

Customs, Excise and Gold Tribunal - Delhi

Poddar Pigments Ltd. vs Commissioner Of Customs on 11 March, 2004

Equivalent citations: 2004 (168) ELT 80 Tri Del

Bench: P Chacko

ORDER P.G. Chacko, Member (J)

1. The short question arising for consideration in this case is whether the limitation provisions under Section 27 of the Customs Act are applicable to a claim for refund of interest paid under Section 61(2) of the Act.

2. Briefly stated, the facts of this case are : The raw material imported by the appellants were in-bonded/warehoused on 18-3-99 and ex-bonded/cleared out of warehouse for home consumption on 10-3-2000. During the period, the interest-free period of warehousing under Section 61 of the Customs Act was one year. As the goods had not remained in warehouse beyond this period of one year, the appellants filed a claim for refund of the amount of interest which they had paid in terms of Section 61(2) at the instance of the department. This refund claim was filed on 28-7-2000 and the same was rejected as time-barred by both the original and first appellate authorities. Hence this appeal.

3. The Counsel for the appellants submits that any interest required to be paid under Section 61(2) of the Customs Act is altogether different from the interest payable on duty of customs under Section 28AA or Section 28AB of the Act. His argument is that the duty of customs referred to under Section 61(2) is only in the nature of a measure of interest leviable for the period beyond the prescribed interest-free period of warehousing. The Counsel has, in this connection, relied on the decision of this Bench in Sunil Synchem Ltd. v. Commissioner of Customs, Jaipur [2003 (157) E.L.T. 58]. Counsel submits that, undisputedly, no interest was leviable in respect of the subject goods which were cleared out of warehouse within one year from the date of warehousing. The interest paid in respect of the goods is, therefore, refundable. The claim for such refund cannot be rejected as time-barred under Section 27 of the Customs Act, which, according to Counsel, was not applicable at all.

4. The DR, in defence of the impugned order, submits that admittedly the refund claim is beyond the period of six months prescribed under Section 27 of the Customs Act. The appellants themselves invoked Section 27 for claiming the refund and cannot question the applicability of the provision at this stage. The DR also seeks to distinguish the cited case law by submitting that, in the cited case, the warehoused goods were not dutiable unlike in the instant case. Counsel, in his rejoinder, submits that Section 27 happened to be mentioned in the refund application only by mistake.

5. I have carefully considered the submissions. The Commissioner (Appeals) appears to have rightly rejected the plea of the appellants that Section 27(1)(b) is not applicable to a claim of refund of interest paid under Section 61(2) of the Act. A plain reading of Sub-section (2) of Section 61 clearly indicates that the interest leviable under the provision is on the duty of customs payable on the warehoused goods. This duty of customs is the principal for the levy of interest. The Counsel's argument that the duty of customs is only a measure of interest leviable under Section 61(2) does

not make sense. The measure (rate) of interest is prescribed by the CBEC from time to time. Interest being a levy on duty, the argument advanced by the Counsel cannot be accepted for a moment. As interest is a levy on duty, Section 27 is the relevant provision governing refund of such interest already collected. The time-bar provisions under Section 27(1)(b) would therefore apply to the refund claim in question. The appellants themselves invoked this provision of law for claiming the refund. They cannot now turn round and say that the provision is not applicable. The plea of mistake is not tenable as there was no mistake on the part of the appellants in invoking Section 27 for claiming refund of the interest. The decision cited by the learned Counsel is, clearly, distinguishable for the reason correctly stated by the DR. Admittedly, the refund claim was filed beyond the period of six months from the date of payment of the interest. It is, therefore, time-barred. The impugned order is sustained and this appeal is dismissed.