(2021) 03 CESTAT CK 0067

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 40100 Of 2020

M/s. SDS Ramicides Crop Science Pvt. Ltd. — APPELLANT

Vs

Commissioner Of Customs Chennai II Commissionerate — RESPONDENT

Date of Decision : 24-03-2021

Acts Referred:

Customs Act, 1962 — Section 4, 27A, 27(2), 111(d), 112(a), 125, 129EE
Insecticides Act, 1968 — Section 17
Constitution Of India, 1949 — Article 226

Citation : (2021) 03 CESTAT CK 0067

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : G. Derrick Sam, Sridevi Taritla

Final Decision : Allowed

Judgement

1. The issues that arises for consideration in this appeal are as under:-

(a) Whether the appellant is eligible for interest on refund of redemption fine and penalty; and

(b) Whether appellant is eligible for interest on the refund of pre-deposit?

2. Brief facts are that the appellant imported goods declared as Cartap Hydrocholoride Technical 98% under warehouse Bill of Entry, dated 19.03.2015. On scrutiny it was found that the source of import mentioned in the invoice was not figuring in the Certificate of Registration issued to the appellant by the Central Insecticides Board Registration Committee. The appellant also failed to comply with the conditions of such certificate. The import can be allowed only for the insecticide which is originating from the source of import as mentioned in the Certificate of Registration. After adjudication, the original authority vide Order dated 25.07.2016 confiscated the goods under section 111(d) of Customs Act, 1962 read with section 17 of the Insecticides Act, 1968. An option was given to the appellant to redeem the goods for the purpose of re-export on payment of

redemption fine of Rs.15 lakhs as under section 125 of the Customs Act, 1962. Besides this, penalty of Rs.5 lakhs was imposed under section 112(a) of the Act ibid.

3. Aggrieved by the order, the appellant preferred appeal before the Commissioner (Appeals), who vide order dated 18.10.2016 rejected the appeal filed by the appellant. A further appeal was preferred before CESTAT, Chennai and vide Final Order No.41179/2017, dated 07.07.2017, the Tribunal held that the imposition of redemption fine for release of goods for the purpose of re-export is not justified. It was also observed that there is no grave violation and that the objection taken by Revenue is hyper technical, for reason which the penalty imposed was also set aside. Consequently, the appellant requested for refund of redemption fine, penalty and as well as the pre-deposit made by them while filling the appeal before the Tribunal. These amounts were refunded without interest vide Order-in-Original dated 25.05.2018. The appellant preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide order impugned herein rejected the appeal filed by the appellant holding that no interest is payable. Hence, this appeal.

4. The learned counsel Shri G. Derrick Sam appeared and argued for the appellant. It is submitted that under 4 section 27A of the Customs Act, 1962 interest has to be paid on delayed refund of duty. The department has imposed redemption fine for release of goods for the purpose of reexport, which is illegal and, therefore, appellant is eligible for interest on the redemption fine refunded. The penalty of Rs.5 lakhs imposed by authorities below was set aside by the Tribunal holding that there is no grave violation committed by the appellant. The appellant had already reexported the goods and suffered much financial loss. To compensate the redemption fine and penalty paid by appellant which was totally unnecessary, the department has to grant interest on these amounts. To support his argument, he relied upon the decision in the case of M/s. Marmo Classic Vs Union of India reported in 2003 (157) E.L.T.520 (Bom.) and Union of India Vs M/s. Pansari Vegetables and Oils Pvt. Ltd., reported in 2016 (333) E.L.T. 55 (Cal.).

5. The second issue is with regard to the claim of interest on the delayed refund of pre-deposit. He adverted to section 129EE of the Customs Act, 1962 and submitted that after the amendment in 2014, the pre-deposit has to be refunded along with interest from the date of deposit till the payment of refund. The appellant had made pre-deposit of Rs.37,500/- on 07.09.2016 and later Rs.12,500/- on 29.12.2016, while preferring the appeal before the Tribunal. The Board's Circular No.984/08/2014-Cx., dated 16.09.2014 clarifies that pre-deposit has to be refunded along with interest from the date of making the deposit to the date of refund. He prayed that the appeal may be allowed.

6. The learned Authorised Representative for the Revenue Ms. Sridevi Taritla supported the findings in the impugned order. With regard to the first issue of redemption fine and penalty, she submitted that section 27A of Customs Act, does not envisage payment of interest on refund of redemption fine and penalty.

The section is very clear that interest has to be paid only on delayed refund of duty. As per section 125 of the said Act, when the goods are confiscated an option is given to redeem the goods by payment of fine. The proviso to section 125 states that the redemption fine shall not exceed the market price of the goods confiscated. The appellant has himself chosen to take advantage of this option and has voluntarily paid the redemption fine. He cannot turn around and then claim interest. The redemption fine is calculated on the Margin of Profit of the goods confiscated, whereas, the liability to pay duty is a statutory liability. Thus, redemption fine is distinct and different from duty and, therefore, cannot be considered to be on par with the duty payable on the goods. Similarly, the penalty imposed under section 112(a) is imposed for violations stated therein. Such penalty cannot gather interest when refunded. When there is delay in payment of duty by an assessee, he is liable to pay interest for the delayed payment. Even if there is delay in paying the penalty imposed, it would not attract interest. The very same logic has to be applied in case of refund of penalty also. She also submitted that the case laws relied by the appellant would not be applicable to the facts of this case. She prayed that the appeal may be rejected.

7. Heard both sides.

8.0 The first issue is with regard to the non-sanction of interest on the refund of redemption fine and penalty. It is correct that the Tribunal has set aside the redemption fine and penalty vide Final Order dated 07.07.2017. Consequently, refund of redemption fine and penalty has been sanctioned by the original authority. Such refund has been granted under section 27A of the Customs Act, 1962. The said section reads as under:-

"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 subsection

(1) of that section, there shall be paid to that applicant interest at such rate, not below five percent 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. Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of 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 appellant 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 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"

It is stated therein that if any duty ordered to be refunded under sub-section (2) of section 27 is not refunded within three months from the date of receipt of application, the applicant would be eligible for interest. There is no mention of payment of interest on redemption fine and penalty that is ordered to be refunded. The learned counsel has relied upon the decision of Hon'ble High Court of Bombay in the case of M/s. Marmo Classic Vs Union of India (supra) as well as the decision of the Hon'ble High Court of Calcutta Union of India Vs M/s. Pansari Vegetables and Oils Pvt. Ltd., (supra). Both these judgments arise out of Writ Petitions. In para 13 of the judgment in the case of M/s. Marmo Classic, in para 13, the learned counsel for petitioner has requested to grant interest on redemption fine and penalty as per discretional power of the Hon'ble High Court conferred under Article 226 of the Constitution of India. In para 27 also, the Hon'ble High Court has granted interest on the redemption fine/penalty by exercising its writ jurisdiction. The relevant paragraph is reproduced as under:-

27. In this case, claim for refund was not at all in dispute. As a matter of fact, it was obligatory on the part of the Revenue to refund the said claim in pursuance of the order of the Tribunal dated 16th April 2002. In spite or sanction of refund order and in spite of executing affidavit-cum-indemnity bond, the Revenue refused to hand over refund cheque which compelled the petitioners to approach this Court. Had the respondents paid the amount of refund, petitioners would nt have approached this Cour. The prayer for stay made before the Tribunal was rejected by it. During the pendency of the reference proceedings, there is no provision for grant of stay to the order giving rise to reference. In these circumstances, there was absolutely no justification for the Revenue to delay refund to the petitions. All the other similarly circumstanced assessees were paid their refund claims arising out of identical order without keeping any reservation or without seeking any security. Then in that event, question arises as to why petitioners were not extended the same treatment by the Revenue. As a matter of fact. judgments against which references had been filed were based on its earlier judgment of the very same Tribunal in the case of Jai Bhagwati Impex Pvt. Ltd., against which S.L.P. was dismissed. Therefore, it was clear that reference was sought against the judgment and order of the Tribunal which was accepted by the Revenue. This Court, normally does not entertain petition under Article 226 of the Constitution of India to enforce civil liability but, where amount of claim was not in dispute and when similarly circumstanced persons were given refund, there was no reason for the Revenue to withhold the amount to which petitions are entitled. The Revenue was expected to obey and follow the order of the Tribunal. Tendency on the part of the Revenue not to obey the order of the Trbiunal and to protract litigation, so as to delay refund claims, is on rise and in every alternate case of refund, the claimants are required to approach this Court for refund. In these circumstances, in our opinion, the petitioners were wrongfully deprived of (SIC) refund claim by the Revenue. It is no doubt true, as

submitted by Mr. Desai, learned Counsel for the Revenue, that the Tribunal did not award interest. The argument of Mr. Desai, that there is no provision in the Customs Act for payment of interest on redemption fine and personal penalties imposed, is misplaced in view of the fact that the amount of redemption fine and penalty was reduced by Tribunal. Then, in that event, to the extent of the amount, it ceased to be amount of redemption fine and penalty and it becomes refundable which can conveniently be termed as the property of the petitioners. As such, the said property could not have been withheld by the Revenue by delaying refund claim to which the petitioners were entitled. It is no doubt true that powers of this Court in writ jurisdiction is required to be exercised keeping in view the self imposed restriction but at the same time if a person is deprived of his right to use his money, such derivation has to be compensated as held by the Apex Court in the case of L.I.C. v. Gangadhar Ranade, . In this view of the matter, the petitioners were deprived of his liquidity for no justifiable reason. Thus, we accept the submission of the learned Counsel for the petitioners and grant simple interest to the petitioners from the dated of the petition till dated of payment i.e. from 2nd August 2002 to 27th August 2002 at the rate of 6% per annum as was awarded (SIC) this Court in the case of Shri Balaji Automobiles (Supra), if paid within 60 days from the date of receipt of writ of this judgment, otherwise the refund amount shall carry interest @ 10% p.a. instead of 6% p.a. as granted herein.

Accordingly, petition is allowed. Rule is made absolute with no order as to costs.

8.1 Similarly, in the case of M/s. Pansari Vegetables and Oils Pvt. Ltd., (supra), the Hon'ble High Court has granted interest by invoking the extraordinary jurisdiction under Article 226. The Tribunal is a creature of Statute and is bound by the provisions under section 27A of the Customs Act, 1962. The arguments put forward by the learned Authorised Representative that there is no provision in the Customs Act to grant interest on redemption fine and penalty also merits consideration. For this reason, I am of the opinion that the view taken by the authorities below in rejecting the claim of interest on redemption fine and penalty, does not warrant any interference. The first issue is found in favour of the Revenue.

8.2 The second issue is with regard to the claim of interest on the delayed pre-deposit. Section 129EE as well as the Board's Circular makes it clear that the appellant is eligible for interest on delayed refund of pre-deposit. The rejection of claim of interest on delayed pre-deposit is unjustified and the same requires to be set aside. I hold that the appellant is eligible for interest on refund of delayed pre-deposit from the date of making the deposit [i.e., Rs.37,500 on 07.09.2016 and Rs.12,500 on 29.12.2016] till the refund of pre-deposit. The second issue is held in favour of the appellant.

9.0 From the foregoing, the impugned order is set aside to the extent of granting interest on the delayed refund of pre-deposit. Appeal is party allowed in above terms with consequential relief, if any.

(Pronounced in open court on 24.03.2021)

