

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 11948 of 2015-SM

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-047-15-16 dated 01.09.2015 passed by Commissioner of CUSTOMS-KANDLA]

Esdee Paints Limited

Plot No. 106-108 & 156-158, Sarkhej Bawla Road, AT-
Moraiya, Sanand, AHMEDABAD
GUJARAT- 382445

.... Appellant

VERSUS

Commissioner of Customs, Kandla

Custom House, Near Balaji Temple,
Kandla, Gujarat

.... Respondent

APPEARANCE :

Shri Gunjan Shah, Chartered Accountant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

DATE OF HEARING : 12.12.2023

DATE OF DECISION: 13.12.2023

FINAL ORDER NO. 12746/2023

SOMESH ARORA :

Matter pertains to excess duty of customs having been paid on the payment of Customs gateway as the initial payment made could not generate receipt as on 12.10.2012 i.e. the date of payment. Therefore, appellant made another attempt on the same date and later both the receipts were generated which are placed at Page 24 and Page 25 of the paper book time of both being 4.46PM and 4.41PM for payments made at 1200Hrs. Appellants kept pursuing with the bank and finally on issuance of letter dated 10.04.2014 and on the basis of Chartered Accountant certificate, filed refund application on 02.05.2014 i.e. beyond the period of limitation prescribed under Section 27 of Customs Act, 1962.

2. While the appellants have relied upon Hon'ble Gujarat High Court decision in the case of *UPL Limited vs. UOI* reported in 2022 (279) ELT 183 (Guj.) dated 28.07.2021 emphasizing double amount of customs duty being paid due to bonafide mistake, refund is to be treated of amount paid without authority of law and limitation prescribed under Section 27 of Customs Act, 1962 but reasonable time shall apply. They also relied upon the decision as reported in 2022 (61) GSTL 364 (Tri. Mad.) dated 02.12.2021 in the matter of *S. Sakthikumar vs. Commissioner of GST & Central Excise, Madurai* as well as Hon'ble Madras High Court reported in 2018 (18) GSTL 410 (Mad.) in the matter *3E Infotech vs. CESTAT, Chennai* on the same point. As against this, learned AR seeks to place reliance on the matter *Cummins Technologies India Pvt. Limited vs. UOI* reported in (2023) 10 Centax 323 (Bom.) dated 28.08.2023 to emphasize that even in case the customs duty was paid by mistake, if the mistake is not bonafide and due diligence is not exercised in approaching the Court, refund is not grantable.

3. Considered the rival submissions. This Court finds that the decision relied upon by learned AR in the matter of *Cummins Technologies India Pvt. Limited vs. UOI* pertaining to not pursuing remedies or due diligence was in that matter pertained to statutory period of filing appeal before the Hon'ble Bombay High Court having expired and the question therefore of entertaining writ was refused. Additionally the mistake was not considered bonafide and due care and diligence was found lacking therefore the Hon'ble Court viewed that claim was correctly rejected on the ground of limitation as per applicable Section 27 read with Section 128 of Customs Act, 1962. As against this, Hon'ble Gujarat High Court considered two years a reasonable period when the duty was paid by mistake. In the instant case, this court finds that payment was made twice due to technical glitch in the Customs

payment system. The appellants to file refund pursued the matter with bank to get confirmation of double payment, as well as taking certification from Chartered Accountant on the basis of accounts to indicate such double payment and therefore, lack of diligence is not indicated on the face of record.

4. This court, therefore, is inclined to follow the decisions cited by the learned advocate and allow the appeal with consequential relief.

Appeal is allowed.

(Pronounced in the open court on 13.12.2023)

(Somesh Arora)
Member (Judicial)

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