CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

Customs Appeal No. 50494 of 2024

(Arising out of Order-in-Appeal No. CC(A) CUS/D-II/Prev/170-171/2023-24 dated 27.03.2024 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Vortex Rubber Industries Pvt. Ltd. **Appellant**
1557-1558, Mezzanine Floor, Church Road,
Kashmere Gate, New Delhi – 110006

Versus

Principal Commissioner of Customs **Respondent**
(Preventive), New Delhi
New Custom House, Near IGI Airport,
New Delhi-110037

<u>AND</u>

Customs Appeal No. 50495 of 2024

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<u>Appearance:</u>

Present for the Appellant: Shri Anup Kumar Srivastava, Advocate

Present for the Respondent: Shri V.J. Saharan, Authorized Representative

<u>CORAM:</u>

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 25/07/2025
Date of Decision : 28/10/2025

Final Order Nos. 51622-51623/2025

Dr. Rachna Gupta

The present order disposes of two appeals arising out of common Order-in-Appeal No. 170-171/2023-24 dated 27.03.2024. The facts, in brief, relevant for the purpose are as follows:

2. The appellant having Shri H.S. Chadha and its Director, is engaged in imports of Chinese tyres of "Infinity" and "Wanli" brand. A case of massive outright smuggling was being investigated against M/s Shivani Industries which was also managed and financially controlled by said Shri H.S. Chadha. Accordingly, the premises of the appellant also got searched on 16.07.2014. The goods lying in the premises were not bearing MRP stickers which was otherwise a mandatory requirement for availing the benefit of exemption from SAD as per Notification No. 21/2012 dated 17.03.2012. The goods were accordingly, seized. Simultaneous search was conducted at the residential premises of Shri H.S. Chadha. Certain loose documents including one Apple Mac book were resumed vide the Panchnama dated 16.07.2014. The goods seized were opined liable for confiscation.

3. Meanwhile, the appellant also filed Bill of Entry No. 6224101 dated 24.07.2014 for importing truck tyres and flaps. However, the consignment was put on hold alleging improper valuation and not affixing MRP stickers. Those goods were also seized under Section 110 of Customs Act and were opined liable for confiscation. However, on the request of the appellant for provisional release,

the goods were provisionally released on furnishing of bonds, bank guarantee and payment of 100% differential duty. On the goods detained during the search on 16.07.2014 the differential duty of Rs. 3,83,645/- was assessed and for the goods covered under Bill of Entry No. 6224101 differential duty of Rs. 3,94,331/- was assessed.

4. The original adjudicating authority vide order-in-original No. 154/2016 dated 13.10.2016 rejected the declared value, confirmed the duty demand and ordered for appropriation of amount of differential duty deposited by the appellant at the time of provisional release of the goods. In an appeal against the said order, Commissioner of Customs (Appeals) vide his Order-in-Appeal No. 217-218/2019-20 dated 27.05.2019 had upheld the said confirmation. Being aggrieved, the appeal was filed appeal before the CESTAT. Vide Final Order No. 50063-50066/2020 dated 09.01.2020, the appeal was allowed with consequential benefits and the directions that the amount appropriated by original adjudicating authority got also revoked. Subsequent to the said final order, the appellant filed two refund claims with respect to the aforesaid both amounts. The refund was sanctioned vide the order No. 17/2021-22 dated 31.05.2021 and 19/2021-22 dated 30.06.2021 however, without interest. Being aggrieved, the appellant is before this Tribunal.

5. I have heard Shri Anup Kumar Srivastava, learned counsel for the appellant and Shri V.J. Saharan, learned Authorized Representative for Revenue.

6. Learned counsel for the appellant had submitted that the amounts in question were in the nature of pre-deposit and were not in the nature of duty. Hence provision of Section 27A of Customs Act, as invoked by Commissioner (Appeals), is not applicable. It is submitted that on the said amount, the interest is payable in terms of Section 35FF of Central Excise Act, 1994. Interest is accordingly prayed @ 12% from the date of deposit till the date of payment. Decision of Hon'ble High Court in the case of Sony Picture Network[1] has been relied upon. The decision of **Duggar Fibre Pvt. Ltd. Vs. CCE, Delhi**[2] has also been relied upon. Relying upon various other decisions, learned counsel has prayed for the present appeal to be allowed.

7. While rebutting these submissions the learned Departmental Representative submitted that the time from which refund was granted and the rate of interest on delayed refund are both according to the law laid down for the purpose. The appellant becomes eligible for refund on the strength of the Tribunal Order No. 50063-50066/2020 dated 09.01.2020 and the refund application filed by the applicant on 31.12.2020 was sanctioned in favour of the appellant vide refund order in original No. 19/DC/AK/Refund/2021-22 dated 30.06.2021 and Order-in-Original No. 17/DC/AK/Refund/2021-22 dated 31.05.2021. Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. Vs. Union of India**[3] has held that interest on refund is allowed after three months of date of refund application, in case of delay.

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1 **2017 (353) ELT 179 (Ker.)**
2 **2021 (378) ELT 293**
3 **2011-IOL-105-SC-CX**

Therefore, the interest on the aforesaid refund is admissible to the appellant under the provisions of above cited Section 27A of the Customs Act. The appellant have been paid interest from date as stipulated in the Act, @ 6% as notified by Notification No. 75/2003-Customs (NT) dated 12.09.2003.

8. Learned Departmental Representative also brought to the notice the order passed by Hon'ble High Court, Delhi in an application filed by the department against M/s SS Automotive reducing the rate of interest from 12% to 6% per annum from the date of deposit till the date of release. The appeal is accordingly, prayed to be dismissed.

9. Having heard both the parties, it is an apparent fact that the amount in question i.e. Rs. 3,83,645/- and Rs. 3,94,331/- were paid by the appellant with respect to the goods seized at the time of search and goods seized of the live Bill of Entry. All those goods were ordered to be released as per the provisions of Customs Act, 1962 at appellant's own request for provisional release of the goods. This apparent and admitted fact is sufficient for me to hold that the amounts in question cannot be considered as an amount deposited under protest. Hence Section 35FF is held to not be applicable to the given set of circumstances. The Commissioner (Appeals) has invoked Section 27A of the Customs Act. We have perused the said provision, it reads as follows:

> "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 percent) and not exceeding thirty percent 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."

10. The perusal of this provision makes it clear that any duty of customs if has to be refunded, the refund shall accompany the interest in case it is not sanctioned within three months of the application of refund. In the present case, the refund application was filed on 31.12.2020 whereas the orders sanctioning the refund is dated 30.06.2021 hence the appellant is entitled for interest for the period after the expiry of three months from the date of receipt of such application till the date of refund of such duty. No question arises for sanctioning interest from the date of payment of the amount in question, for the amount in question being the amount of customs duty instead of an amount of pre-deposit, as already mentioned above.

11. The rate of interest has already been curtailed to 6% by Hon'ble High Court, Delhi in another matter vide order dated 30.12.2022. Otherwise also as per Section 27A of Customs Act itself, the rate of interest has to be such as fixed by the Central Government by a notification in the official gazette. It has been brought to notice that the Notification No. 67/2003 restricts the rate of interest at 6% in case of delayed refund. This observation is sufficient for me to hold that the interest calculated in such manner as mentioned above @ of 6% from the date immediately after the expiry of three months till the disbursement thereof has rightly been sanctioned by Commissioner (Appeals). Holding no infirmity in the said order and relying upon the following decisions:

(i) M/s Nino Chaks (P) Ltd. Vs. Commissioner of Customs (General)[4];

(ii) M/s Essjay Telecom and It Services Private Limited Cs. Commissioner of Central Tax & CGST, Central Excise, Delhi[5];

(iii) M/s Dinesh Tobacco Industries (Unit-II) Vs. CGST, Jodhpur-1[6].

I hereby upheld the order. Consequent thereto, both the appeals are hereby dismissed.

(Pronounced in open Court on 28.10.2025)

(Dr. Rachna Gupta)
Member (Judicial)

RM

4 2019 (9) TMI 1166-Delhi High Court
5 2025 (3) TMI 743 –CESTAT NEW DELHI
6 Final Order No. 57990-57991 dated 09.08.2024