

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No.20457 of 2021

[Arising out of the Order-in-Original No.COC-CUSTOMS-000-COM-01/2021-22 dated 20.04.2021 passed by the Commissioner of Customs, Cochin.]

M/s. Indian Oil Corporation Ltd.

....Appellant

Cochin Terminal
Irumpanam,
Kochi – 682 309.

Vs.

The Commissioner of Customs

....Respondent

Custom House
Willingdon Island
Cochin – 682 009.

Appearance:

Mr. Aryaman G, Advocate

....For Appellant

Mr. K. A. Jathin, AR

.... For Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 02.08.2023

Date of Decision: 30.11.2023

FINAL ORDER No. 21315 of 2023

Per R. BHAGYA DEVI:

The impugned order confirmed the differential duty amount of Rs.60,39,697/- in terms of the remand order vide Final Order No. 20667/2019 dated 23.08.2019 of the Tribunal. In addition to the demand confirmed under Section 28(2) of the Customs Act 1962, demanded applicable interest at appropriate rates in terms of erstwhile provision under Section 28AB of the Customs Act 1962.

2. The appellant is in appeal against the above impugned order only to the extent of interest demanded under Section 28AB of the Customs Act, 1962. Today, when the matter came up for hearing, the learned counsel on behalf of the appellant submitted that the impugned order on finalisation of the provisional assessments for the period 01.03.1994 to 31.03.1997 demanded the differential duty under Section 28(2) of the Customs Act, 1962. It is the claim of the appellant that Section 28AB of the Customs Act, 1962 as it stood is relevant only for recovery of interest on duty payable under Section 28 of the Customs Act, 1962 and not against finalisation of provisional assessments. For provisional assessments, Section 18(2) is the relevant Section for recovery of duty short levied or short paid and therefore, demand of interest under Section 28AB was not applicable. It is further submitted that subsection (3) of Section 18 of Customs Act, 1962 was introduced with effect from 13.07.2006 for recovery of interest, consequent upon finalisation of provisional assessment and this introduction had prospective effect only. Hence all the provisional assessments which were finalised prior to 13.7.2006 when there was no provision for recovery of interest on finalisation of provisional assessments, no such recovery can be made. He also relied on the decisions in the case of **Sterlite Industries versus Commissioner of Customs: (2007) 216 ELT 564 (CESTAT)** and the decision of the Bombay High Court rendered in the case of **CCE, Nagpur vs. Ispat Industries Ltd.: 2010 (259) ELT 662 (Bom.)** and decision of the Hon'ble Gujarat High Court in the case

of **Commissioner of Customs (Preventive) vs. Goyal Traders: 2014 (302) ELT 529 (Guj.)**.

3. The matter is no longer *res integra* as it has been settled by various decisions referred above that in all cases of provisional assessment finalised on or after the amendment to Section 18 i.e., on or after 13.7.2006 interest is applicable on finalisation of the assessments. We find that the Hon'ble Gujarat High Court in the case of **Commissioner of Customs (Preventive) vs. Goyal Traders** held that:

“17. In the present case, we find that prior to introduction of sub-section (3) of **Section 18** of the Act in the present form, there was **no liability to pay interest on difference between finally assessed duty and provisionally assessed duty** upon payment of which the assessee may have cleared the goods. **It was only with effect from 13-7-2006** that such charging provision was introduced in the statute. Upon introduction therefor such provision created interest liability for the first time w.e.f. 13-7-2006. In absence of any indication in the statute itself either specifically or by necessary implication giving retrospective effect to such a statutory provision, we are of the opinion that the same cannot be applied to cases of provisional assessment which took place prior to the said date. Any such application would in our view amount to retrospective operation of the law.”

Since in the present Appeal, the assessments are finalised prior to the above amendment i.e., before 13.7.2006, the question of interest does not arise. Accordingly, the impugned order is set aside and the appeal is allowed with the consequential relief, if any.

*(Order pronounced in open court on **30.11.2023.**)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)