

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60381 of 2022

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-206-207-2022 dated 29.07.2022 passed by the Commissioner (Appeals), CGST, Ludhiana]

Commissioner of Customs, Ludhiana

ICD GRFL, G T Road,
Sahnewal,
Ludhiana, Punjab

.....Appellant

VERSUS

Khanna Paper Mills Ltd

Khasra No. 93/3, 93 & 93/5,
Village, Nangli,
Fategarh Road,
Amritsar, Punjab

.....Respondent

WITH

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.....Respondent

APPEARANCE:

Present for the Appellant: Shri Shivam Syal, Authorized Representative

Present for the Respondent: Shri Gautam Chugh, Advocate

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**FINAL ORDER NO. 60446-60447/2024**

DATE OF HEARING: 24.07.2024
DATE OF DECISION: 26.07.2024

PER: S. S. GARG

These two appeals filed by the Revenue are directed against the impugned order dated 29.07.2022 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has allowed the appeals of the respondent by granting the refund along with interest at applicable rate from the date of deposit till the date of refund.

2.1 Briefly stated facts of the present case are that the respondent had filed two Bills of Entry as per below Table-A and four Bills of Entry as per below Table-B for import of waste paper at the port of import INSGF6:

Table-A

S. No.	BoE No. & Date		Port Code	Duty Amt. (Rs.)	Challan No. & Date	
1.	4038372	22.05.21	INSGF6	38977	2035083264	24.05.21 & 25.05.21
2.	4062236	24.05.21	INSGF6	20673	2035084179	24.05.21 & 25.05.21
			Total	59,650		

Table-B

S. No.	BoE No. & Date		Port Code	Duty Amt. (Rs.)	Challan No. & Date	
1.	4118107	28.05.21	INSGF6	10633190	2035134724	29.05.21 & 30.05.21
2.	4118111	23.05.21	INSGF6	983187	2035134722	29.05.21 & 30.05.21
3.	4117851	28.05.21	INSGF6	731088	2035134694	29.05.21 & 30.05.21
4.	4117777	28.05.21	INSGF6	615101	2035134666	29.05.21 & 30.05.21
			Total	33,92,566		

2.2 While paying duties of customs in respect of said BOEs as per Table-A, the respondent attempted payment on 24.05.2021 & 25.05.2021 and in respect of BOEs as per Table-B on 29.05.2021 & 30.05.2021 vide e-challans mentioned in 5th column of the table supra. As per copies of e-payment transaction details submitted by the respondent, a consolidated amount of Rs.59,650/- in respect of two BOEs as per Table-A and Rs.33,92,566/- in respect of four BOEs as per Table-B had been debited twice from their bank Account No. 626702840056000 maintained with Union Bank of India vide UTR/Reference-ID Nos. S65420720/517496890 and S74217204/517554154 on 24.05.2021 & 25.05.2021 in respect of two BOEs as per Table-A and vide UTR/Reference-ID Nos.

S24299066/517831824 and S34440080/517863157 on 29.05.2021 & 30.05.2021 in respect of four BOEs as per Table-B. Thus, in respect of six BOEs as mentioned in Table-A & Table-B, double payment of customs duty was made.

2.3 In support of their claim, the respondent submitted copies of "BE Challan Enquiry" status generated from web site 'https://enquiry.icegate.gov.in' in respect of each Bill of Entry as proof which proved that payment of duties of customs was attempted on two dates 24.05.2021 & 25.05.2021 in respect of BOEs as per Table-A and on 29.05.2021 & 30.05.2021 in respect of BOEs as per Table-B. Thus, being customs duty paid twice on the same BOEs, the respondent filed refund claim for excess paid customs duty to the jurisdictional refund sanctioning authority/adjudicating authority.

2.4 The adjudicating authority while processing the claims for refund of excess paid customs duty observed that "BE Challan Enquiry" status submitted by the respondent itself shows that payment of duties of customs was attempted on 24.05.2021 & 25.05.2021 and on 29.05.2021 & 30.05.2021 but the e-payment transaction which has successfully been integrated with ICES (Indian Customs EDI System) was of dated 25.05.2021 and 30.05.2021 only and the same were silent about the status of integration of payment attempted on 24.05.2021 and 29.05.2021 with ICES system. The adjudicating authority checked present status of above said BOEs in EDI system which show that e-

payment of customs duty was made vide respective challans mentioned in table above on 25.05.2021 and 30.05.2021. The adjudicating authority vide e-mail dated 27.08.2021, took up the matter with the National Informatics Centre (NIC) with a request to intimate whether duty of customs as mentioned in respective e-challans was credited twice against each Bill of Entry in the exchequer of Govt of India. The NIC vide their e-mail dated 31.08.2021 intimated that "the challans of error code 00 gets integrated with ICES only. So ICEGATE/Bank will only confirm these payments."

2.5 The adjudicating authority rejected the refund claims of the respondent on the ground that NIC has not confirmed integration of payments of duties of customs made on 24.05.2021 and 29.05.2021 in respect of BOEs referred in Table-A and Table-B above.

2.6 Being aggrieved with the findings of the adjudicating authority, the respondent filed the appeals before the Commissioner (Appeals), who allowed their appeal. Aggrieved by the order of the Commissioner (Appeals), the Revenue has filed these appeals challenging the grant of interest from the date of deposit till the date of refund.

3. Heard both the parties and perused the material on record.

4.1 The learned Authorized Representative appearing on behalf of the appellant-Revenue submits that the impugned order passed by the Commissioner (Appeals) is not sustainable in law.

4.2 The learned AR further submits that the respondent filed refund claim vide application dated 10.06.2021 of excess payment of customs duty. Since the application was incomplete, the same was returned to the respondent on 24.06.2021. In compliance, the respondent submitted the documents vide letter dated 04.08.2021. The adjudicating authority vide order dated 20.10.2021 rejected the claim on the ground that National Informatics Centre (NIC) did not confirm integration of said excess payment of customs duty and no documentary proof was submitted by the respondent to establish that the payment has been credited twice in the account of government exchequer.

4.3 The learned AR further submits that the duty was paid under Section 27 of the Customs Act, 1962 and interest was granted under Section 27A of the Act.

4.4 The learned AR further submits that the judgments relied upon by the Commissioner (Appeals) are not applicable in the present case as all those judgments do not pertain to the issue of interest on delayed refund.

4.5 In support of his submissions, the learned AR relies on the following judgments:

- ***Saraswati Knitware Pvt. Ltd. vs Commr of Customs, Ludhiana – Order-in-Appeal dated 25.08.2022***
- ***Saraswati Knitwear Pvt. Ltd. vs Commr of Customs, Ludhiana - Final Order No. 60376/2023 dated 13.09.2023 - CESTAT Chandigarh***
- ***UOI vs Willowood Chemicals Pvt. Ltd. - 2022 (60) GSTL 3 (SC)***
- ***UOI vs Cosmo Films Limited - Civil Appeal No. 290 of 2023 - Supreme Court***
- ***Bochasanwasi Shri Aksharpurushottam Swaminarayan Sanstha vs Commr of Customs, Ahmedabad - 2022 (380) ELT 82 (Tri. Ahmd.)***
- ***M/s G.S. Promoters and Developers vs Commr of CGST, Ludhiana - Final Order No. 60703/2023 dated 11.12.2023 - CESTAT Chandigarh***
- ***V.R. Overseas Pvt. Ltd. vs Commr of Customs (Port) - 2023 (385) ELT 107 (Cal.)***
- ***Commr of Customs, Mangaluru vs JSW Steel Ltd. - 2022 (379) ELT 451 (Kar.)***

5.1 On the other hand, the learned Counsel for the respondent submits that these two appeals filed by the Revenue are not maintainable on account of the National Litigation Policy. He further submits that the Tribunal has consistently held that if the matter is covered by the National Litigation Policy under instructions dated 02.11.2023 issued by the CBIC, then the appeal filed by the Revenue is not maintainable under the National Litigation Policy.

5.2 On merits also, the learned Counsel submits that the Commissioner (Appeals) has rightly granted the interest by observing that all the documents were produced before the adjudicating

authority and the department was at liberty to verify the same; the department cannot absolve of its responsibility by way of putting burden on the respondent.

5.3 In support of his submissions, the learned Counsel relies on the following judgments:

- ***Commissioner of Customs, Ludhiana Vs. Goyal Impex And Industries Ltd - Final Order No. 60606-60626/2023 dt. 22.11.2023 - CESTAT Chandigarh***
- ***Commissioner of Customs, ICD Patparganj & Others ICDs Vs. VSM Impex Pvt Ltd - Final Order No. 60260-60285/2024 dt. 22.05.2024 - CESTAT Chandigarh***
- ***Sandvik Asia Ltd Vs. Commissioner of Income Tax-I, Pune - 2006 (196) E.L.T 257 (S.C)***
- ***Ebiz.Com Pvt Ltd Vs. Commissioner of Central Excise, Customs & S.T. - 2017 (49) S.T.R 389 (All.)***
- ***Commissioner of C. Ex. (Appeals), Bangalore Vs. KVR Construction - 2012 (26) S.T.R 195 (Kar.) & 2018 (14) G.S.T.L J70 (S.C)***
- ***Commissioner of Central Excise, Panchkula Vs. Riba Textiles Ltd - 2022 (62) G.S.T.L 136 (P&H)***
- ***Commissioner of Central Excise, Panchkula Vs. Riba Textiles Ltd - CEA-8-2022 dated 23.05.2022 (P&H)***
- ***Impressive Management Solutions Pvt Ltd Vs. Commissioner of CG&ST, Chandigarh - Final Order No. 60090/2023 dt. 06.04.2023 - CESTAT Chandigarh***
- ***Parle Agro Pvt Ltd Vs. Commissioner of CG&ST, Noida - 2022 (380) E.L.T 219 (Tri-All.)***

6. After considering the submissions made by both the parties and perusal of the material on record, I find that the issue involved in the present case is of grant of interest by the learned Commissioner (Appeals) from the date of deposit till the date of refund paid at the prescribed rate. As per the respondent, the amount of interest, if calculated @12%, comes to Rs.7,89,678/- in Appeal No. C/60381/2022 and Rs.13,590/- in Appeal No. C/60382/2022 respectively. I have gone through the decision of this Tribunal in the case of **CC, ICDs vs. VSM Impex** (*cited supra*) wherein Division Bench of this Tribunal vide **Final Order No. 60260-60285/2024 dt. 22.05.2024** has rejected 26 appeals filed by the Revenue under the National Litigation Policy by holding that the appeals filed by the Revenue are not maintainable in view of the instructions dated 02.11.2023 issued by the CBIC. In the present case also, I am of the considered view that the present two appeals are also not maintainable in view of the instructions dated 02.11.2023 issued by the CBIC; therefore, I dismiss both the appeals of the Revenue without going into the merits of the case; however, the question of law is kept open.

(Order pronounced in the court on 26.07.2024)

(S. S. GARG)
MEMBER (JUDICIAL)