

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51301 of 2023 [SM]

[Arising out of Order-in-Original/Appeal No. CC(A)CUS/D-1/ACC/EXPORT/4724/2022-2023 dated 28.09.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Churchit International

...Appellant

B-1/223, Lajpat Nagar-1,
New Delhi - 110024

VERSUS

**Commissioner of Customs (Export),
New Delhi**

...Respondent

New Customs House,
Near IGI Airport,
New Delhi - 110037

APPEARANCE:

Shri Pramod Tiwari and Shri Prachit Mahajan, Advocates for the Appellant
Shri Mahesh Bhardwaj, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 07.05.2024
DATE OF DECISION: **06.09.2024**

FINAL ORDER No. 58537/2024

DR. RACHNA GUPTA

The issue pertains to refund of amount of interest paid on the amount collected during course of investigation which was paid much before issuance of Show cause Notice. The principle amount was ultimately refunded since no demand was ever confirmed against the appellant. However, the issue of refund of amount of interest was left open to be decided by refund sanctioning authority.

2. The brief facts culminating into the present proceedings are that a case of ineligible duty drawback was booked by DRI(HQ), New Delhi against appellant. In this regard, five (05) Show Cause

Notices were issued by the various Commissionerate between 03.12.2015 to 24.03.2018. The Appellant was made to deposit Rs. 50,00,000/- involuntarily under threat of arrest during investigation on 18.03.2014. The proceedings initiated vide the above SCNs were dropped by the common Adjudicating Authority vide Order-in-Original No. 183/2019 dated 14.10.2019. Thereafter, M/s. Churchit International filed the application for claiming refund of amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) in the office of the Commissioner of the Customs, ICD TKD, Delhi on 22.01.2020, which was transferred to Air Cargo, NCH. The Assistant Commissioner of Customs vide Order-in-Original No. 04/2021 dated 02/03/2021 rejected the refund claim of Rs.50,00,000/- for want of Original TR-6 Challan. Aggrieved by the impugned Order dated 02/03/2021, the appellant filed an Appeal before Commissioner (Appeals) whereas vide Order-in-Appeal dated 15.09.2021, learned Commissioner (Appeals) set aside Order-in- Original No. 04/2021 dated 02/03/2021 and held that rejection of refund claim is not sustainable. Further it was held that issue of interest is left open to be decided by refund sanctioning Authority. Thereafter, Assistant Commissioner of Customs (Refund) vide Order-in-Original No. 045/2021 dated 24/12/2021 allowed the refund of Rs. 50,00,000/- but had not granted interest on the said amount. Aggrieved by the same the appellant has filed appeal before Commissioner (Appeals), whereas Ld. Commissioner has sanctioned the interest from date of deposit till date refund however, has ordered that interest is payable as applicable for delayed refund.

3. Aggrieved on account of the rate of interest, the appellant has filed the present appeal. Learned counsel for the appellant has mentioned that order of Commissioner (Appeals) is liable to be set aside on following grounds:

(a) The Commissioner (Appeals) in his Order-in-Appeal bearing No. 4724/2022-2023 dated 28.09.2022 directed the refund sanctioning authority to allow payment of interest from the date of deposit till the final payment was made with applicable rates of interest (as applicable for delayed refund).

(b) The Central Government vide Circular No. 984/8/2014-CX., dated 16.09.2014 has made provisions for interest on the pre-deposited amount by as assessee which reads as:

*"5.1 Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate **from the date of making the deposit to the date of refund** in terms of Section 35FF of the Central Excise At, 1944 or Setion 129EE of the Customs Act, 1962."*

(c) Any deposit in the hands of department has to be refunded with interest from the date of deposit in terms of Section 129EE.

d) The Commissioner (Appeals) has cited various decisions sanctioning interest @ 12% however, in the order portion has sanctioned interest as applicable for delayed refund.

e) In interest of justice, equity and fair play, the appropriate rate of interest would be as sanctioned by Division bench in **Parle agro in final order no. 70180-70181/2021 dated 25.05.21** in view of Apex court ruling in case of **Sandvik Asia Ltd [2006(196)ELT**

257 (SC)]. Finally while relying upon other decisions as follows, the order under challenge is prayed to be set aside and appeal is prayed to be allowed:

(i) Kuil Firework Industrial Vs. Collector of Central Excise reported as 1997 (95) E.L.T. 3 (SC).

(ii) Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex., Cus. & CGST, Delhi reported as 2021 (378) ELT 293 (Tri.-Del.)

(iii) Pr. Commr. of CGST, New Delhi Vs. Emmar Mgf Construction Pvt. Ltd. reported as 2021 (55) GSTL 311 (Tri.-Del.)

(iv) M/s. Digipro Import and Export Pvt. Ltd. Vs. Union of India reported as 2017 (350) ELT 145 (Del.)

4. Learned Departmental Representative on the other hand has mentioned that Commissioner (Appeals) has meticulously examined the issue and rather has sanctioned the interest though @ 6% (as was applicable) that too from the date of deposit. Hence there is no infirmity in the order. Reiterating the findings of Commissioner (Appeals), the appeal is prayed to be dismissed.

5. Having heard both the parties and after perusing the record it is worth noting that amount of Rs.50,00,000/- was deposited much before issuance of show cause notice and adjudication order did not confirm any demand against the appellant and thus the said amount was never appropriated against any demand. There was no demand against the appellant and accordingly such collection of amount was without authority of law. This position of law is now

settled by various courts. I rely upon the case of **Parle Agro Pvt. Ltd. reported as 2018 (360) ELT 1005 (T-All.)** and **Omjai Bhavani Silk Mills (P) Ltd. reported as 2009 (243) ELT 560 (T-Bang.)**. Rely upon the decision of this Tribunal in the case of **M/s. Toyota Kirloskar Auto Parts Pvt. Ltd. reported as 2009 (240) ELT 124 (Tri.-Bang.)** in which is held that:

"The amount is not due and it had also been collected much before the adjudication order, the amount can only be treated as deposit. The officer of DRI had clearly no jurisdiction to demand and collect any amounts from the assessee, in view of the fact that they are not vested with powers of an Assessing Officer. Furthermore, if we were to accept this argument of the learned counsel, then it would tantamount to allowing the Revenue to take advantage of its own wrong. This apart, the Revenue has enjoyed the benefits of the money collected from the assessee on account of purported liability to pay duty, which was ultimately proved to have been wrongly foisted. Therefore, in our opinion, it only be right that the Revenue be called upon to pay interest to the assessee because, by its nature, any such collection of money be Revenue can only be termed as exaction under ostensible authority of law."

6. From the decision it is clear that any amount received during investigation is Revenue Deposit hence cannot be retained for want of any authority of law to retain such amount. Unless there is valid demand against the depositor, it must be refunded with interest from the date it was wrongly collected. Reliance is also placed on Hon'ble Supreme Court's judgment in the case of **kuil Fireworks Industries Vs. Collector of Central Excise reported as 1997 (95) E.L.T. 3 (SC)**, wherein Hon'ble Supreme Court ordered pre-deposit made by assessee to be returned with 12% interest since the demand raised by the Collector was quashed by the Supreme Court. But Commissioner (Appeals) has allowed, the appeal with

the directions to the Refund Sanctioning Authority to allow payment of interest from the date of deposit till the final payment was made with applicable rate of interest (as applicable for delayed refund) during relevant period. Thus no rate of interest is mentioned in concluding Para where in the entire order eligibility for interest @12% has been discussed.

7. These observations when seen in the light of above quoted decisions, it is clear that Section 11B/11BB of Central Excise Act is not applicable to the given set of circumstances. This Tribunal in the case of **M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, GST (supra)**, wherein following findings have also been endorsed:

"30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

31. Section 11D of the Excise Act deals with duties of excise collected from the buyer to be deposited with Central Government. It provides that every person who is liable to pay duty and has collected any amount in excess of the duty assessed from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

32. Section 11DD of the Excise Act deals with interest on the amount collected in excess of the duty. It provides that where an amount has been collected in excess of the duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate interest has not been prescribed, when revenue deposit is required to be refunded."

The Tribunal in the said case had allowed the interest at the rate of 12% on the refund amount from the date of deposit till the date of payment thereof.

8. I further observe that Hon'ble Supreme Court also in the case of **Commissioner of Customs (Import), Raigad vs M/s. Finacord Chemicals (P) Ltd.** in Civil Appeal no. 1633-1638 of 2004 as decided on 08.04.2015 reported as 2015 (319) E.L.T. 616 (S.C.) also while discussing the liability of the department to pay the interest has referred to Departments' own circular dated 02.01.2002 wherein the Board clarified that the matters of refund other than the amount of duty would not be covered under the provisions of Section 11B of Customs Act or Section 35FF of Central Excise Act. It was held by the Hon'ble Apex Court that in such cases of refund even the concept of unjust enrichment is not applicable. Learned Apex Court has relied upon its decision in SLP titled as **Union of India vs Suidhe Ltd.** in which decision of Bombay High Court in **Suidhe Ltd. vs Union of India reported as 1996 (82) ELT 177** has been upheld. The Bombay High Court has observed that in case of deposits which were not in the form of duty, provisions of 11B of Customs Act will have no applicability. The deposits made under Section 35FF since is not the payment of duty, Section 11B will not be applicable.

9. Another circular of department bearing No. 802/35/2004 CX dated 08.12.2004 was also being considered by the Apex Court in the above mentioned judgment dated 08.04 2015. In that circular the Board emphasised that the amounts other than the amount of duty if deposited it should be refunded immediately as non-returning of deposits attract interest that has been granted by the Courts in number of cases. One similar case of Hon'ble Apex Court is the decision of **Sandvik Asia Ltd. reported as 2006 (196) ELT 257 (SC)** wherein it was held that the amount deposited under Section 35FF of Central Excise Act as far as the payment of interest is concerned shall be applicable only in the cases for such deposits as have been made under Section 35F of the Act. As already observed in the present case, the amount in question is neither the amount of duty nor is the amount of pre deposit, the amount in question is merely a deposit with the Revenue which the Revenue had no authority to retain as the appellant was the owner thereof.

10. The said decision of Hon'ble Apex Court in the case of **Sandvik Asia Ltd. (supra)** is now the law of land in terms of Article 141 of the Constitution of India. The Hon'ble Apex Court, in the said case, has observed as follows:

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had

been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. RamanathaAiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the

rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

11. Hon'ble High Court Delhi also in the case of **M/s. Digipro Import and Export Pvt. Ltd. Vs. Union of India reported as 2017 (350) ELT 145 (Del.)** has observed as under:

"It is indeed extraordinary that officers at the level of a Superintendent would have such vast powers of collecting duty on the spot without even a quantification of the duty amount preceded by a Show Cause Notice (SCN). No attempt has been made to demonstrate that the above is a procedure known to law. It actually points to the opposite. And that is what makes it inexcusable....

.....This illegal practice adopted by the Anti-Evasion Department of Central Excise requires a deeper investigation. The Court has every reason to believe that this has come to light only because the Petitioner has approached this Court. This practice is perhaps being adopted in a number of instances which are yet to come to the notice of the Court. There will be serious ramifications if this practice is allowed to continue unchecked. In the first place, it must be realised that the officers of the Anti-Evasion Wing of the Central Excise Department have to function within the four corners of the law. They are bound by not only the C.E. Act and the Rules made thereunder but all the notifications/circulars/instructions issued from time to time including those issued by the CBEC. There is no scope at all to collect duty and that too without even quantifying the extent of duty evasion".

12. From the above discussion about various decisions, it is clear that Section 11B and 11BB of Central Excise Act will not be applicable to the amount in question. The assessee is entitled for interest on the amount deposited during investigation. Otherwise also, as per the Article 300A of Constitution of India also, no person shall be deprived of his property, save by authority of law. Once the demand proposed under five show cause notices is set aside, it becomes clear that the money deposited continues to be the appellant's property. He cannot be deprived of the same and is entitled for benefits arising out of said property. Hence interest accrued on the amount in question during the period it was in fixed deposit is the property of the owner of the amount i.e. the appellant herein. It was otherwise, involuntary deposited.

13. Following the said law of land, I hold that the appellants are entitled to claim the interest on the amount as has been refunded in their favour that too to be paid from the date of payment of initial amount till the date of its refund as has already been held by Commissioner (Appeals).

14. Now comes the question about the rate at which the such interest has to be awarded. From the several provisions of Central Excise Act, as quoted above, it is observed that the rate of interest has to be notified by the Central Government from time to time. I take note of following notifications:

(i) The Notification No. 15/2016-CE dated 01.03.2016 issued under Section 11AA of Central Excise Act vide which the Central

Government has fixed the rate of interest at 15% per annum for the purpose of said section.

(ii) The Notification No. 67/2003-CE dated 12.09.2003 issued under Section 11BB vide which the Central Government has fixed the rate of interest at 6% per annum for the purpose of said section.

(iii) The Notification No. 68/2003-CE dated 12.09.2003 issued under Section 11DD vide which the rate of interest fixed by the Central Government is at 15% per annum for the purpose of the said section.

(iv) The Notification No. 6/2011 dated 01.03.0211 under Section 11AB wherein Central Government has fixed the rate of interest at 18% per annum for the purpose of the said section.

From the above notifications, issued under the respective sections of the Act, it becomes clear that the rate of interest varies from 6% to 18%, subject to notification in that respect.

15. This Tribunal in the case of **M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida (vice-Versa) reported as 2021 (5) TMI 870 – CESTAT ALLHABAD** has held that in the light of the above discussed notifications the grant of interest at the rate of 12% per annum seems to be appropriate. Tribunal Delhi (CESTAT) also in the case of **Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex., Cus. & CGST, Delhi reported as 2021 (378) ELT 293 (Tri.-Del.)** wherein the adjudicating authority was ordered to grant interest @ 12% per annum from the date of deposit till the date of refund. The relevant Para is reproduced as under:

"I further take notice that Division Bench of this Tribunal in Parle Agro (P) Ltd. Vs. Commissioner, CGST - 2021-TIOL-306-CESTAT-ALL, wherein interest on pre-deposit (made during investigation) have been enhanced from 6% to 12%, following the ruling of the Apex Court in Sandvik Asia Ltd. Vs. Commissioner - 2006 (196) E.L.T. 257 (S.C.). I further direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the date of refund. Such interest should be granted within a period of two months from the date of receipt or service of the copy of this order."

16. Similar view was taken in case of **Pr. Commr. of CGST, New Delhi Vs. Emmar Mgf Construction Pvt. Ltd. reported as 2021 (55) GSTL 311 (Tri.-Del.)** wherein it was held that amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund. Further, it is directed that the adjudicating authority shall disburse the amount of interest @ 12% per annum forthwith.

"8. Considering the rival contentions, this appeal by the Revenue is dismissed. Further, it is directed that the Adjudicating Authority shall disburse the amount of interest @12% per annum forthwith, within a period of 45 days from the date of receipt of the copy of this order, as held by Division Bench of this Tribunal in Parle Agro (P) Ltd., (supra)."

17. Reliance is placed on Hon'ble Supreme Court's judgment in the case of **Kuil Firework Industrial Vs. Collector of Central Excise reported as 1997 (95) E.L.T. 3 (SC)** wherein Hon'ble Supreme Court ordered pre-deposit made by assessee to be returned with 12% interest since the demand raised by the collector

was quashed by the Supreme Court. Relevant paragraph is as follows:

"7. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside and the demand raised by the Assistant Collector of Central Excise on the basis of the show cause notice dated February 16, 1988 is quashed. The appellant had paid a sum of Rs. 1,50,000/- towards the impugned demand of excise duty on March 30, 1991 and a further sum of Rs. 50,000/- was paid by the appellant in pursuance of the interim order of the Tribunal dated January 27, 1992. In pursuance of the order dated April 25, 1997 passed by this Court the appellant has furnished a bank guarantee of Rs. 1,50,000/-. Since the demand has been quashed, it is directed that the amount of Rs. 2,00,000/- which has been deposited by the appellant be refunded to the appellant with interest @ 12% and the bank guarantee of Rs. 1,50,000/- furnished by the appellant shall stand discharged. No order as to costs."

18. In view of the above settled proposition, the payment made by the appellant at the time of investigation, in absence of any SCN for the same, cannot be held to be the payment against the demand raised by the Department without even going into the merits of the nature of demand. Though no notification, if any, is brought to notice by the department, irrespective, in view of the decisions of Hon'ble Supreme Court and others as discussed above, I hold that the appellant is eligible for refund of interest at the rate of 12%. Reliance in this regard is also placed on decision of Hon'ble Tribunal in case of **M/s. Bird Audio Electronics Vs.**

Commissioner of CGST [FINAL ORDER No. 50172/2022 dated 28/02/2022]:

"Relying upon the decision of this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. vs. Commissioner CGST, Noida reported as 2021 TIOL 306 - CESTAT and upon another decision of this Tribunal in Final Order No. 51266/2019 announced on 04.09.2019 in Excise Appeal No.51370/2018 that I order that the amount of the claim in question be refunded alongwith the interest at the rate of 12%."

19. Consequent to the entire above discussion, the findings of the order under challenge are upheld with respect to holding appellant entitled for getting refund of the amount along with interest. However, it is held that the appellant is entitled to have interest on the amount of refund sanctioned at the rate of 12% per annum to be calculated from the date of the deposit of the amount till the date refund thereof. Resultantly, the present appeal is hereby allowed.

[Order pronounced in the open court on **06.09.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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