

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Customs Early Hearing Application No.50414 of 2022
(on behalf of the appellant) **with**
Customs Appeal No. 51662 of 2022-SM

(Arising out of order-in-appeal No. CC (A)CUS/D-II/Prev./146/22-23 dated 26.04.2022 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

M/s BBM Impex Pvt. Limited

54, Regal Building, IInd Floor,
Parliament Street,
Connaught Place,
New Delhi-110 001.

Appellant

VERSUS

**Principal Commissioner of Customs
(Preventive)**

New Custom House, Near IGI Airport
New Delhi-110037.

Respondent

APPEARANCE:

Sh. Aakarsh Srivastava & Sh. Ashish Bansal, Advocates for the appellant
Sh. Ishwar Charan, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50737/2022

DATE OF HEARING/DECISION: 03.08.2022

ANIL CHOUDHARY:

As the appeal itself is taken up for hearing, the early hearing application stands disposed of.

2. The only issue involved in this appeal is as to under which Section, the appellant is entitled to interest, rate of interest and the period of interest.

3. The brief facts are that the appellant is an importer. Pursuant to import, there was dispute with regard to value of the goods. The appellant deposited the differential amount suggested by the Revenue specifically for the purpose of provisional release. They made pre-deposit of Rs.13,50,000/- on 22.09.2015, pursuant to which, release of goods was allowed. Thereafter, Revenue issued show cause notice on 4.2.2016 and thereafter adjudicated the dispute resulting into passing of the order-in-original, whereby the proposed duty was confirmed with penalty and fine. Finally, the appellant/assessee succeeded in appeal before this Tribunal, which allowed the appeal and set aside the demand along with penalty and fine, vide Final Order No. C/A-50695/2020 dated 12.06.2020.

4. Thereafter, the appellant filed the refund claim on 20.07.2020 claiming for the refund of the amount deposited of Rs.13,50,000/- on 22.09.2015, along with appropriate interest as per Rules.

5. The Adjudicating Authority - Dy. Commissioner rejected the claim of interest and granted refund only for the principal amount of Rs.13,50,000/-, which was granted on 11.03.2021. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to hold that the appellant is entitled to interest under Section 27A of the Customs Act. It was further observed that as per Section 27A, interest is payable from the end of three months, from the date of application of refund and accordingly, allowed interest on refund for the period 12.01.2021 to 04.03.2021 only, on the amount of Rs.12,85,013/-, observing that in view of the appropriation in the order-

in-original, the appellant is not entitled to interest on the amount adjusted towards fine. Being aggrieved, the appellant is before this Tribunal.

6. Heard the parties.

7. Ld. Counsel for the appellant urged that the issue of interest is no longer *res integra*, and is payable as per Section 129EE of the Customs Act. Upon success in appeal, the amount of pre-deposit is to be refunded with interest from the date of deposit till the date of refund.

7.1 He also relies on the ruling of this Tribunal in the case of **Indo Rubber and Plastic Works** - wherein this Tribunal held that the amount of deposit made during investigation /audit becomes pre-deposit *ifso facto* upon contest of the dispute/filing of the appeal, and accordingly, entitled to interest as per law from the date of deposit till the date of refund. This order of the Tribunal was confirmed by the Hon'ble Supreme Court, whereby the appeal of the Revenue was dismissed reported at 2021 (378) ELT A-141. He also relies on the ruling of the Chandigarh Bench of this Tribunal in the case of **Reeba Textiles Ltd. - 2022 (Vol.3) TMI 693**, wherein the Tribunal had allowed interest on delayed refund from the date of deposit till the date of refund, which amount becomes refundable due to success of the appellant in appeal. The Hon'ble Punjab & Haryana High Court in its judgement confirmed the ruling of the Tribunal taking notice of the ruling of the Hon'ble Supreme Court in **Sandvik Asia Ltd., - 2007 (8) STR 193 (SC)**, wherein refund under the Income Tax Provisions was allowed @12% p.a. The Hon'ble High Court took observed that the provision of interest is *pari materia* under the Income Tax Act and the

Central Excise Act, 1944 and accordingly appeal of the Revenue was dismissed upholding the order of this Tribunal.

8. Accordingly, Id. Counsel prays for grant of interest at the appropriate rate following the precedent ruling of this Tribunal affirmed by the Hon'ble High Court and the Hon'ble Supreme Court.

9. Opposing the appeal, learned Authorised Representative for Revenue urges that under the similar circumstances, wherein interest on pre-deposit was granted by this Tribunal under Section 35FF in the matter of **Jovex International** for the period, from the date of deposit till the date of refund @ 12% p.a., Revenue has preferred appeal before the Hon'ble Delhi High Court, being Appeal No. C.E.A. No.3/2022, wherein the Hon'ble High Court by its order dated 18.07.2022 has been pleased to admit the appeal and has granted stay of the order of this Tribunal, pending before the High Court. Accordingly, Id. AR prays that interest granted should not be more than the notified rate.

10. Having considered the rival contentions, I find that in view of the precedent decisions, the appellant is entitled to grant of interest under Section 129EE of the Customs Act, for the period from the date of deposit till the date of refund. Accordingly, I hold that the appellant is entitled to interest from 23.09.2015 till the date of grant of refund i.e. 11.03.2021. As regards the rate of interest, I hold that interest is payable @12% P.A. following the ruling of Hon'ble Supreme Court in **Sandvik Asia Ltd. (supra)**. The appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)