

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II**

**Customs Cross Application No. 50769 of 2022 (SM)
in
Customs Appeal No. 52157 of 2022**

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/Prev./NCH/860/2022-23 dated 21.07.2022 passed by the Commissioner of Customs (Appeals), New Delhi)

**Principal Commissioner, Customs-
New Delhi (Prev)**

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

Appellant

VERSUS

M/s Mahavir Overseas

2393/114, Vidya Market,
Chatta Shahji, Chawri Bazar,
Delhi-110006

Respondent

APPEARANCE:

Mr. Vishwajeet Saharan, Authorised Representative for the Appellant
Mr. Rajat Doshi, Advocate for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50068 / 2023

Date of Hearing: 20.01.2023

Date of Decision: 20.01.2023

ANIL CHOUDHARY:

Heard the parties.

2. Revenue is in appeal against impugned Order-in-Appeal whereby the respondent-assessee, regular importer of self-adhesive thermal paper have been granted refund of amount deposited during investigation of Rs. 40 lakhs. The respondent-assessee has filed

cross-objection being aggrieved for non-grant of interest on the refund amount.

3. The brief facts are that revenue commenced investigation during 2014 as it appeared that the respondent importer was mis-declaring the imported goods as well as undervaluing the goods. In the course of investigation, with regard to the current Bills of Entry being BOE no. 7493283 dated 25.11.2014 and bill of entry no. 7480226 dated 24.11.2014, goods were detained and seized on the reasonable belief of mis-declaration as to classification and value under panchnama dated 03.12.2014 and 09.12.2014. Thus, the revenue observed that even the past imports have also been undervalued. Accordingly, the appellant was made to deposit an amount of Rs. 40 lakhs which was deposited by TR 6 challans dated 18.12.2014 Rs. 30 lakhs and on 19.12.2014 Rs. 10 lakhs. After, this deposit, during investigation stage, the goods of aforementioned bills of entry were granted provisional release on 23.12.2014 and 28.12.2014, after taking PD bond. Thereafter, as no show cause notice was received by the assessee, they filed refund claim after about six years on 09.10.2020.

4. The refund claim was adjudicated vide O-I-O dated 29.07.2021 and the same was rejected on the ground that original copy of bill of entry and TR-6 challan could not be made available. Being aggrieved, the respondent-assessee preferred appeal before the learned Commissioner (Appeals) who vide impugned Order-in-Appeal dated 20.07.2022 have been pleased to hold that the said amount of Rs. 40 lakhs was in the nature of pre-deposit, deposited during

investigation. The Commissioner (Appeals) also made enquiry from the field formation, the refund section Preventive Commissionerate. The Assistant Commissioner refund vide report dated 12.07.2022 intimated that respondent-assessee have deposited total amount of 40 lakhs in December 2014, as pre-deposit during investigation in respect of the aforementioned bills of entry. It was also intimated that no SCN was issued and/or adjudication was passed, as the matter was dropped. Accordingly, the learned Commissioner (Appeals) held that there is no ground to reject the refund and accordingly, directed to grant the refund after taking I. Bond, on record, if required.

5. Being aggrieved, revenue is in appeal on the ground that under the Customs Act, there is no provision requiring an assessee to make a pre-deposit during investigation and further the respondent-assessee have made the claim after the period of six years, further no protest letter was filed by the assessee at the time of deposit or soon thereafter. It is also urged that the appellant was obligated to present the documents like deposit challan for the purpose of refund claim which they failed to produce.

6. Opposing the appeal of revenue, learned Counsel for the respondent-assessee submits that admittedly, the amount remained with revenue all this time unadjusted by way of deposit. Further, from the facts on record, that it was only after the goods were seized and detained and investigation was going on by the revenue on the allegation of mis-declaration as to classification and value, the appellant was obligated on the oral instructions of the department to

make the pre-deposit of 40 lakhs. Further, it was only after making the pre-deposit that the goods under the two bills of entry referred to hereinabove were granted provisional release on submission of PD bond. Thus, deposit under protest is writ large on the face of the record.

7. Learned Counsel further urges that they have filed cross-objections wherein they have raised the grounds that they are entitled to interest on the pre-deposit from the date of deposit till the date of refund. Learned Counsel further placed reliance, on the issue of interest, on the ruling of division bench of this Tribunal in the Parle Agro Pvt Ltd vs. Commissioner CGST 2022-380-ELT 219 (Tribunal Division Bench). It is also urged that the order of Tribunal in Parle Agro have been followed in several decisions by other benches wherein interest @ 12% have been granted from the date of deposit till the date of refund. The Learned Counsel further submits that under the facts and circumstances interest may be granted @ 6% per annum, as stipulated in the relevant notification.

8. Having considered the rival contentions, I find that learned Commissioner (Appeals) have rightly held that the amount remained with the revenue unadjusted by way of pre-deposit. I further find under the facts and circumstances, that such pre-deposit was made under protest which is writ large on the face of the record. I further find there is no merits on the grounds of appeal raised by revenue. Relying on the ruling of the Division Bench of this Tribunal in Parle Agro Ltd. (Supra), I allow the Cross-objections with directions to the revenue to grant interest @ 6% per annum from the date of deposit

till the date of refund. Such interest on refund should be granted within a period of 45 days from the date of receipt of copy of this order.

9. In view of my aforementioned findings and observations, appeal by revenue is dismissed and Cross-objection by assessee are allowed.

(order dictated in the open Court)

Anil Choudhary
Member(Judicial)

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