. C/42085 & 42086/2013)

Sl. No.

Date of filing of refund claim

Amount of refund claimed (in Rs.)

Date of Order-inOriginal

1.

01.10.2012

2,952,912.76

01.04.2013

2.

06.11.2012

1,754,866.30

01.04.2013

? M/s. International Business and Trade (Appeal Nos. C/42087 & 42088/2013)

Sl. No.

Date of filing of refund claim

Amount of refund claimed (in Rs.)

Date of Order-inOriginal

1.

01.10.2012

3,083,149.20

01.04.2013

2.

06.11.2012

1,401,603.90

01.04.2013

4. Facts are not in dispute and the scope of the above appeals lies on a very narrow compass; the only issue is: whether the appellants are entitled for the interest on refund, as claimed by them?

5. The following facts are relevant for our consideration: -

• Applications for refund of Additional Duty of Customs (SAD) were filed separately on 01.10.2012 and 06.11.2012 by both the appellants and as observed at paragraph 2 of the Orders-in-Original, the said refund applications were filed along with the documents specified thereunder.

• Orders-in-Original Nos. 784/2013 dated 01.04.2013, 785/2013 dated 01.04.2013, 786/2013 dated 01.04.2013 and 787/2013 dated 01.04.2013 were passed separately, though dated 01.04.2013, however, sanctioning the entire refund as claimed.

6. It appears that feeling aggrieved by the non-sanctioning of interest on the refunds so granted, the appellants preferred appeals before the first appellate authority and the first appellate authority vide common impugned Order-in-Appeal dated 16.07.2013 and common impugned Order-in-Appeal dated 30.07.2013 holds that the required documents were filed by the appellants only on 11.02.2013; the lower authority having sanctioned the refunds vide Orders-in-Original dated 01.04.2013, which was very much within the prescribed time-limit of three months as per the Board's Instruction in Circular No. 6/2008 dated 28.04.2008 and therefore, there was no question of any delay in passing the orders and hence, the question of interest as claimed did not arise at all.

7. It is against the above rejection that the present appeals have been filed before this forum.

8. The Ld. Advocate would contend at the outset that the very same issue has been decided by this very Bench of the CESTAT in the appellants' own case in Final Order Nos. 40727-40728 of 2016 dated 03.05.2016 in Customs Appeal Nos. 41509 and 41510 of 2015 and this Bench, after observing that interest was payable for delay, however, had remanded the cases back to the file of the original authority. He would also refer to paragraph 5 of the Final Order (supra) to contend that the Board Circular relied upon by the Revenue has been set aside by the Hon'ble Madras High Court in the case of M/s. KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.), M.F. (D.R.) [2013 (294) E.L.T. 211 (Mad.)]

9. Per contra, the Ld. Assistant Commissioner relied on the findings of the lower authorities. She would reiterate that the refund has been sanctioned within three months, which is also in terms of the requirement of Section 11BB of the Central Excise Act, 1944 and therefore, the appellants' claim for interest is misconceived.

10. We have heard the rival contentions.

11. There is no denial to the fact that the original refund applications were filed on 01.10.2012 and 06.11.2012 enclosing various documents, as extracted at paragraph 2 of the Orders-in-Original. It appears that queries dated 20.12.2012 were raised by the Superintendent (Refunds) requiring the filing of the certificate issued by the VAT authority with official seal or signature, in response to which the appellants submitted the documents as indicated vide its communication dated 11.01.2013. It appears that there was a further query vide communication dated 06.02.2013 requiring even the VAT returns along with Annexure-II thereto, which was duly complied with by the appellants. The lower appellate authority has clearly proceeded on the compliance date, which according to him is 11.02.2013, to hold that the refund orders have been passed within three months from that date, which, according to him, are very much within the

prescribed period.

12.1 We are afraid, that is not the correct position of law since Section 11BB of the Central Excise Act is clear as to the liability to pay interest from the date of expiry of three months from the date of receipt of application for refund. For convenience, the relevant portion of Section 11BB is reproduced hereinbelow:

"Section 11BB. Interest on delayed refunds. — If any duty ordered to be refunded under sub-section (2) of section 11B to any 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 per cent] and not exceeding thirty per cent 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 :"

12.2 The effect of Section 11BB is that when any duty ordered to be refunded, is not refunded within three months from the date of receipt of application, then there shall be paid interest at the applicable rates from the date immediately after the expiry of three months from the date of receipt of application for refund until the date of refund of such duty.

12.3 The liability of the Revenue to pay interest under Section 11BB has also been upheld by the Hon'ble Apex Court in the case of Union of India v. M/s. Hamdard (Waqf) Laboratories [2016 (333) E.L.T. 193 (S.C.)]. The Hon'ble Apex Court, after referring to its earlier decisions in the cases of M/s. Ranbaxy Laboratories Ltd. v. Union of India [2011 (273) E.L.T. 3 (S.C.)] and M/s. Mafatlal Industries Ltd. v. Union of India [1997 (89) E.L.T. 247 (S.C.)], has also reiterated the above position.

13. In view of the above discussions, we are of the view that the appellants are entitled to the interest on refund since the claim of the appellants is relatable to the date of its applications, and not the date of compliance with the query raised by the Revenue. Going by the said dates of applications, the refund sanctioned vide Orders-in-Original dated 01.04.2013 are clearly beyond the prescribed period of three months. Hence, we do not find any reasons to sustain the impugned orders of the first appellate authority, for which reason the impugned Order-in-Appeal Nos. 135 & 136/2013 dated 16.07.2013 and Order-in-Appeal Nos. 141 & 142/2013 dated 30.07.2013 are set aside.

14. Resultantly, the appeals are allowed with consequential benefits, if any, as per law.