

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 13084 of 2013 - DB

(Arising out of OIA-PJ-255-VDR-II-2013-14 dated 18/07/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Videocon Industries Ltd

Village- Chavaj,
P.O.- Paguthan,
Bharuch , Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

.....Respondent

APPEARANCE:

Shri Sushil Jethmalani & Ms. Aaksha Sajnani, Advocates for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11917 /2023

DATE OF HEARING: 27.07.2023
DATE OF DECISION: 11.09.2023

RAMESH NAIR

This appeal is directed against order in appeal No. PJ-255-VDR-II-2013-14 dated 18/07/2013 whereby the Learned Commissioner (Appeals) rejected the claim of interest on refund already sanctioned to the appellant on the ground that the appellant was granted the refund within three months from the order dated 13.04.2012 passed by Commissioner (Appeals) allowing the refund therefore, no interest is payable. Being aggrieved by the said Order-In-Appeal appellant filed the present appeal.

1.2 Before proceeding in this appeal on the query from the bench that since the company resolution process under IBC is pending before the NCLT whether this Tribunal can continue the proceeding in this appeal, Shri Sushil Jethmalani, Learned Advocate with Ms. Aaksha Sajnani, Advocate appearing

for the resolution professional submits that since in this appeal the proceeding is in favour of the appellant company moratorium provided under Section 14 of IBC does not apply and proceeding can be continued. In this regard he placed reliance on the Delhi High Court order dated 11.12.2017 in case no O.M.P (COMM.)397/2016 in the matter of Power Grid Corporation of India Limited vs. Jyoti Structures Limited.

1.3 As regard merit of the present appeal, he submits that as per department's insistence the appellant had paid the anti-dumping duty subsequently, they have challenged the imposition of anti-dumping duty wherein they succeeded vide CEGAT order dated 15.11.2002. Thereafter, the appellant filed an application for refund on 22.04.2003 in respect of anti-dumping duty along with interest paid by the appellant. By the adjudication order dated 05.11.2003 though the refund was sanctioned but the same was credited into consumer welfare fund on the ground of unjust enrichment. The appellant being aggrieved by the adjudication order dated 05.11.2003 filed writ petition before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat directed the appellant vide order date 15.03.2011 to file an appeal before Commissioner (Appeals) against the order dated 05.11.2003. The appellant filed appeal before Commissioner (Appeals) on 30.03.2011 which was allowed by Commissioner (Appeals) vide order dated 13.04.2012. Thereafter, the appellant filed a revised claim with interest on refund. The Adjudicating Authority vide order dated 25.06.2012 though granted the refund of amount paid by the appellant but rejected the claim of interest on such refund on the ground that there is no specific order about interest by the Commissioner (Appeals). The appellant being aggrieved by the order dated 25.06.2012 filed an appeal before the Commissioner (Appeal). The Ld. Commissioner (Appeal) vide impugned order dated 18.07.2013 rejected the claim of interest on the ground that refund was granted within 3 months from

the Commissioner (Appeals) order dated 13.04.2012. Therefore, no interest is payable to the appellant.

2. Shri Sushil Jethmalani, Learned Advocate with Ms. Aaksha Sajnani, Advocate appearing for the appellant submits that as per Section 27 A the interest is payable after 3 months from the date of initial application filed for refund. In the present case the refund application was filed on 22.04.2003 however the refund was sanctioned and granted to the appellant on 25.06.2011. Accordingly, the appellant is entitled for interest on refund after 3 months from the date of application i.e., 22.04.2003 to 25.06.2012. He submits that this issue is no longer res- integra as per the following judgments: -

- JK Cement Works – 2004 (170) ELT 4
- Purnima Advertising Agency Pvt Ltd – 2016 SCC OnLine Guj 6312
- Hamdard (WAQF) Laboratories – 2016 SCC OnLine SC 197
- Ranbaxy Laboratories Limited – 2011 SCC OnLine SC 1420
- M/S Ahmedabad Packaging Industries Ltd - Final order No. A/11063/2016 dated 29.09.2016

3. Shri Anoop Kumar Mudvel, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. As regard the issue that when the IBC proceeding is undergoing and pending before the NCLT whether this appeal can be heard and disposed of. I find that the moratorium is provided under Section 14 of the IBC Code, the Delhi High Court in its order dated 11.12.2017 in case no O.M.P (COMM.)397/2016 in the matter of Power Grid Corporation of India Limited vs. Jyoti Structures Limited dealt with the provision of Section 14 elaborately given the following observation: -

"3. The question now has arisen is if the present proceedings under Section 34 of the Act, need to be stayed, per Section 14 (1)(a) of the Code?

4. The respondent's case is if the proceedings are stayed, the respondent would be unable to execute the award given in its favour for an extended period till the moratorium exists and be unable to recover its dues thereby further impeding its financial condition. Hence, the issue is if the word "proceedings" used in Section 14 (1) (a) of the Code be read to mean 'all legal proceedings' or be read restrictively to mean a particular type of legal proceedings viz., "debt recovery action" which may have an effect of dissipating or diminishing the debtor's assets during the period of its insolvency resolution.

5. Section 14 (1) (a) of the Code runs as under:-

"14. (1) Subject to provisions of subsections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:— (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;"

6. Admittedly the term 'proceedings' as is mentioned in Section 14 (1) (a) of the Code is not preceded by the word 'all' to indicate the moratorium provisions would apply to all the proceedings against the corporate debtor.

7. In *Canara Bank vs Deccan Chronicle Holdings Limited Company* Appeal No.147/2017, the court has already recognized the moratorium provision does not apply to all proceedings viz to proceedings under Article 32 or 226 of the Constitution of India.

8. The object of the Code is to provide relief to the corporate debtor through 'standstill' period during which its assets are protected from dissipation or diminishment, and as a corollary, during which it can strengthen its financial position, extending of the unexecutability of the award would rather prevent the corporate debtor from recovering money due to it and adding to its financial corpus. Such a consequence would infact be directly contrary to the object of the Code. To determine the true meaning of the statute, the provision would have to be construed in the context of the statute as a whole, for which purpose interpretative criteria may have to be applied even when the statutory language is apparently free from any semantic ambiguity.

9. The meaning and purpose of Section 14 (1) (a) of the Code may also be reliably ascertained from the context of its surrounding provisions. Sub-clauses (b), (c) and (d) of Section 14 (1) of the Code are reproduced below for ease of reference would further demonstrate the moratorium provision would apply only to protect the assets of the corporate debtor. The provisions read as under:-

"14. (1) xxxx

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

10. In the light of above purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in as much these proceedings are not a 'debt recovery action' and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall be in sync with the purpose of moratorium which includes keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern.

11. The report of the Bankruptcy Law Reforms Committee on the rationale and design of the Code also demonstrates the moratorium is to apply to recovery actions and filing of new claims against the corporate debtor and the purpose behind moratorium is there should be no additional stress on the assets of the corporate debtor. The report of the Bankruptcy Law Reforms Committee has been relied upon by the Supreme Court in M/s Innovative Industries Limited vs. ICICI Bank & another 2017 SCC OnLine SC 1025.

12. The learned counsel for the respondent has though argued that once the moratorium comes into effect, no proceedings against the corporate debtor may continue. No doubt to the said proposition of law as stated above, but one need to see the nature of the proceedings; if such proceedings is against the corporate debtor or is in its favour. Stay of proceedings against an award in favour of the corporate debtor would rather be stalking the debtor's effort to recover its money and hence would not fall in the embargo of Section 14 (1) (a) of the Code.

13. The fact the petitioners did file a counter claim before the learned arbitrator, admittedly, is disallowed. An extreme scenario would be allowing of such counter claim but in that eventuality Section 14 (1) (a) of the Code would immediately come into play and the decree would not be executable against the corporate debtor. However in apprehension of such an eventuality the proceedings under Section 34 of the Act cannot be kept in abeyance, especially when such counter claim has been rejected by the Learned Arbitrator and the claim of the corporate debtor being upheld.

14. Hence for following reasons I conclude the present proceeding would not be hit by the embargo of Section 14(1)(a) viz., (a) 'proceedings' do not mean 'all proceedings'; (b) moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of corporate debtor; (c) continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code; (d) term 'including' is clarificatory of the scope and ambit of the term 'proceedings'; (e) the

term 'proceeding' would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor; (f) the use of narrower term "against the corporate debtor" in section 14(1)(a) as opposed to the wider phrase "by or against the corporate debtor" used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability; (g) the Arbitration Act draws a distinction between proceedings under section 34(i.e. objections to the award) and under section 36(i.e. the enforceability and execution of the award). The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a).

15. Hence, the continuation of these proceedings shall cause no harm to either party's rights to seek determination of issues under section 34 of the Act and object of the code shall be preserved rather than defeated. The question posed is thus answered."

4.1 In view of the judgment read with Section 14 it is clear that the moratorium provision would apply to all those proceedings which are against the corporate debtor. However, in the present appeal the proceeding is in favour of the appellant (Corporate Debtor) as in this appeal the appellant is claiming the interest on refund. Therefore, following the aforesaid order of the Delhi High Court by conclusion and disposal of this appeal would not affect adversely the resolution plan therefore, I am of the view that in this appeal proceeding can be continued and appeal can be disposed of. Therefore, the appeal is taken up for disposal.

4.2 I find that the learned Commissioner (Appeals) rejected the claim of interest on refund referring the provision of Section 27 A of Customs Act, 1962 on the ground that the refund was payable within three months from the order dated 13.04.2012 of Commissioner (Appeals) whereby the refund was allowed. To understand the correct interpretation of Section 27 A, the same is reproduced below:-

"SECTION [27A. 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 sub-section (1) of that section, there shall be paid to that

applicant interest at such rate, [not below five per cent] 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 an 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 applicant 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 [, National Tax 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 [, National Tax 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.”

4.3 From the plain reading of Section 27A it is clear that the assessee is entitled for the refund if the same is not refunded within three months from the date of receipt of application under sub section (1) of Section 27. In the fact of present case undisputedly application for refund which had arisen from the CEGAT's order dated 15.11.2002 was filed on 22.04.2003. The said refund though sanctioned but credited into Consumer welfare fund thereafter from 22.04.2003 till 25.06.2012 refund was not granted as the matter of refund itself was under litigation before the High Court, Commissioner (Appeals) and finally the refund was granted to the appellant only on 25.06.2012. Therefore, in the clear provision under Section 27 A and the landmark judgment of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd (Supra), the appellant is entitled for interest on the amount already refunded for the period from 22.07.2003 (three months after the date of application) till 25.06.2012 (date of grant of refund).

4.4 As regard the contention of the Commissioner (Appeals) that interest is payable after three months from the date of Commissioner (Appeals) order wherein the refund was allowed is absolutely absurd and contrary to Section 27 A and principle laid down by Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd (Supra). All the judgments in this regard relied upon by the Learned Counsel cited (supra) directly support the case of the appellant. Therefore, I am of the considered view that the appellant is legally entitled for interest on the refund granted to them after three months from the date of the application i.e. 22.07.2003 till the grant of refund i.e. 25.06.2012 as per the rate of interest as prescribed under the Customs Act, 1962.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 11.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

Geeta