CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS STAY APPLICATION NO. 85268 OF 2018
(on behalf of appellant)
IN
CUSTOMS APPEAL No. 85677 of 2018

[Arising out of Order-in-Appeal No. GOA-CUSTM-000-APP-108-2017-18 dated 23.10.2017 passed by the Commissioner of Customs (Appeals), Panaji, Goa]

Commissioner of Customs **.... Appellant**
Custom House, Marma goa
Harbour, Goa - 403 803.

Versus

JSW Steel Limited **.... Respondents**
JSW Centre, Bandra-Kurla Complex
Bandra (East)
Mumbai – 400 051.

Appearance:

Shri Deepak Sharma, Authorized Representative for the Appellant

Shri Vipin Jain along with Shri Ramnath Prabhu, Ms. Ananya Maitin, Advocates for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85694/2026

Date of Hearing: 23.02.2026
Date of Decision: 15.05.2026

PER: M.M. PARTHIBAN

This appeal has been filed by the Commissioner of Customs, Custom House, Goa (herein after, referred to as 'the appellant'), pursuant to the directions given by the Committee of Commissioners of Customs consisting of Commissioner of Customs, Pune and Commissioner of Customs, Goa directing that in terms of sub-section (2) of Section 129A of the Customs Act, 1962 to file an appeal assailing the Order-in-Appeal No. GOA-CUSTM-000-APP-108-2017-18 dated 23.10.2017 (herein after, referred to as 'the impugned order', for short) passed by the Commissioner of Customs (Appeals), Panaji, Goa.

2.1. Briefly stated, the facts of the case are that the respondents herein *inter alia*, are engaged in the manufacture of iron and steel products for which they had imported different grades/varieties of coal, in bulk form, from their overseas supplier M/s JSW International Tradecorp Pte. Ltd., (JSW ITPL) Singapore. For the purpose of 42 such consignments imported during the period 2014-2015 and 2015-2016, the respondents have filed 42 Bills of Entry (B/Es) at the port of Marmagoa port. Since the imports were from related party, the assessments were carried out by the customs authorities provisionally pending determination of influence of relationship on the declared assessable value in respect of import of goods supplied by JSW ITPL, Singapore to the respondents, under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter, referred to as "CVR, 2007", for short] read with Section 14 of the Customs Act, 1962. The goods were allowed clearance on provisional assessment basis by the customs authorities on execution of provisional duty bond along with security/bank guarantee and upon payment of 1% of declared assessable value as External Duty Deposit (EDD) by the respondents in terms of Circular No.11/2001 dated 23.02.2001 issued by the Central Board of Excise & Customs (CBEC), New Delhi. Besides this, considering the nature of imports being coal in bulk form, and that the imported goods are subjected to testing and analysis, submission of certificate on demurrage/dispatch, draft survey reports about the actual quantity of imports etc., the B/Es were also assessed provisionally by the customs authorities at Marmagoa port.

2.2 Accordingly the import transactions under various B/Es, as above at Marmagoa, besides import transactions at other ports such as Dharmatar, Mumbai, Jaigarh, Pune, Mangalore, Karaikal, Krishnapatnam and Chennai were referred centrally to the Special Valuation Branch (SVB), GATT Valuation Cell, Mumbai for detailed examination of the valuation aspects of such imports and a separate file was opened for such examination with registration number assigned to the case as DOV REG No.0009495. Upon detailed examination of records, contracts, documents submitted by the respondents, the Additional Commissioner of Customs, GATT valuation cell, Mumbai by issue of Order-in-Original No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 have held that the relationship has no influence on the pricing between the respondents-importer and the related party supplier; and the price settlement has been arrived at as per the pricing mechanism of umbrella agreement purely on commercial consideration of international

trade governed by the forces of demand and supply at the relevant time of shipment. Therefore, it was held by him in the said order dated 09.09.2015 that the declared invoice value for the imported goods as submitted in the B/Es by the respondents shall be accepted under Rule 3(3)(a) of CVR, 2007. Further it was also held that all pending provisionally assessed B/Es of the respondents importer at different ports/Customs formations shall be finalised accordingly. It was also mentioned in the said order that this decision will remain in force till present method of invoicing remains unchanged or for a period of three years from the date of such order.

2.3 On the basis of aforesaid order-in-original dated 09.09.2015, the respondents importer had filed refund application dated 23.03.2016 before the Assistant Commissioner of Customs (Refund Section), Custom House, Marmagoa which was received by the custom house on 30.03.2016. However, the said refund application was disposed off by the Assistant Commissioner of Customs vide letter F. No. S/ 99-106/15-Ap. dated 06.04.2016 stating that the said refund claim was scrutinised and it was found that refund has been filed in respect of 42 B/Es which have been assessed provisionally and these B/Es have not finalised till date. Further, it was stated therein that certain documents were not enclosed. Therefore, it was directed by the said Assistant Commissioner of Customs informing the respondents-importer to submit the refund application after getting all the B/Es finally assessed quantifying the refund amount entitlement in the prescribed proforma. The respondents refuted the aforesaid view of the Department and submitted that the refund claims have been filed only for the amount of EDD deposited by them at the time of assessment and clearance, pending verification of valuation by the SVB in terms of CBEC circular dated 23.02.2001. It was also submitted by the respondents that in terms of SVB order dated 09.09.2015, the declared value has been accepted and thus the EDD paid during the pendency of SVB investigation was refundable immediately. They also cited the Public Notice No.5/2012 dated 17.01.2012, wherein the responsibility for finalising the provisional assessments on priority basis was fixed on the departmental officials in order to enable sanction of refund claim within the interest free period of three months. This was followed up with the remainder letter dated 07.09.2016 submitted by the respondents. In the meantime, the assessment group after examining the various aspects involved in the import transaction have passed six numbers of Order-in-Original in finalising the provisional assessments made in respect of 42 B/Es on

account of testing and analysis, submission of certificate on demurrage/ dispatch, draft survey reports. In the said orders, *inter-alia*, it was also specifically mentioned that the respondents importer are also eligible for refund of EDD. Therefore, the respondents had once again taken up the issue for processing their refund application on 30.03.2017. At the request of the Department, the respondents have also again refiled its earlier refund application dated 23.03.2016 on 05.05.2017. The Deputy Commissioner of Customs passed Order-in-Original No.122/2017 dated 27.07.2017 sanctioning 1% EDD amount of Rs.21,17,32,793/- under Section 27 ibid on 27.07.2017. However, no interest was sanctioned on the said refund amount, on the observation by the said original authority that the respondents vide their letter dated 05.05.2017 had submitted their refund application in the prescribed format in original on 05.05.2017, and as the said refund has been sanctioned within the 3 months from such date of filing refund claim. Feeling aggrieved with the said order of the lower authority dated 27.07.2017, the respondents have filed an appeal before the Commissioner of Customs (Appeals), Goa. In the impugned order dated 31.10.2017, the appeal filed by the respondents were allowed and it was held that the order of the lower authority is incorrect and the interest shall be payable from the date, immediately after expiry of three months from the date of receipt of refund application i.e., three months from 30.03.2016. In other words, the learned Commissioner of Customs (Appeals), in the impugned order had sanctioned interest on the refund amount for the period from 30.06.2016 till the date of refund of such EDD on 27.07.2017. Being aggrieved against the impugned order, Revenue/ the appellant department had filed this appeal before the Tribunal.

3.1 The learned Authorized Representative (AR) for Revenue reiterated the facts recorded in the appeal filed by the Department, stating that in response to the refund application dated 23.03.2016, the Department had found certain infirmities and accordingly vide office letter F. No. S/99/106/15-Appg. dated 06.04.2016 had directed the applicant respondents to submit the refund application after getting the B/Es finally assessed and after quantifying the refund amount entitlement in the prescribed proforma; that, in the order-in-original at paragraph 2.8, the original authority had also recorded that the complete refund application was filed in the prescribed proforma on 05.05.2017 after final assessment of the 42 B/Es. The refund was duly sanctioned on 27.07.2017 within 3 months from the date of refund application submitted in the prescribed

proforma along with required documents i.e., before 04.08.2017. Therefore, he contended that the respondents importer are not eligible for grant of interest on delayed payment of refund in terms of Section 27A of the Customs Act, 1962.

3.2 Learned AR further stated that the Respondents importer is not entitled to file refund application without finalisation of provisionally assessed B/Es and no refund can be considered before determination of final duty, by relying on the legal provisions of Section 2(2), 18(2), 27, 27A ibid. He also pointed out that once the refund application filed by the respondents importer was disposed of by the Department giving a detailed reason for doing so vide letter F. No. S/ 99-106/15-Ap. dated 06.04.2016, they should have appealed against the said letter dated 06.04.2016 with the Commissioner (Appeals), which they failed to do so, knowing that they are not entitled to file refund application without finalisation of B/Es and refund cannot be granted. He further stated that once the refund section has directed the respondents to get all the concerned B/Es finally assessed quantifying the refund amount entitlement, they should have approached the assessing authority for finally assessing the B/Es at the earliest for claiming the refund, which also they failed to do so. Instead, they were only writing to refund section to process the refund claim which is not sufficient to stake their claim for interest on delay in payment of refund under the provisions of Customs Act, as the refund sanctioning authority and B/E finalisation authority are different and they are independent authorities. In this regard, he also relied upon the legal provision under sub–section (1B)(c) of Section 27 ibid.

3.3 In support of their stand, the learned AR had also relied upon the judgements of the Hon'ble High Court as follows:

(i) *The Commissioner of Customs, Mangaluru Vs. JSW Steel Limited* – 2022 (379) E.L.T. 451 (Kar.) upheld by the Hon'ble Supreme Court 2022 (381) E.L.T. 443 (S.C.)

(ii) *V.R. Overseas Private Limited Vs. Commissioner of Customs (Port)* – 2023 (385) E.L.T. 107 (Cal.)

4.1 Learned Advocate for the respondents submitted that the payment of interest on the delayed refund of duty is governed by the provisions of Section 27A of the Customs Act, 1962. He submitted that in the instant case, it is an admitted fact that the refund application for EDD has been filed on 23.03.2016 along with all relevant documents viz., (i) Certified copy

of SVB order dated 09.09.2015; (ii) Original Certificate of Chartered Accountant for Unjust enrichment dated 21.03.2016; (iii) 36 nos. of Original EDD payment challans in respect of their claim of EDD refund; (iv) self-attested copies of EDD challans in respect of 6 B/Es paid through EDI online system; (v) Self-attested copies of triplicate B/Es in respect of 42 B/Es for which EDD refund was claimed (vi) self-attested copies of invoices in respect of 42 B/Es covered in the refund application. The claim for refund in this case has been filed requesting for consequential refund of EDD for an amount of Rs.21,17,32,793/- paid at the time of provisional duty assessments duly acknowledged by the department on 30.03.2016, and the claimed refund amount has also been duly sanctioned and paid, but after much delay. In the said refund application, it has been specifically mentioned that the refund of EDD is arising on account of transaction value being found as correct and acceptable to the Department in terms of SVB order dated 09.09.2015. Additionally, it was held in the said order dated 09.09.2015, that the respondents were eligible for the refund of 1% EDD paid the time of provisional assessment and the same may be claimed as per the provisions of Section 27 of the Customs Act, 1962. Therefore, he stated that refund claim of EDD submitted by the respondents-importer is required to be disposed of immediately, without any reference or need for finalization of provisional assessment by the appraising groups, who are not having any jurisdiction on such SVB issue. Further, in the individual orders-in-original dated 09.11.2016, 20.01.2017 and 08.03.2017, it was *inter-alia*, held that the respondents were eligible for refund of EDD besides being liable to pay differential Customs duty or was eligible for a refund of differential duty of Customs, under section 27 ibid on account of addition or deduction made to the assessable value on account of test report, the demurrage dispatch charges etc. In this regard, he submitted that these orders were neither subjected to any review nor appealed against by either side and have thus attain finality. There was, therefore, *consensus ad idem* between the parties that refund of EDD was covered under Section 27 ibid. In view of this, he claimed that the Revenue's contention before the Tribunal that claim for refund has to be examined and dealt with under Section 18 ibid is contrary to the department's own stand and needs to be rejected.

4.2 He further submitted that for the sake of argument also, even if it is contended that the claim for refund ought to have been made under the provisions of Section 18 ibid, as claimed by the Department for the first time in the additional submissions filed by them, then he stated that the

result would not have been different as the same amount of interest would have still accrued to the Respondents, albeit under different provision i.e., Section 18(4) ibid. In terms of the said legal provision read with Section 27 ibid (as the refund is claimed under this section) interest had to be allowed for a period starting from 3 months from the date of receipt of refund application to the date of refund. In this regard he pointed out that the amendment made in Section 18 ibid (with effect from 08.04.2011) provide for claim for refund arising not only upon final assessment, but also at the time of each of the re-assessment made, maybe for any number of times, depending on the facts of the case. In the context of present case, he stated that claim for refund of differential Customs duty paid at the provisional assessment stage, if it is at the higher side, then the differential duty liable to be paid upon finalisation of SVB investigation, would be entitled to be refunded to the respondents; or such duty paid at the provisional assessment stage being deficient to finally assessed duty would be liable to be paid by the respondents to the Department in terms of Section 18(4) ibid. In addition to this, 1% EDD paid in terms of CBEC circular Customs dated 09.02.2016, during the time of provisional assessment pending finalisation of SVB investigation, would also become refundable to the respondents upon completion of such SVB investigation. He stated that these are also evident in the various orders passed by the original authority both on account of finalisation of SVB investigation and upon finalisation of provisional assessments on account of other factors viz., testing and analysis, submission of certificate on demurrage/dispatch, draft survey reports about the actual quantity of imports etc. Further, he stated that the instructions issued by the CBEC vide F. No. 512/5/72-Cus.VI dated 23.04.1973; F. No. 511/7/77-Cus.-VI dated 09.01.1978, also states that provisional assessments must be finalised expeditiously, well within 6 months. Thus, he claimed that under no circumstances can the respondents be made liable for the delay on the part of the Department, which fact has also been taken cognizance in the impugned order by the learned Commissioner (Appeals).

4.3 On the contention of the Department that the refund claim filed by the respondents was premature being filed prior to the finalisation of assessment, by relying on the various instructions issued by the CBEC and the Public Notice (PN) No.05/2012 dated 17.01.2012, learned Advocate submitted that it is clearly provided in the said PN that in case of refund arising in the matter where B/Es are to be finalised prior to sanction of

refund, considering the inconvenience caused to the trade, the Department has specifically provided that the refund claim shall be accepted by the Refund section of the Custom House and no deficiency memo shall be issued to get the B/Es finalised; further, even where the Refund section officer scrutinising the refund claim, if required, shall forward the file to the assessing group for obtaining the reassessment of B/Es on priority basis within 5 working days. Therefore, he stated that the claim of the Department that without finalisation of the B/Es, no refund can be sanctioned is neither supported by law, nor by the extant instructions issued by the Department.

4.4 Learned Advocate further stated that there is nothing in the legal provisions of Section 27 ibid that a claim for refund can be filed pursuant to final assessment. He stated that claim for refund under Section 27 ibid can be filed at any time after the payment of duty, regardless of whether or not the assessment has been made are finalised, as long as duty or interest has been paid, to which the respondents-importer is seeking refund of duty. He further stated that the limitation period of one year prescribed under the said section has to be reckoned from the date of adjustment of the duty, i.e., the same extends the outer time period for filing the refund. He stated that this provision cannot be relied upon to hold that the right to file a refund claim arises only after the B/Es are finally assessed.

4.5 In support of the case, Learned Advocate placed reliance on the decision of the Hon'ble Jharkhand High Court in the case of *M/s Bihar Foundry and Casting Limited Vs. Union of India* – 2024 (3) TMI 371 - Jharkhand High Court, wherein it was observed that the provisional B/Es were finalised with the delay, and the same is contrary to Para 3.1 of Chapter 7 of the CBIC Customs Manual issued under Section 151A of the Customs Act, 1962, which mandates expeditious finalisation of B/Es within 6 months. Therefore, he claimed that the observation made in the said judgement that the CBEC circular being binding on the Revenue, the Department cannot act contrary to the same, and even though Section 18 ibid prescribes no limitation period, finalisation of B/Es must be done within a reasonable time. He also brought to the attention of the Tribunal, that the said judgement was challenged by the Department before the Hon'ble Supreme Court and vide order dated 10.01.2025, the said appeal was dismissed on merits; even a review petition filed by the Revenue, against the said order also came to be dismissed by the Hon'ble Supreme Court on 02.09.2025. Therefore, he pleaded that there is no infirmity in the

impugned order granting interest on delayed refund of EDD to the respondents.

4.6 Furthermore, Learned Advocate also submitted that 1% EDD was collected from the respondents separately and for a specific purpose i.e., for timely submission of documents relevant to related party transactions during the investigation undertaken by the SVB. The refund of this amount becomes due and payable, no sooner than the investigation concludes in favour of the respondents importer. Further, he stated that such a refund of the EDD amount is not contingent upon the finalisation of the assessment of B/Es on other ancillary grounds relating to other aspects of assessment, which may be governed by the provisions of Section 18 ibid. Thus, he claimed that refund of the EDD amount in question is independent of the finalisation of assessments on other aspects, and hence, the Respondents have been rightly granted the interest for the delay in refund of EDD in the impugned order by the learned Commissioner (Appeals).

4.7 In support of the above submissions, learned Advocate had relied upon the following case laws:

(i) *Ranbaxy Laboratories Limited Vs. Union of India and Others* – (2011) 10 Supreme Court Cases 292.

(ii) *Reliance Jio Infocom Limited Vs. Principal Commissioner of Customs (Import), Mumbai* – Final Order No. A/87598/2023 dated 06.09.2023 of West Regional Bench, CESTAT, Mumbai.

4.8 In view of the above, Learned Advocate pleaded that the appeal filed by the Revenue is devoid of merits and is liable to be rejected.

5. We heard both sides and have considered the submissions advanced by the learned Advocates appearing for the respondents and the learned Authorized Representative of the Department. We have also carefully perused the records of the case and the additional written submissions given in the form of paper books along with relied upon case laws on both sides.

6. In the impugned order dated 23.10.2017 and in the original order dated 27.07.2017, the facts of the case have been brought out in detail and the same has also been captured in the preceding paragraphs 2.1 to 2.3 of this order. We find that the issues arising for consideration before us from this appeal is to determine the following:

(i) In the case of sanction of refund of Extra Duty Deposit (EDD) of Rs.21,17,32,793/- vide Order-in-Original No. 122/2017 dated 27.07.2017 which was upheld along with payment of interest thereon in the impugned order, whether there is any delay in sanction of refund to the respondents or not?

(ii) if there is a delay, then whether interest under Section 27A of the Customs Act, 1962 is payable to the respondents or not;

(iii) if any interest is payable on account of delay in the above refund, then for what period such interest under Section 27A ibid, is payable?

7. The period of dispute in the present case is from May, 2014 to September, 2015, as the 42 B/Es covered under the present dispute were filed under Section 46 ibid during the period 20.05.2014 to 10.09.2015 with details of B/Es furnished by the respondents as Annexure-B in the refund claim dated 23.03.2016. Besides the above, details or six orders in original issued in finalization of B/Es also provide the following details of duty paid provisionally, finalized duty as well as EDD paid by the respondents:

Sr. No.	**B/E No. and date**	**Provisionally assessed**	**Finally assessed**	**Duty Diff. refundable**	**EDD at 1% paid**	**Order No. Ref.**
		(Amount in Rupees)				
Financial Year 2014-2015						
1	5543846 20/05/2014	37990886	37982224	-8662	5502209	**2**
2	5691359 03/06/2014	43089041	43827899	738848	6345229	**3**
3	5702613 04/06/2014	22724843	23035081	310238	4545770	**5**
4	6347887 05/08/2014	31819320	31826025	6705	4917746	**5**
5	6622008 02/09/2014	33508405	33517795	9390	5514799	**4**
6	6710674 10/09/2014	28756641	29242273	485632	4480652	**4**
7	6866061 24/09/2014	41521542	41445852	-75690	5276171	**6**
8	6887378 26/09/2014	36261667	36230145	-31522	6094017	**1**
9	6916716 29/09/2014	28119929	28119929	0	4533935	**5**
10	6993056 08/10/2014	31978592	31952236	-26356	5184435	**6**
11	7134876 21/10/2014	33189578	33306828	117250	5230394	**4**
12	7236042 31/10/2014	33574555	33680272	105717	5299682	**4**
13	7218305 30/10/2014	36714666	36902185	187519	5961562	**4**
14	7303520 07/11/2014	30757411	31396047	638636	5211355	**3**
15	7398498 17/11/2014	28364757	28878236	513479	4341231	**4**
16	7720099 17/11/2014	33130294	33073741	-56553	5364139	**2**
17	7775194	28047532	28704722	657190	4275124	**4**

Sr. No.	B/E No. and date	Provisionally assessed	Finally assessed	Duty Diff. refundable	EDD at 1% paid	Order No. Ref.
		(Amount in Rupees)				
	22/12/2014					
18	7845423 31/12/2014	40384931	40319795	-65136	6639202	**6**
19	7970917 13/01/2015	31118162	31485803	367621	4670468	**4**
20	8025241 19/01/2015	29071537	29327829	256292	4924130	**4**
21	8098232 27/01/2015	29570118	29581246	11128	4469286	**4**
22	8313345 16/02/2015	30445633	31249001	803368	4664696	**5**
23	8392042 23/02/2015	40697764	40732007	34243	6887174	**4**
					120333406	
Financial Year 2015-2016						
1	8972750 20/04/2015	34698306	34698306	0	4173071	**4**
2	9007888 23/04/2015	47350847	47343243	-7604	6134922	**6**
3	9242460 15/05/2015	25229795	25242417	12622	3347813	**5**
4	9248383 15/05/2015	40361548	40318992	-42556	4679114	**1**
5	9343847 25/05/2015	35705492	35705492	0	4515062	**3**
6	9316091 27/05/2015	53015125	53044736	29611	6869406	**4**
7	9524814 10/06/2015	41649779	41637264	-12515	5112105	**6**
8	9622043 19/06/2015	37132641	37133626	985	4725153	**5**
9	9634813 20/06/2015	38097655	37912860	-184795	4410377	**2**
10	9883515 14/07/2015	40626302	40589238	-37064	4909673	**6**
11	9900009 15/07/2015	35268588	352688	0	4484579	**4**
12	9967399 21/07/2015	49565916	49549260	-16656	6018648	**6**
13	2042308 27/07/2015	35540361	35540361	0	4541671	**3**
14	2208896 11/08/2015	35344102	35705446	361344	4241860	**4**
15	2319338 21/08/2015	34775508	35159262	383754	4125941	**3**
16	2332319 22/08/2015	22608262	22768271	160009	2978962	**3**
17	2349152 24/08/2015	39132005	39652886	520881	4890577	**3**
18	2507483 07/09/2015	48011022	47965672	-45350	5888317	**6**
19	2555084 10/09/2015	41665323	41760251	94928	5352136	**3**
					91399387	

Order No. Reference

Order 1 – 2 B/Es covered in Order-in-Original (O-in-O) No. 03/2017 dated 20.01.2017

Order 2 – 3 B/Es covered in O-in-O No. 21/2017-A.C.(B) dated 08.03.2017

Order 3 – 8 B/Es covered in O-in-O No. 24/2017- A.C.(A) dated 08.03.2017

Order 4 – 15 B/Es covered in O-in-O No. 158/2017- A.C.(A) dated 09.11.2016
Order 5 – 6 B/Es covered under O-in-O No. 163/2016 dated 30.11.2016
Order 6 – 8 B/Es covered under O-in-O No. 164/2016 dated 30.11.2016

From the above table, it transpires that the total EDD paid by the respondents is Rs. 21,17,32,793/- (120333406+91399387).

8.1 In order to address the issues under consideration before this Tribunal, we would like to refer the relevant legal provisions contained in the Customs Act, 1962 and the rules/regulations made thereunder as it existed during relevant point of time of the dispute and the relevant facts evidenced through various orders, documents/letters dealing with the issue, for coming to a proper conclusion about the subject issues of determination referred above.

Customs Act, 1962

*"**Definitions**.*
***Section 2**.—*
In this Act, unless the context otherwise requires,—

(2) "assessment" includes provisional assessment, re-assessment and any order of assessment in which the duty assessed is nil; Assessment of duty.

(15) "duty" means a duty of customs leviable under this Act;

(24) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14;

Valuation of goods.

***Section 14**.—(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf…..*

Assessment of duty.

***Section 17**.—(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document,

whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification or concession of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

[1][(6) Where re-assessment has not been done or a speaking order has not been passed on reassessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

Provisional assessment of duty

Section 18.*(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46—*

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of

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[1] *Omitted by the Finance Act, 2018, w.e.f. 29-3-2018.*

the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then—

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) the case of warehoused goods, the proper officer may, where the duty finally assessed [65][or re-assessed, as the case may be,] is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

Claim for refund of duty.

Section 27*.(1) Any person claiming refund of any duty or interest—*

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy

Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

Provided *that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2) :*

Provided further *that the limitation of one year shall not apply where any duty or interest has been paid under protest :*

Provided also *that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.*

Explanation.—For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.
(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :—

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided *that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*
(a) the duty and interest, if any, paid on such duty paid by the importer or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty] on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75;

(f) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify;

***Provided further** that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.*

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, the National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

Interest on delayed refunds.

***Section 27A.** 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 [95][five] per cent and not exceeding thirty per cent per annum as is for the time being fixed [96][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 Act, 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."

Customs (Provisional Duty Assessment) Regulations, 1963

Notification No. 181-Cus., dated 13th July, 1963.

"In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), read with section 18 of the said Act, the Central Board of Revenue makes the following regulations, namely:

1.Short title.- These regulations may be called the Customs (Provisional Duty Assessment) Regulations, 1963.

2. Conditions for allowing provisional assessment.- Where the proper officer on account of any of the grounds specified in sub-section (1) of section 18 of the Customs Act, 1962 (52 of 1962), is not able to make a final assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty that is most likely to be levied hereinafter referred to as the provisional duty. If the importer or the exporter, as the case may be, ***executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty****, as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty.*

3.Terms of the bond.-
(a)Where provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or the exporter, as the case may be, the terms of the bond shall be that such document shall be produced or such information shall be furnished within one month or within such extended period as the proper officer may allow, and the person executing the bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(b)Where provisional assessment is allowed pending the completion of any test or enquiry, the terms of the bond shall be that the person executing the bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

4.Surety or security of the bond.- The proper officer may require that the bond to be executed under these regulations may be ***with such surety or security, or both****, as he deems fit."*

Customs (Provisional Duty Assessment) Regulations, 2011.

Notification No. 81/2011-Customs (N.T.) Dated 25.11.2011

"In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), read with section 18 of the said Act, and in supersession of the Customs (Provisional Duty Assessment) Regulations, 1963, except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely:-

Regulation 1. Short title and commencement. - (1) These regulations may be called the Customs (Provisional Duty Assessment) Regulations, 2011.
(2) They shall come into force on the date of their publication in the Official Gazette.

Regulation 2. Conditions for allowing provisional assessment. - (1) Whereas an importer or an exporter, as the case may be, is unable to make self-assessment under sub-section (1) of section 17 of the Customs Act, 1962 (52 of 1962) and makes a request in writing to the proper officer for assessment; or b) the proper officer on account of any of the grounds specified in sub-section (1) of section 18 of the said Act, is not able to verify the self-assessment or make re-assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty to be levied (hereinafter referred to as the provisional duty).

(2) If the importer or the exporter, as the case may be, ***executes a bond in an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty and deposits with the proper officer such sum not exceeding twenty per cent of the provisional duty****, as the proper officer may direct, the proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty.*

Regulation 3. Terms of the bond. –
(1) Where provisional assessment is allowed on request of the importer or the exporter, as the case may be, the bond referred to in regulation 2 shall contain an undertaking that he shall pay the deficiency, if any, between the duty finally assessed or reassessed, as the case may be, and the duty provisionally assessed.

(2) Where provisional assessment is allowed pending the completion of any test or enquiry, the bond referred to in regulation 2 shall contain an undertaking that he shall pay the deficiency, if any, between the duty finally assessed or reassessed, as the case may be, and the duty provisionally assessed.

(3) Where provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or the exporter, as the case may be, the bond referred to in regulation shall contain an undertaking that he shall produce such document or information within one month or within such extended period as the proper officer may allow, and the person executing the bond shall pay the deficiency, if any, between the

duty finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.

Regulation 4. Surety or security of the bond. - The proper officer may require that the bond to be executed under these regulations may be ***with such surety or security, or both****, as he deems fit.*

Regulation 5. Penalty. - If any importer or exporter contravenes any provision of these regulations or abets such contravention, or who fails to comply with any provision of these regulations with which it was his duty to comply, he shall be liable to a penalty which may extend to fifty thousand rupees."

Customs (Finalisation of Provisional Assessment) Regulations, 2018

[Notification No.73/2018-Customs(N.T.) dated ***14th August, 2018****]*

"In exercise of the powers conferred by clause (d) of section 157 read with section 18 and clause (ii) of sub-section (2) of section 158 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely:

Regulation 1. Short title and commencement. - (1) These regulations may be called the Customs (Finalisation of Provisional Assessment) Regulations, 2018.
(2) ***They shall come into force on the date of their publication in the Official Gazette.***

Regulation 2. Definitions. - (1) In these regulations, unless the context otherwise requires-
(a) 'Act' means the Customs Act, 1962 (52 of 1962);
(b) 'Board' means the Central Board of Indirect Taxes and Customs;
(c) 'proper officer' means Deputy Commissioner or the Assistant Commissioner of Customs;
(2) The words and expressions used herein and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the said Act.

Regulation 3. Application. - ***These regulations shall apply to the provisional assessments ordered on and after the enforcement of these regulations.***

Regulation 4. Time-limit and manner for submission of documents or information for the purpose of finalisation of provisional assessment. –

(1) Where a provisional assessment is ordered by the proper officer for the reasons that, -
(a) the necessary documents have not been produced or information has not been furnished by the importer or the exporter; or
(b) the proper officer requires the importer or the exporter to produce any additional documents or information, then such information or documents shall be made available by the importer or the exporter within one month from the date of such order of provisional assessment or the date of such requisition by the proper officer, as the case may be.

(2) The proper officer shall within fifteen days from the date of such order of provisional assessment, inform the importer or the exporter, in writing,

the specific details of the information to be furnished or the documents to be produced.

(3) The proper officer may, for reasons to be recorded in writing, allow a further period not exceeding three months, on his own or at the request of the importer or the exporter, in case the documents or information are not made available within the time period specified in sub-regulation (1).

(4) The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another three months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within the period as allowed above by the proper officer.

(5) The Commissioner of Customs, may extend the time period further as deemed fit, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available even after the extension of time under sub-regulation (4).

(6) The documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer may be submitted in one instance.

(7) The importer or the exporter or his authorized representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

(8) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

Regulation 5. Time-limit for finalisation of provisional assessment. –
(1) The proper officer shall finalise the provisional assessment within two months of receipt of:
(a) an intimation from the importer or the exporter or his authorized representative or Customs Broker under sub-regulation (7) of regulation 4; or
(b) a chemical or other test report, where the provisional assessment was ordered for that reason; or
(c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

Provided that where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of two months shall be reckoned from the date of last intimation referred to in clause (a)above,:

Provided further that where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within two months of the expiry of the time allowed for submission of the said documents or information.

(2) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of three months in case the proper officer is not able to finalise the provisional assessment within the period of two months as specified in sub-regulation (1) above.

(3)This regulation shall not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Regulation 6. ***Manner of finalisation of provisional assessment****. - (1) The provisional assessment shall be finalised as per the provisions of section 18 of the Act.*

Provided that if the amount so paid at the time of provisional assessment or after adjustment under clause (a) to sub-section (2) of section 18 of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the ***shortfall shall be adjusted from the security****, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,:*

Provided further that, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods shall pay the shortfall in terms of the provisions of section 18.

(2) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(3) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.

(4) Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

(5) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Regulation 7. Penalty. - If any importer or exporter or his authorized representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to fifty thousand rupees."

Customs Refund Application (Form) Regulations, 1995

M.F. (D.R.) Notification No. 34/95-Cus. (N.T.), dated 26-5-1995.

"In exercise of the powers conferred by sub-section (1) of section 157 , read with clause (aa) of sub-section (2) of the said section of the Customs Act, 1962 (52 of 1962), hereinafter referred to as the Act, and in

supersession of the Customs Application (Form) Regulations, 1991, except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely :-

Regulation 1. Short title and commencement. – (1) These regulations may be called the Customs Refund Application (Form) Regulations, 1995. (2) They shall come into force with effect from the date of their publication in the Official Gazette.

Regulation 2. Form and manner of filing application for refund. - (1) An application for refund shall be made in the prescribed Form appended to these regulations in duplicate to the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs], having jurisdiction over the Customs port, Customs airport, land customs station or the warehouse where the duty of customs was paid.

(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.

(3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies, for scrutiny.

Explanation . - For the purposes of payment of interest under section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Officer, has been made."

8.2 At the outset, it is also made clear that in the above appeal the disputed period pertains to post introduction of 'self-assessment' concept under the definition clause of 'assessment' in Section 2(2) ibid as well as in the legal provisions contained in Section 17 ibid relating to 'Assessment of duty'. Further, Section 18 ibid relating to 'Provisional assessment of duty' providing for a separate mechanism to regularize the payment of duty short levied and interest thereon and duties that are to be refunded on finalization of a provisional assessment along with the scheme of self-assessment was brought into the Customs Act by Finance Act, 2011 with effect from 08.04.2011, and hence these are particularly relevant to the dispute period in the present case. In the following paragraphs, we would examine the issues under dispute both from the perspective of legal validity as well as on the facts of the case, specific to the appeal before the Tribunal.

8.3 According to Section 14 of the Customs Act, 1962, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Customs Value should be the "Transaction Value", i.e., the price actually

paid or payable after adjustment by various factors influencing valuation and subject to (a) compliance with the valuation Conditions and (b) satisfaction of the Customs authorities with the truth and accuracy of the declared value. In terms of Section 14 ibid, import transactions involving buyer and seller, where they are related to each other, commonly referred to as 'related party transactions', the valuation aspect of such imports are examined by Special Valuation Branches (SVB) located, at that relevant time, in the major Custom Houses at Mumbai, Calcutta, Chennai and Delhi. In such cases, the goods are first assessed provisionally, and the importer is required to fillup a questionnaire and furnish a list of documents so that finalisation of provisional assessments is expedited. In terms of extant CBEC instructions with effect from 01.01.2013, the functional and supervisory control over the functioning of SVBs has been vested with the Directorate General of Valuation (DGOV). Accordingly, DGOV would monitor the functioning of SVBs and be responsible for their quality control. [Reference CBEC Circulars No.11/2001-Cus, dated 23.02.2001 and No. 29/2012-Cus., dated 07.12.2012]

8.4 The Finance Act, 2011 (Act No.8 of 2011) w.e.f. 08.04.2011, introduced the scheme of self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to re-assessment by the proper officer of Customs, if it is found to be incorrect. However, in case an importer or exporter is not able to make self-assessment in terms of Section 17(1) ibid, then he may request in writing to the proper officer for assessment.

8.5 Similarly the legal provisions in respect of provisional assessment of duty under Section 18 ibid provide for certain situations in which provisional assessment of duty is resorted to. In terms of Section 18 ibid, in case the proper officer is not able to verify the self-assessment or make re-assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents have not been furnished or information has not been furnished and the it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally. Customs (Provisional Duty Assessment) Regulations, 2011 have been notified to prescribe conditions for allowing provisional assessment, terms of bond to be executed with security, penal provisions etc. A penalty of upto Rs.50,000 may be imposed

on contravention of these Regulations. In the present case, the respondents importer had submitted all information required for ascertaining the duties of customs leviable on the imported goods at the time of registration of SVB file under Directorate General of Valuation DOV Registration No.0009495. Further, during SVB investigation the respondents have also furnished requisite details viz., details of various consignments imported at different ports; commercial invoices; Certificate of quality, weight, Origin; Sales and Purchase contract; Price confirmation letters; Long Term Umbrella Agreement and Annual Financial reports for relevant financial years, which are necessary to finalize the SVB angle in determining the transaction value in import transactions.

8.6 For making provisional assessment, the proper officer of customs is required to estimate the duty to be levied i.e., the provisional duty and the duty that may be finally assessed or re-assessed. Thereafter, the importer or the exporter has to execute a bond in an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty. He shall also deposit with the proper officer such sum not exceeding twenty per cent of the provisional duty, as the proper officer may direct. The terms of the bond include the following undertakings to be given by the importer/exporter viz., (i) The importer or exporter shall pay the deficiency, if any, between the duty finally assessed or re-assessed, as the case may be, and the duty provisionally assessed. (ii) Where provisional assessment is allowed pending the production of any document or furnishing of any information, the importer / exporter shall produce the same within one month or within such extended period as the proper officer may allow. In terms of extant CBEC instructions, the provisional assessments must be finalized expeditiously, well within 6 months. However, in cases involving machinery contracts or large project imports, where imports take place over long period, such finalization may take more time. Here too, CBEC directs the customs field formations that efforts should be made to finalize the cases within 6 months of the date of import of the last consignment covered by the contract. [Refer CBEC Instructions F.No.512/5/72-Cus.VI, dated 23-4-1973 and F.No.511/7/77-Cus.VI, dated 9-I-1978 and Circular No. 17/2011-Cus., dated 8-4-2011].

8.7 In terms of the CBEC's instructions vide F.No.512/5/72- Cus.VI dated 23.04.1973 and F. No. 511/7/77-Cus.VI. dated 09.01.1978, the provisional assessments must be finalized expeditiously, well within 6 months. Thus, it could be inferred that even though there is no specific time limit prescribed

in the Regulations of 1963/2011, either for submission of documents by the importer or for finalizing the provisional assessment by the proper officer of customs, the endeavour of the department is to obtain finalization of provisionally assessed duties at the earliest as may be possible under the Customs statute. This also becomes clear from the subsequent Customs (Provisional Duty Assessment) Regulations, 2011, introduced with effect from 25.11.2001, where it is specifically provided that in case of provisional assessment which is pending the production of any document or furnishing of any information by the importer or the exporter, the bond referred to in regulation shall *inter alia,* contain an undertaking that he shall produce such document or information within one month or within such extended period as the proper officer may allow.

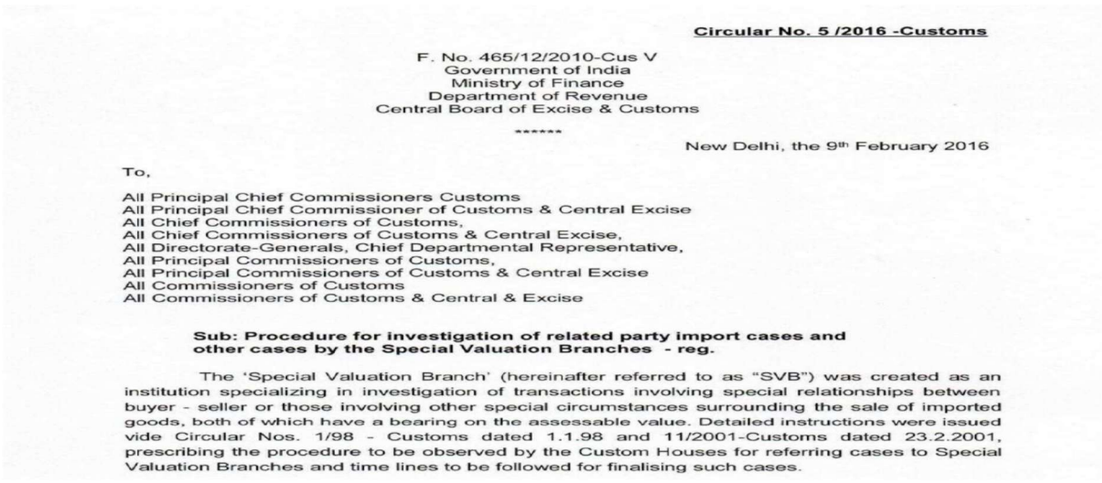
8.8 We find that the provisions under sub-section (2) to Section 18 ibid provide that the duty leviable on import goods shall be assessed finally in accordance with the Customs Act. In the event of finally assessed duty falls short of the amount already paid, then the importer is required to pay the deficiency after adjusting the duty already paid under provisional assessment; further, in case the finally assessed duty is in excess of the duty already paid on the provisional assessment, then the importer is entitled to get refund of such amount of excess duty paid over the finally assessed duty.

9.1 From careful examination of the legal provisions of the Customs Act, 1962 particularly Sections 2(2), 2(15), 18, the phrase "duty" has been used therein and has also been defined to mean duty of customs leviable under the Customs Act, 1962. However, the phrase "Extra Duty Deposit" has not been either defined or mentioned in any of the provisions of the Customs Act, 1962. In the regulations made in exercise of the powers vested with the Board/CBEC under Section 157 ibid, for carrying the purposes of the Customs Act, 1962, there is mention of the term "deposit" in determining the sum, not exceeding twenty per cent of the provisional duty, to be paid by the importer, besides execution of bond and security at the time of provisional assessment. The relevant regulations relevant for the period of dispute is Customs (Provisional Duty Assessment) Regulations, 2011. In the Circular No.11/2001-Customs dated 23.02.2001 issued for prescribing the instructions in handling the cases by SVB, such "Extra Duty Deposit (EDD)" to be obtained is specified at the rate of 1% and in certain situations, enhancement of such deposit to 5% has also been mentioned. The relevant

extract of the said instructions in the said Circular dated 23.02.2001 is given below:

> *"9. The amount of extra duty deposit presently kept at 1% will be continued. Board has however decided that if the importer does not furnish complete reply to the questionnaire within 30 days, of receipt of the "Questionnaire" by the importer, the extra duty deposit will be increased to 5% till the date of receipt of reply by the Department. It should therefore be impressed upon the concerned importers (in the public notice that is issued) to ensure timely replies being sent to the Questionnaire to avoid any higher deposit being insisted.*
>
> *10. Furthermore, where provisional assessment is being resorted to, the investigation and finalisation of the assessment must be completed within four months from the date of reply. If no decision is taken within 4 months, the extra duty deposit should be discontinued and the concerned Deputy Commissioner/Assistant Commissioner will be held responsible for inexplicable delay in finalisation."*

9.2 Further, in the subsequent instructions issued prescribing the procedure for investigation of related party transactions in import cases under SVB, the CBEC had issued one another circular No.5/2016-Customs dated 09.02.2016, where the procedure of obtaining EDD in case of provisional assessments have been elaborately explained. Even though this circular has been issued four months subsequent to the disputed period, for understanding the nature of EDD and its implication in refund of the same, for the purpose of the appreciation of issues under dispute, it would be useful to refer the same. The relevant paragraphs of the said circular has been extracted and given below:



Circular No. 5 /2016 -Customs

F. No. 465/12/2010-Cus V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

****

New Delhi, the 9th February 2016

To,

All Principal Chief Commissioners Customs
All Principal Chief Commissioner of Customs & Central Excise
All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Directorate-Generals, Chief Departmental Representative,
All Principal Commissioners of Customs,
All Principal Commissioners of Customs & Central Excise
All Commissioners of Customs
All Commissioners of Customs & Central & Excise

Sub: Procedure for investigation of related party import cases and other cases by the Special Valuation Branches - reg.

The 'Special Valuation Branch' (hereinafter referred to as "SVB") was created as an institution specializing in investigation of transactions involving special relationships between buyer - seller or those involving other special circumstances surrounding the sale of imported goods, both of which have a bearing on the assessable value. Detailed instructions were issued vide Circular Nos. 1/98 - Customs dated 1.1.98 and 11/2001-Customs dated 23.2.2001, prescribing the procedure to be observed by the Custom Houses for referring cases to Special Valuation Branches and time lines to be followed for finalising such cases.

2. However, trade and industry has been repeatedly representing regarding delays in finalisation of SVB investigations, continued uncertainty due to provisional assessments, increase in transaction costs due to extra duty deposits and burdensome procedure of renewal of SVB orders. Board has also taken cognizance of the WCO's Guide to Customs Valuation and Transfer Pricing (June 2015) and the fact that the circulars 1/98 and 11/2001 were based upon the Customs Valuation (Determination of Price of imported goods), Rules, 1988, which have since been superseded by the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, after considering the above and the large number of SVB investigations pending in various Customs Houses, a need has been felt to streamline the procedures relating to investigations by SVBs.

xxx xxx xxx xxx

3.2 The Board has reviewed the practice relating to levy of 'Extra Duty Deposits' (EDD) in cases where SVB investigations are undertaken. It has been taken into consideration that 'Extra Duty Deposit' @ 1% of declared assessable value is being obtained from the importer for a period of 4 months during which time he is required to submit required documents and information to the SVB. In the event of his failing to do so, the EDD can be increased to 5% till such time the importer complies. Upon the importer complying with the requisition for documents and information, Circular 11/2001 – Cus dated 23.2.2001 provides that EDD shall be discontinued, while imports will continue to be assessed provisionally till the completion of investigations. In other words, the imports were continued to be assessed provisionally on the basis of a PD Bond but without any EDD. It has also been noted that many importers have represented on delays in dispensing of EDD, even though they have provided the required information and a period of 4 months has passed without the case having been decided. Therefore, the Board has decided that while reference to SVB requires the assessments to be provisional, for the sake of reducing transaction cost and bringing uniformity across Customs Houses, no security in the form of EDD shall be obtained from the importers. However, if the importer fails to provide documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months. Simultaneously, the importer shall be granted a further period of 60 days to comply with the requisition for information & documents. If the importer fails to submit documents within this extended period, the Commissioner in charge of SVB may consider the use of other provisions of the Customs Act for obtaining documents / information from an importer for conducting investigations. In no case shall the imposition of Security Deposit exceed the period of three months specified above. Furthermore, the Board has also decided that the importer would be free to choose whether the Security Deposit to be provided for the purposes of provisional assessment shall be by way of cash deposit or a Bank Guarantee. The form of Bond to be initially furnished by the importer is attached as Annexure D. The form of Bond to be used in a case where taking a Security Deposit becomes necessary is attached as Annexure E.

3.3 It has also been decided that the existing system of adjudication, wherein the proper officer of the SVB passed an appealable order followed by the assessing officer passing another corresponding order finalizing provisional assessments should be replaced. It has now been decided that the SVB shall not issue an appealable order. Instead, the SVB shall convey its investigative findings by way of an Investigation Report to the referring customs formation for finalizing the provisional assessments. This would obviate multiple streams of appeals for the trade.

9.3 On careful perusal of the above along with statutory provisions of Customs Act, 1962, it clearly transpires that the term "duty" refers to the duties of customs leviable under Section 14 of the Customs Act, 1962 read with the Customs Tariff Act, 1975; whereas, the term "Extra Duty Deposit" (EDD) refers to the deposit of certain prescribed percentage of declared assessable value, pending submission of documents in respect of related party transactions under SVB investigation. This EDD is in addition to and separate from the deposit of certain sum, being the prescribed percentage of differential duty between the provisionally assessed duty and the duty that may be finally assessed, which is taken as security under Customs (Provisional Duty Assessment) Regulations, 1963/2011. Therefore, we are of the considered view that the provisions relating refund of 'duty' as contained in Section 27 of the Customs Act, 1962 and those relating to "Extra Duty Deposit" arising on account of ordering of provisional assessment of duty till finalization of such provisional assessments for determination of duty finally payable by the importer under Section 18 ibid, in respect of SVB cases implemented through CBEC Circular cannot be equated to as "duty". Further, EDD is secured by Revenue for a specific purpose of obtaining the documentation in time, for enabling timely finalization of provisional assessments by the department, whereas the "duty" and "security of duty" are determined by the proper officer of customs for securing the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed. Therefore, we are also of the prima facie view, that the EDD is paid by an importer, pending finalization of provisional assessment for a specific purpose and its estimation based on differential duty as a measure and its continuation cannot be dependent on finalization of assessment. In other words, the duties of customs paid under any type of assessment i.e., provisional, self-assessment, re-assessment, final assessment etc., are in the nature of 'duty' as defined under Section 2(15) ibid, "Extra Duty Deposit" by its nature and as explained in the CBEC circular is in the nature of 'deposit of certain sum' in order to ensure timely submission of information by the importers under SVB investigation, for the purpose of expeditious finalization of provisional assessments made under Section 18 ibid. Though the quantum of EDD deposit is determined on the basis of declared value, such measure of the deposit cannot by itself convert its nature to be a 'duty'. Further, such quantum of deposit has also been prescribed at 1% and at 5% depending upon the circumstances as prescribed in CBEC circular. Further, upon furnishing of required information

by the importers the requirement of payment of EDD is dispensed with by CBEC, while continuing the imports under SVB to be assessed under provisional assessment. Therefore, it also transpires from the above, that payment of EDD is for a specific time period, during the pendency of provisional assessment on account of SVB investigation, and it is only for the purpose of submitting the requisite information by the importer for determination of duty that is finally to be assessed by the proper officer of customs under Section 18 ibid. At the most EDD can be kept as reserve or 'advance' being in the nature of 'deposit' which is obtained by Revenue as an 'extra amount', which could be adjusted with the duty finally determined (on account of valuation of related party transaction), in case the security obtained during provisional assessment is insufficient and the importer had not paid the differential amount due on account of finalization of provisional assessment. Even though, such deposits made in the form of EDD may be available for adjustment against the deficiency of finally determined duty, in the context of present case where in comparison to the provisionally assessed duty paid there is no case of insufficiency in the duty already paid, as the transaction values were accepted, the EDD amount is refundable and it is not dependent on finalization of provisional assessment on account of other reasons. Further, since the purpose and the manner of collection of EDD is to ensure timely submission of information, in cases where the EDD is not required to make the deficiency of finally assessed duty, in our considered view, the same is refundable to the importer, by applying legal provisions of Section 18 ibid *mutadis mutandis* to EDD as it applies to the duty, as EDD is collected for purpose of Section 18 ibid.

9.4 On careful perusal of legal provisions of Section 18 ibid and the notes on clauses explaining the rationale and purpose of introducing the provision, as seen from the Notes furnished by the Ministry of Finance submitted before the Standing Committee on Finance (2005-2006) in its Twenty Seventh Report dated 13.12.2005, and the Statement of Objects and Reasons of the Taxation Laws (Amendment) Bill, 2005 it transpires that the amendments were made to provide for a separate, self-contained machinery provision to handle payment of deficient duty or refund of excess duty, as the case may be, while finalizing the provisionally assessed duty, after determining the finally assessed duty. Therefore, the payment of interest on such additional duty by the importer under Section 28AB/ 28AA or interest on duty refundable under Section 27A ibid, were also provided

therein. Further, the requirement of fulfilment of unjust enrichment was also provided therein. The said extract of the notes on clause is given below:

> ***"(b) Indirect Taxes (Customs and Central Excise)***
> *(iv) Clause 18 12.*
> *Presently, Section 18 of the Customs Act, which provides for provisional assessment of duty does not provide for various issues arising from the finalisation of provisional assessment. The proposals of Clause 18 seek to insert sub-section (3), sub-section (4) and sub-section (5) to section 18 of the Customs Act, 1962 to provide for a mechanism to regularise the payments of duty short levied and interest thereon and duties that are to be refunded on finalisation of a provisional assessment."*

Therefore, we are of the considered view that interest, if any payable, for the delay in refund of such EDD would also be governed by the relevant provisions under sub-section (4) of Section 18 ibid, as it provides for separate mechanism to regularise the payment of duty short levied and interest thereon as well as the duties that are to be refunded on finalisation of provisional assessment, and the interest payable, if there is any delay.

9.5 On careful examination of the Order-in-Original No. 82/ADC/SVB/ BT/2015-16 dated 09.09.2015 (DOV No.DOV0009495), it clearly transpires that the provisionally assessed B/Es on account of SVB investigation in respect of related party transactions between the respondents importer and M/s JSW International Tradecorp PTE Ltd., Singapore was finalised under Rule 2(2) of CVR, 2007 read with Section 14 of the Customs Act, 1962 by accepting the declared invoice value for the imported goods as the transaction value to be adopted for the purpose of determining finally assessed customs duty in terms of Rule 3(3)(a) of CVR, 2007 read with Section 14 ibid. It was also ordered that all pending provisionally assessed B/Es of the respondent importer at different ports/Customs formation shall be finalised accordingly. Further, the said order have also held that the decision of accepting the value declared by the respondents importer will remain in force till the present method of invoicing remains unchanged and that on the expiry of 3 years from the date of this order, if there was no renewal, then the said order stands expired and the assessing groups may resort to provisional assessment again with EDD equivalent to 1% of the assessable value. Thus, the order dated 09.09.2015 applied to all import transactions of the respondent importer from the said supplier of Singapore for the financial year 2014-2015 as well as for 2015-2016, 2016-2017 and 2017-2018. These orders finalizing the aspect of valuation of imported goods for the purpose of determining the relationship having influenced the

transaction value or otherwise, was neither reviewed by the department nor had been appealed against by the respondent importer; further the direction in the said order for finalization of provisional assessments have also not been implemented. It is also important to note that the finalization of provisional assessments have to be done by the proper officer of customs expeditiously, when there is nothing more to be done for finalizing the provisionally assessed B/Es in having accepted the transaction value, which have already been declared and the applicable duty had been paid by the respondent importer at the time of import itself, or finalized at the most within the specified time period of three months provided in the customs statute for refunding EDD without any interest burden or as per instructions issued by CBEC from time to time.

9.6 Consequent to the passing of such order dated 09.09.2015, the respondents importer have filed the refund application dated 23.03.2016 claiming refund of 1% EDD for an amount of Rs.21,17,32,793/-, and the same was received under acknowledgement at the custom house, mom Marmagoa on 30.03.2016. Perusal of the case records indicate that the said the refund claim was filed in the prescribed form "Application for refund of duty/interest" in Part-A containing particulars itemized under Sl. No. 1 to 13; Declaration by the claimant, along with Annexure-A providing the 'grounds of refund claim'; and Part-B Acknowledgement (For Custom House) and Acknowledgement (to be issued to the applicant); Annexure-B providing list of shipments imported from M/s JSW International Tradecorp Pte. Limited, Singapore, quantifying the amount of refund under each of the B/Es and in total. Further, the list of documents submitted along with refund application dated 23.03.2016 included (1) certified copy of SVB Order No. 82/ADC/SVB/BT/2015-16 dated 09.09.2015 passed by the Additional Commissioner of Customs, GATT Valuation Cell, Mumbai; (ii) original certificate of Chartered Accountant for Unjust Enrichment dated 21.03.2016; (iii) original EDD challans in respect of 36 B/Es covered in refund application; (iv) self-attested copies of EDD paid challans (paid through EDI online system) in respect of 6 B/Es covered in refund application; (v) self-attested copies of triplicate B/Es in respect of 42 B/Es covered in refund application; and (vi) self-attested copies of invoices in respect of 42 B/Es covered in refund application.

9.7 In response to the refund claim filed by the respondents importer, the Assistant Commissioner of Customs (Refund), Custom House, Marmagoa by

letter dated 06.04.2016 had informed them that the said refund claim cannot be processed as the same is incomplete on account of the 42 B/Es for which EDD was paid under provisional assessment have not been finalised till date; and that said refund claim is incomplete for the reasons that the following documents have not been furnished viz., (i) working sheet for claim of refund amount; (ii) document establishing Applicants eligibility to receive the refund such as chartered accountant certificate; (iii) self-declaration stating that the Applicant has not claimed refund earlier along with speaking order/direction for the said refund; (iv) undertaking that refund claim has not been claimed earlier, and if found otherwise, then to pay back the refund to the Department; (v) original copies of B/Es; and (vi) original duty paid challans. Accordingly, the said Assistant Commissioner of Customs (Refund) informed the respondent importer with copy marked to their Customs Broker, stating that the refund claims 'stands disposed off' in terms of Section 27 ibid as being incomplete, vide his letter dated 06.04.2016.

9.8 On plain reading of sub-section (2) of Section 27 ibid, it transpires the said legal provision mandates the Assistant/Deputy Commissioner of Customs, on receipt of refund claim application, to satisfy himself whether the whole of any part of the duty or interest paid by the applicant is refundable or otherwise, and if refundable then credit such amount to the consumer welfare fund or pay the amount of refund to the applicant if the unjust enrichment angle is fulfilled. The Customs Refund Application (Form) Regulations, 1995 issued vide Notification No.34/95-Customs dated 26.05.1995 as amended in terms of powers vested with the Board vide Section 157(2)(aa) ibid, provide for the form and manner of filing application for refund under Section 27 ibid. The prescribed proforma for submission of refund claim is given in Part-A and Part-B which is to be filed by the claimant of refund; and the proper officer of customs, within ten days of its receipt, upon scrutiny, shall point out deficiency, if any, and return the application to the applicant/claimant for re-submitting the refund claim application after making good the deficiencies, as per prescribed proforma in Part-C. On perusal of the case records, it is found that the respondent importer had submitted the refund claim application in the prescribed format Part-A and Part-B. Even though the proper officer of customs had not issued deficiency memo in the form of Part-C, but the same was written in the form of letter dated 06.04.2016. The said letter of the department was also replied by the respondent importer vide his letter dated

18.04.2016, explaining that they had submitted complete details in their refund claim and on the basis of CBEC Circular No. 05/2016-Customs dated 09.02.2016; and as per Public Notice No.5/2012 dated 17.01.2012, they had requested that the refund application filed on 23.03.2016 be processed without any delay. A copy of the same was also marked to the jurisdictional Commissioner of Customs urging him for refund of EDD and issuing necessary instructions on the matter. However, since there was no progress in processing of their case, they had further represented to the Commissioner of Customs on 07.09.2016.

9.9 On reading of the legal provisions governing refund of duty, it transpires that there is no provision for summarily returning the refund claim application which has been filed and found to be complete in all respects. The regulations framed under Section 27 ibid only provide for returning the incomplete application pointing out deficiencies within 10 days of its receipt. On the factual matrix of the present case, even if there was some deficiencies that had been pointed out by the proper officer, once the deficiencies pointed out had been removed, then there is no possibility for rejecting the refund without passing an order as provided under sub-section (2) to Section 17 ibid. Therefore, in our considered view, both for want of legal validity and on the factual matrix of having provided all the said documents that was said to have been deficient, along with the refund claim application initially submitted except for the finalization of provisional assessment for which specific directions has been given in the Public Notice No. 5/2012, dated 17.01.2012, the reply letter of Assistant Commissioner of Customs (Refund) dated 06.04.2016, in treating the refund claim as disposed of, is improper and does not stand legal scrutiny. Furthermore, the action of the proper officer of customs to be taken, in respect of finalization of provisional assessments upon receipt of refund claim by completing it within five working days, has been mandated under Public Notice No.5/2012, dated 17.01.2012. Thus, the department cannot take shelter under the technicalities of non-finalization of provisional assessment, which is not at the hands of respondent importer. Further, having provided all requisite details and in a situation that the only action left over was with the departmental officers, then the delay caused in completing such action, cannot be the ground for not sanctioning of refund claim within the prescribed time limit. Therefore, these inaction on the part of the department or non-compliance of timely disposal of refund claim cannot frustrate the legal option available to the respondent importer for

claiming interest on account of delay caused by the department in sanction of refund.

10.1 Further, it is not the case of the Department that the EDD paid by the respondents importer was required to adjust the deficiency arising on account of determination of final assessment of duty amount, as in none of the six Orders-in-Original passed by the jurisdictional Assistant Commissioners in charge of appraising, such EDD amount was required for adjustment. On the other hand, the provisionally assessed duty paid by the Respondents importer was in excess and was required to be refunded to them, in three orders dated 20.01.2017; 08.03.2017; 30.11.2016 and in another two orders dated 08.03.2017, 30.11.2016 to the extent the final duty was higher than the provisional duty, the same was adjusted against the differential duty paid separately; and in order dated 09.11.2016 security was enforced for adjusting the deficient amount of final duty. In all the said 6 orders, it was reiterated that the respondents importer are eligible to be refunded the EDD paid by them in terms of the SVB order dated 09.09.2015, by stating it separately and in distinguishing the amount of refund to be paid being in excess (in xx cases) and differential duty to be paid by the respondent importer, on account of finalization of provisional assessments on other aspects concerning xxx, other than valuation arising on account of SVB/related party transaction. Therefore, from the facts of the case and on the basis of self-contained legal provisions for adjustment and payment of excess paid duty at the time of provisional assessment, that is in excess of the finally assessed duty under Section 18 ibid, the amount of EDD is eligible to be paid back/refunded to the respondents importer, once a speaking order was passed on 09.09.2015 in terms of the legal provisions of the Customs Act for accepting the declared value as transaction value.

10.2 The relevant portion of aforesaid six orders are extracted and given below:

Order 1 – 2 B/Es covered in Order-in-Original (O-in-O) No. 03/2017 dated 20.01.2017 – Paragraph 6(v)

Order 2 – 3 B/Es covered in O-in-O No. 21/2017-A.C.(B) dated 08.03.2017-Para 6(v)

Order 3 – 8 B/Es covered in O-in-O No. 24/2017- A.C.(A) dated 08.03.2017-Para 6(vi)

Order 4 – 15 B/Es covered in O-in-O No. 158/2017- A.C.(A) dated 09.11.2016-Para 7(v)

Order 5 – 6 B/Es covered under O-in-O No. 163/2016 dated 30.11.2016-Para 7(vi)

Order 6 – 8 B/Es covered under O-in-O No. 164/2016 dated 30.11.2016- Para 6(v)

Order No.1

ORDER

6. In view of the above, I pass the following Order

I) The goods declared in Table 1 para 2 above for B/E mentioned at Sr No.1 & 02 are finally assessed as per the declared CTH and tariff rate.

II) I reject the declared value of all 02 B/E mentioned in Sr No.1 & 02 of Table-3, Para. 5.5, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry are finalized as per the Value mentioned in Column-4 of the Table 3 (Para. 5.6) of above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

III) The total duty liability, on re-determined value for said two Bills of Entry works out to **Rs. 7,65,49,137/-** (Rupees Seven crores Sixty Five lakhs Forty Nine thousand One hundred and Thirty Seven only). The importer has already paid duty of **Rs. 7,66,23,215/-**(Rupees Seven Crores Sixty Six lakhs Twenty Three thousand Two hundred and Fifteen only) at the time of provisional assessment.

iv) The importer is therefore, eligible for refund of differential duty of **Rs. 74,078/-** (Rupees Seventy Four thousand Seventy Eight only), as per Sec.18(5) of the Customs Act,1962 , which may be claimed as per provisions of Section 27 of the Customs Act,1962.

v) Party is eligible for a refund of **Rs. 1,07,73,132/-**(Rupees One Crore Seven Lakhs Seventy Three Thousand One Hundred Thirty Two only) being 1% Extra Duty Deposit deposited by them at the time of provisional assessment as per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act 1962.

vi) This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

20/11/17

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

F.No. P.A.Bond No.338/2014, 252/2015.

To,
M/s JSW Steel Ltd, JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051.

Copy to:

1. Asstt Commissioner,(Review Cell) Custom House, Marmagoa.
2. M/s Om Freight Forwarders (CHA), Marmagoa.
3. Office Copy.

Order No.2

ORDER

6. In view of the above, I pass the following Order

i) The goods declared in Table 1 para 2 above for B/E mentioned at Sr No.1 to 03 are finally assessed as per the declared CTH and tariff rate.

ii) I reject the declared value of all 03 B/E, mentioned in Sr No.1 to 03 of Table-3, Para. 5.5, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry may be finalized as per the Value mentioned in Column- 4 of the Table 3 (Para. 5.5) of above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

iii) The total duty liability, on re-determined value for said Three Bills of Entry works out to **Rs. 10,89,68,825/-** (Rupees Ten crores Eighty Nine lakhs Sixty Eight thousand Eight hundred and Twenty Five only). The importer has already paid duty of **Rs. 10,92,18,835/-**(Rupees Ten crores Ninety Two lakhs Eighteen thousand Eight hundred and Thirty Five only) at the time of provisional assessment.

iv) The importer is therefore, eligible for refund of differential duty of **Rs. 2,50,010/-** (Rupees Two lakhs Fifty thousand Ten only), as per Sec.18(5) of the Customs Act,1962 , which may be claimed as per provisions of Section 27 of the Customs Act,1962.

v) Party is eligible for a refund of **Rs. 1,52,76,725/-**(Rupees One Crore Fifty Two Lakhs Seventy Six Thousand Seven Hundred Twenty Five only) being 1% Extra Duty Deposit deposited by them at the time of provisional assessment as per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act 1962.

vi) This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

8/8/17

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

F.No. P.A.Bond No.173/2014, 473/2014, 296/2015

To,
M/s JSW Steel Ltd, JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051.

Order No.3

ORDER

7. In view of the above, I pass the following Order

i) The goods as declared for Bills of Entries mentioned at Sr No.01 to 08 of Table-1, PARA 2 above are finally assessed at the declared CTH and tariff rate.

II) I reject the declared value of all 08 B/E mentioned in Sr No.01 to 08 of Table-1, PARA 2, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry are finalized as per the Value mentioned in Column- 4 of the Table 3(A) & (B) (Para. 6) above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

III) The total duty liability on these 07 B/E (Sr No.1 to 07) Table 3(-A-) works out to **Rs. 24,20,02,570** (Rupees Twenty Four crores Twenty Lakhs Two Thousand Five Hundred Seventy only). The importer has already paid total duty of **Rs. 24,02,04,362/-** at the time of provisional assessment. They are liable to pay a differential duty of **Rs.17,98,208/-** (Rupees Seventeen lakhs Ninety Eight thousand Two Hundred Eight only) for these 07 Bills of Entry referred in Table 3, at para 6 above along with interest at @18% from 1st day of the month in which duty provisionally assessed till 31st of March 2016 and further interest @15% w.e.f from 1st April 2016, till the date of payment thereof. The total interest works out to **Rs. 5,70,635/-**(Rupees Five Lakhs Seventy Thousand Six Hundred Thirty Five only) (calculated upto 31.03.2017).

IV) The Importer vide letter Ref JSWSL/EXIM/GOA/15-16 dated 09.07.2015 paid differential duty of **Rs. 7,38,848/-** and interest of **Rs. 1,47,203/-** (upto 09.07.2015) i.e. (Total Rs. 8,86,051/-) for Bill of Entry No 5691359/ 03.06.2014 referred in Table 3 (-B-) above vide demand draft No.712586 dated 09.07.2015 and the same was deposited in Govt treasury vide challan No.4407 dated 13.07.2015, hence no recovery of differential duty and interest in respect of the aforesaid Bill of Entry.

V) As per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai, the party is eligible for a refund of **Rs. 3,16,15,704/** (Rupees Three Crore Sixteen lakhs Fifteen thousand Seven hundred and Four only) mentioned in Table 3 (A) para 6 & **Rs.63,45,229/-**(Rupees Sixty Three Lakhs Forty Five Thousand Two Hundred Twenty Nine Only) mentioned in Table 3 (B) para 6 being 1% Extra Duty Deposit deposited by them at the time of provisional assessment against these 8 Bills of Entries.

VI) The B/Entry No.5691359 dated 03.06.2014 was finalized vide Order in Original No.97/2015-DC(A) dated 25.03.2015 and the party has paid upto 09.07.2015 which is deposited in the Govt Treasury vide challan No.4407/13.07.2015. However, refund of 1 % EDD amount i.e. Rs.63,45,228/- was not shown refundable in the Order pending acceptance of transaction value of by SVB and issuance of order and hence the same was not shown refundable. However, now 1% EDD of amount i.e. **Rs.63,45,229**/- now becomes refundable in pursuance of SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act, 1962.

8. This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

P.A.BOND NO.397/2014,306/2015,359/2015,
404/2015, 405/2015,435/2015

Order No.4

ORDER

7. In view of the above, I pass the following Order

I) The goods as declared for Bills of Entries mentioned at Sr No.1 to 15 of Table-1, PARA 2 above are to be finally assessed at the declared CTH and tariff rate.

II) I reject the declared value of all 15 B/E mentioned in Sr No.1 to 15 of Table-1, Para. 2, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry may be finalized as per the Value mentioned in Column- 3 of the Table 3 (Para. 6) above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

III) The total duty liability on these 15 B/E (Sr No.1 to 15) works out to **Rs. 51,40,76,272/-** (Rupees Fifty One crores Forty lakhs Seventy Six thousand Two hundred and Seventy Two only). The importer has already paid total duty of **Rs. 51,09,39,856/-** at the time of provisional assessment. They will be liable for differential duty of **Rs. 31,36,416/-** (Rupees Thirty One lakhs Thirty six thousand Four hundred Sixteen only) for these 15 Bills of Entry referred in Table 3, at para 6 above along with total interest works out to **Rs. 11,16,554/-**(Rupees Eleven lakhs Sixteen thousand Five hundred and Fifty Four only) (calculated upto 30.11.2016), and further interest at @18% till date of payment thereof.

IV) The PD Bond submitted by the importer at the time of provisional assessment is enforced for recovery of differential duty of Rs. **31,36,416/-** (Rupees Thirty One lakhs Thirty six thousand Four hundred Sixteen only) for these 15 Bills of Entry referred in Table 3, at para 6 above along with total interest works out to **Rs. 11,16,554/-**(Rupees Eleven lakhs Sixteen thousand Five hundred and Fifty Four only) (calculated upto 30.11.2016), and further interest at @18% till date of payment thereof.

V) Party is eligible for a refund of **Rs. 7,58,23,417/** (Rupees Seven Crore Fifty Eight lakhs Twenty Three thousand Four hundred and Seventeen only) being **1%** Extra Duty Deposit deposited by them at the time of provisional assessment as per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act 1962.

8. This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

16/11/16

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

To,
M/s JSW Steel Ltd, JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051.

Order No.5

ORDER

7. In view of the above, I pass the following Order

I) The goods as declared for Bills of Entries mentioned at Sr No.1 to 06 of Table-1, PARA 2 above are finally assessed at the declared CTH and tariff rate.

II) I reject the declared value of all 06 B/E mentioned in Sr No.1 to 06 of Table-1, PARA 2, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry are finalized as per the Value mentioned in Column- 4 of the Table 3 (Para. 6) above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

III) The total duty liability on these 06 B/E (Sr No.1 to 06) works out to **Rs. 17,66,06,079** (Rupees Seventeen crores Sixty Six lakhs Six Thousand thousand Seventy Nine only). The Importer has already paid total duty of **Rs. 17,54,72,161/-** at the time of provisional assessment. They are liable to pay a differential duty of **Rs. 11,33,918/- (Rupees Eleven lakhs Thirty Three thousand Nine hundred Eighteen only)** for these 06 Bills of Entry referred in Table 3, at para 6 above along with interest at @18% from 1st day of the month in which duty provisionally assessed till 31st of March 2016 and further interest @15% w.e.f from 1st April 2016, till the date of payment thereof. The total interest works out to **Rs. 2,41,723/-**(Rupees Two Lakhs Forty One Thousand Seven Hundred Twenty Three only) (calculated upto 30.11.2016), and further interest at @15% till date of payment thereof.

IV) The Importer vide letter Ref JSWSL/EXIM/GOA/15-16 dated 15.10.2015 paid differential duty of **Rs.8,03,368**/- and interest of **Rs.1,01,819**/- **(Total Rs.9,05,187/-)** for Bill of Entry No 8313345/16.02.2015 referred in Table 3 (para 6) above vide demand draft No.713146 dated 15.10.2015 and the same was deposited in Govt treasury vide challan No.4409 dated 16.10.2015.

V) The party is now liable to pay differential duty on remaining 05 Bills of Entry referred in Table 3, para 6 above amounting to **Rs.3,30,550**/-(Rupees Three lakhs Thirty thousand Five hundred Fifty only) and interest of **Rs.1,39,904**/-(Rupees One lakhs Thirty nine thousand Nine hundred Four only) Calculated upto 30.11.2016 at @18% from 1st day of the month in which duty provisionally assessed till 31st of March 2016 and further interest @15% w.e.f from 1st April 2016, till the date of payment thereof.

VI) Party is eligible for a refund of **Rs. 2,67,35,113/** (Rupees Two Crore Sixty seven lakhs Thirty Five thousand One hundred and Thirteen only) being **1%** Extra Duty Deposit deposited by them at the time of provisional assessment as per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act 1962.

8. This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

P.A.BOND NO.201/14,272/14,
343/14,76/15,238/15,295/15

To,
M/s JSW Steel Ltd,
JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051.

Order No.6

ORDER

6. In view of the above, I pass the following Order

i) The goods declared in Table 1 para 2 above for B/E mentioned at Sr No.1 to 08 are finally assessed as per the declared CTH and tariff rate.

ii) I reject the declared value of all 08 B/E mentioned in Sr No.1 to 08 of Table-3, Para. 5.5, above, in view of provisions of the Customs Valuation (determination of value of imported goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962. These Bills of Entry may be finalized as per the Value mentioned in Column- 4 of the Table 3 (Para. 5.5) of above under Sec.18 (2) of the Customs Act, 1962, and duty shall be paid accordingly.

iii) The total duty liability, on re-determined value for said Eight Bills of Entry works out to **Rs. 34,08,02,560/-** (Rupees Thirty Four crores Eighty lakhs Two thousand Five hundred and Sixty only). The importer has already paid duty of **Rs. 34,10,88,931/-**(Rupees Thirty Four crores Ten lakhs Eighty Eight thousand Nine hundred and Thirty One only) at the time of provisional assessment.

iv) The importer is therefore, eligible for refund of differential duty of **Rs. 2,86,371/-** (Rupees Two lakhs Eighty Six thousand Three hundred and Seventy One only), as per Sec.18(5) of the Customs Act,1962 , which may be claimed as per provisions of Section 27 of the Customs Act,1962.

v) Party is eligible for a refund of **Rs. 4,51,63,473/-(**Rupees Four Crore Fifty One Lakhs Sixty Three Thousand Four Hundred Seventy Three only) being **1%** Extra Duty Deposit deposited by them at the time of provisional assessment as per the SVB Order No.82/ADC/SVB/BT/2015-16 dated 09.09.2015 issued in F.No.S/9-53 GATT/2015 GVC dated 09.09.2015 issued by Additional Commissioner of Customs, GATT Valuation Cell Mumbai. The refund may be claimed as per the provisions of Section 27 of Customs Act 1962.

vi) This order is issued without prejudice to any other action likely to be taken under this Act, Regulation, Rules or any other Allied Acts/Rules/Regulations for the time being in force.

30/11/16

(PARINATI SUNKAR)
Asstt Commissioner of Customs (Appg)
CUSTOM HOUSE, MARMAGOA

F.No. P.A.Bond No.337/14,358/14,485/14, 187/15,266/15,345/15,346/15,427/15

To,
M/s JSW Steel Ltd, JSW Centre,
Bandra Kurla Complex,
Bandra (East), Mumbai,
Maharashtra – 400 051.

10.3 From the above portion of the various orders passed by the proper officers whose finalization was stated to be deficient by the Deputy Commissioner scrutinising the refund claim filed by the respondent importer, it also evidentially proved that finalization of provisional assessment which was shown as deficient, was actually had nothing to do with the refund of EDD. This also evident in the CBEC Circular No.5/2016-Customs at para 3.2 (supra) wherein it was directed that the field formations shall not obtain security in the form of EDD from the importers, beyond the passage of four months period without the case being decided, for the sake of reducing the transaction cost and brining in uniformity in handling the EDD collection in respect of SVB cases across all Custom Houses. Contrary is the facts in the present case, where the respondents importer had fully furnished the complete information and even the SVB orders finalizing the provisional assessment on account of related party transaction was completed by issue of Order-in-Original dated 09.09.2015. Therefore, there is no valid reason for the department to hold on with such EDD amount, instead of refunding it, for the reason that there is no finalization of provisional assessments.

11.1 Besides the above, we also find that the department had issued Public Notice No. 5/2012, dated 17-01-2012 for handling the matters of refund of duty, for avoiding inconveniences to the trade and industry. The extract of the said PN is given below:

"Refund in case of Amendments to Bill of Entry

1. Difficulty has been expressed by Trade to get the refund in the matter where Bills of Entry are to be finalised prior to sanction of refund, for example in the case of appellate orders revising assessments already finalized etc. In such cases Refund Section, on receipt of refund claims, issues deficiency memo to importer for producing re-assessed Bill of Entry or amendment certificate.

2. In order to address the inconvenience caused to Trade, in cases of the refund as above, following steps should be taken by the Refund Section.

(i) Refund Section shall accept the claim and no deficiency memo be issued to get the Bill of Entry re-assessed.

(ii) Refund Section officer after scrutinizing the refund claim, if required, shall forward the file to concerned assessing group for re-assessment/ finalization/amendment.

(iii) Assessing group will re-assess the Bill of Entry on priority basis within five working days. Concerned Group should get the deficiencies rectified, get documents or indemnity bond from applicant where ever required within such period. In case assessing group further notices any

discrepancies while reassessing/finalizing the Bill of Entry the same may be intimated to Refund Section.

(iv) Refund Section will monitor the file movement and ensure that the claim is settled within the statutory period.

Any difficulties faced by the Trade or Officers in this regard may be brought to the notice of ADC/Refund. [Commissioner of Customs (Import), ACC, Mumbai, Public Notice No. 5/2012, dated 17-01-2012]"

On careful perusal of the above, we are of the considered view that the Assistant Commissioner who has processed the refund application ought to have, instead of returning the refund for being deficient, either requested the concerned appraising group to issue a speaking order for finalization of assessments as provided in the above PN under Section 18(2) of the Act, within the prescribed time and pass necessary orders on the refund claim as per law. This course of action would have been consistent not only with the legal provisions but also the various decisions of the Hon'ble High Courts in the matter of refund of EDD. Therefore, in our considered view, non-payment of refund of EDD within three months from the date of receipt of the refund claim, complete in all respects, as evidenced in the annexures and supporting documents, at the Custom House, Marmagoa on 30.03.2016, is saddled with the liability to pay interest at the prescribed rate, in terms of Section 27A of the Customs Act, 1962.

11.2 We also find support for the above view, as this Bench of the Tribunal in the case of adherence to the Public Notice No.5/2012, dated 17-01-2012 in the matter of sanction of refund claims as discussed in detail in the case of *Reliance Jio Infocom Limited* (supra). The relevant paragraphs are extracted and given below:

"17. We are of the considered view that the Deputy Commissioner who has processed the refund application ought to have, instead of rejecting the refund, either requested the concerned appraising group to issue a speaking order under Section 17(5) of the Act, provided such an order had been passed by the original re-assessing proper officer and was available on the file, or consider amending the Bills of Entry by treating the written representation of the appellant as applications for amendment of the Bills of entry under Section 149. This course of action would have been consistent not only with the view of the Hon'ble Bombay High Court's in the above cited case but also with Public Notice No.5/2012 dated 17.1.2012, issued by the Respondent in the present appeal i.e., Commissioner of Customs (Import), ACC Mumbai. The said Public Notice states clearly that refund sanctioning authority should not insist the importer to get the bills of entry re-assessed by himself, but instead, forward the file to the assessing group for getting the bill of entry re-assessed within a specific time frame, so that the refund claim

is settled within the statutory prescribed period of three months. The contents of the said Public Notice are extracted below:

> *"Refund in case of Amendments to Bill of Entry*
>
> *1. Difficulty has been expressed by Trade to get the refund in the matter where Bills of Entry are to be finalised prior to sanction of refund, for example in the case of appellate orders revising assessments already finalized etc. In such cases Refund Section, on receipt of refund claims, issues deficiency memo to importer for producing re-assessed Bill of Entry or amendment certificate.*
>
> *2. In order to address the inconvinience caused to Trade, in cases of the refund as above, following steps should be taken by the Refund Section. (i) (ii) (iii) (iv) Refund Section shall accept the claim and no deficiency memo be issued to get the Bill of Entry re-assessed. Refund Section officer after scrutinizing the refund claim, if required, shall forward the file to concerned assessing group for re-assessment/finalization/amendment. Assessing group will re-assess the Bill of Entry on priority basis within five working days. Concerned Group should get the deficiencies rectified, get documents or indemnity bond from applicant whereever required within such period. In case assessing group further notices any discrepancies while re assessing/finalizing the Bill of Entry the same may be intimated to Refund Section. Refund Section will monitor the file movement and ensure that the claim is settled within the statutory period. Any difficulties faced by the Trade or Officers in this regard may be brought to the notice of ADC/Refund. [Commissioner of Customs (Import), ACC, Mumbai, Public Notice No. 5/2012, dated 17-01-2012]"*

In our view, the above course of action would be perfectly in accord with the ratio laid down in the case of ITC, particularly para 47 of the said judgement, which has been quoted and applied by the Hon'ble Bombay High Court in Dimension Data case.

18. Before parting with the matter, we feel it necessary to emphasise that the provisions of sub-Section (5) of Section 17 of the Act are mandatory in nature as the same provides that the proper officer, "shall" pass a speaking order on the re-assessment, within fifteen days from the date of re-asessment of the bill of entry. This sub-section, unlike the preceeding sub-sections of Section 17, which use the word 'may' does not give any discretion to the proper officer in regard to the requirement of passing a speaking order within 15 days of the date of re-assessment of the Bill of Entry. Admittedly, this requirement has not been met in the present case by the department. As obseved by us earlier, to allow the department to invoke the judgement in the case of ITC, despite the departmental officer being themselves at fault in not passing a speaking order, as required by law would tantamount to attaching a premium to non-compliance of law on the part of the officers. If such an approach is permitted to be taken, then the importer would be left at the mercy of the authorities, who may, at their own whims and fancies, either oblige the importer by passing a speaking order (so as to enable him to challenge the same in appeal and apply for refund expeditousy) or virtually frustrate the importer's right to seek refund of excess payment of duty simply by not passing any speaking order ever, as has been done in the present case. We therefore, cannot subscribe to the proposition that a claim for refund can be denied for non-challenge of assessment in appeal, even in situations where the proper officer is himslef remiss in

passing a speaking order under Section 17(5) of the Act, despite a detailed protest being lodged by the importer, even prior to the payment of duty and customs clearance."

11.3 The various cases in which the matter of refund of EDD and interest for delay in refund beyond the prescribed time limit was dealt with by various Hon'ble High Courts supports our above view. The relevant extract of the judgements passed by the Hon'ble High Courts are given below:

(1) Assistant Commissioner of Customs (Refunds), Chennai Vs. Dalmia Cement (Bharat) Ltd. reported in (2025) 31 Centax 343 (Mad.) in W.A.No. 1084 of 2020 and C.M.P.No. 13255 of 2020, decided on 2-12-2020

"8. The alleged reason assigned by the Department that there was some investigation pending of which no details are placed on record, is not at all a justifiable reason in the light of Board's own Circular as quoted by the learned Single Judge. No such material has been placed before this court to justify the action of the Customs Department not to finalise the Provisional Assessment for 16 years and even by now to keep the EDD a mere Security Deposit by Importer/ Petitioner with them like this.

9. The direction of the learned Single Judge, is, therefore, perfectly justified and does not call for any interference by this court in the present intra-court Appeal. Such an innocuous and correct direction of the learned Single Judge is also not complied with by the Revenue Department so far even though there was no interim order in favour of the Customs Department against the order of the learned Single Judge.

10. Section 27A of the Act provides that interest to be paid on such refund to be not below 5% and not exceeding 30% per annum may be fixed. It has also been brought to our notice that vide Notification 75/2003-Cus.(NT) dated 12th September 2003, issued under Section 27A of the Act the interest at the rate of 6% has been fixed by the Central Government.

11. Accordingly, we direct refund of the EDD amount to the Petitioner/ respondent herein forthwith within a period of 4 weeks from today with interest at the rate of 6% from 17.12.2007 till the actual refund and if there is a delay in making the refund of EDD beyond 4 weeks from today, interest at the increased rate of 9% would be payable by the Appellant Department and the excess interest in such case would be recovered from the Officer concerned who delays the matter any further."

(2) Commissioner of Customs, Bangalore Vs. Hitachi Koki India Pvt. Ltd. reported in 2012 (281) E.L.T. 207 (Kar.)

"4. Against the said order, second appeal was filed before the Appellate Tribunal which set aside both the orders and remanded the matter back to the assessing. authority. After remand, the additional value laid was excluded and the provisional transaction value declared was accepted. In the meanwhile, the assessee had paid additional value. Therefore, he wrote letters demanding refund of the said amount. However, the same came to be rejected by the assessing authority on the ground that it was barred by time. Aggrieved by the same, he preferred an appeal. The appellate

authority held that, the refund claim that has been preferred by the assessee is not customs duty, but it is extra duty deposit. Thus, this amount cannot be equated with the duty payable by the assessee against the import of the goods by them. At the moot, it can be treated as a precautionary measure to cover up/make good the difference of duty payable by them after completion of final assessment. Therefore, the appellate authority held that the time limit stipulated under Section 27 of the Customs Act, 1962 is not applicable in the instant case. The provisions under Section 18(1) and 18(2) could have been followed and refund would have been granted automatically after completion of final assessment and cancellation of PD bonds. In coming to that conclusion, he relied on two judgments of the Tribunal at Bangalore and Chennai and thus the order of the assessing authority was set aside and a direction was issued to refund the money. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal agreed with the said reasoning, dismissed the appeal. Aggrieved of the said order, the revenue is before this court in appeal.

5. From the aforesaid facts it is clear that, the refund is not sought for the excise duty paid in excess of what was payable under law. The refund was sought in respect of the additional value insisted upon by the department being the value of technical knowhow and royalty. It was added to the excise duty payable. When the assessee authority held that the customs duty paid by the assessee was proper and no additional duty need be paid, they were under an obligation to refund this additional amount which was collected, which had no basis. In such circumstances, Section 27 is not attracted. That is the view taken by the appellate authorities relying on the judgment of the Tribunal earlier. Therefore, the impugned order is legal and valid and does not suffer from any legal infirmity which calls for interference, No substantial question of law arises for consideration. Accordingly, appeal is dismissed."

(3) Nittan India Tech Pvt. Ltd.Vs. Deputy Commissioner of Customs (Refund), Chennai reported in (2025) 34 Centax 104 (Mad.)

"9. It is further submitted that the Extra Duty Deposit (EDD) is merely a deposit and not customs duty payable on the importation of goods in terms of Section 12 of the Customs Act, 1962. It is further submitted that this very aspect was considered by this Court in Commissioner of Customs, Chennai v. Aristo Spinners Pvt. Ltd., 2008 (226) E.L.T. 42 (Mad.)*, wherein, it was held as under:-*

> *"As the amount in question relates to encashed Bank Guarantee, the same cannot be considered as Customs duty and hence section 27 of the Customs Act, 1962, which provides for refund of any duty and interest, if any, paid on such duty in pursuance of an order of assessment, cannot be invoked as there is no payment of duty in pursuance of an order to safeguard the interest of the revenue in the event of the importer committing default in performing the export obligation cast upon him for the purpose of availment of concession in importing the capital goods."*

16. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

17. In my view, there is no justification in the impugned order passed by the respondent rejecting the request of the petitioner for refund of the amount paid by the petitioner pursuant to Circular No.11/2001-Cus dated 23.02.2001 of the Central Board of Indirect Taxes. Content of which has been extracted in Paragraph No.2 of this order.

17(A). The amount that was collected by the Assessing Officer in view of the Special Valuation Branch (SVB) proceedings are nothing to deposit and not a customs duty as is contemplated under Section 12 of the Customs Act, 1962, although such deposit were eligible to be appropriated towards the duty liability of the petitioner after final assessment of the Bill of Entry.

17(B). As such, amount that has been calculated over and above the tax duty payable by the petitioner is to be refunded back only after the Bill of Entries filed are finally assessed and assessment is completed. Needless to state, such refund will be subject to the petitioner satisfying that there will be no unjust enrichment on account of refund in terms of Section 27 of the Customs Act, 1962.

18. That apart, it is submitted that the impugned order is also in gross violation of principles of natural justice as the petitioner's reply dated 22.04.2021 has not been considered while passing the impugned order.

19. Under these circumstances, the impugned order is set aside with consequential relief. The respondents are directed to complete the proceedings within a period of six months from the date of receipt of a copy of this order."

11.4 We also find that the judgment of the Hon'ble Supreme Court in *Mafatlal Industries Ltd. Vs. Union of India* – 1997 (89) E.L.T. 247 (S.C.) have not dealt with the refund of EDD, as they had dealt with in the said case three types of levy of duty i.e. unconstitutional levy of duty, duty levied under erroneous interpretation of law and duty levied under mistake of law. Therefore, we are unable to take guidance from the aforesaid judgement for dealing with the present issue. This may be seen from the relevant paragraph of the said judgment of the Hon'ble Supreme Court referred above.

"131. As stated by me earlier in Paragraph 5 of this judgment, the claims for refund can be classified broadly into 3 groups. They are -

(I) the levy is unconstitutional - outside the provisions of the Act or not contemplated by the Act.

(II) the levy is based on misconstruction or wrong or erroneous interpretation of the relevant provision of the Act, Rules or Notifications; or by failure to follow the vital or fundamental provisions of the Act or by acting in violation of the Fundamental Principles of judicial procedure.

> *j(III) mistake of law - the levy or imposition was unconstitutional or illegal or not exigible in law (without jurisdiction) and, so found in a proceeding initiated not by the particular assessee, but in a proceeding initiated by some other assessee either by the High Court or the Supreme Court, and as soon as the assessee came to know of the judgment, (within the period of limitation) he initiated action for refund of the tax paid by him, due to mistake of law."*

However, the aspect of unjust enrichment that is required to be fulfilled by the claimant of refund was proved before the proper officer of customs and the eligible refund has been properly sanctioned by him in the present case, in compliance with the above judgement of the Hon'ble Supreme Court.

11.5 We further find in the case of *Bihar Foundry & Castings Limited Vs. Union of India & Ors.* - 2024 (3) TMI 371 - JHARKHAND HIGH COURT, it was held that the provisional assessment must be finalized within six months' time and thus the show cause notices and order adjudication orders determining differential duty was quashed as void ab initio. The relevant paragraph of the said order is extracted below:

> *"21. It is not out of place here to mention that Rule 5 of Customs (Finalization of Provisional Assessment) Regulation, 2018 (the 2018 Regulation) applies only to provisional assessment made after 14-08-2018; hence, in the case at hand it cannot be applied on the provisional assessments of the 4 Bill of Entries as they are made in the year 2012. The limitation for finalization to the case at hand would be governed by Para 3.1 of the CBIC Instruction as per which the finalization of provisional assessment is to be made expeditiously, well within 6 months whereas in the instant case the finalization is done after 6 years to 9 years."*

When the department was aggrieved with the said judgement of the Hon'ble Jharkhand High Court and filed a Special Leave Petition (Civil) Diary No. 55454/2024 before the Hon'ble Supreme Court, the same was dismissed both on the grounds of delay as well as on merits.

1

ITEM NO.16 COURT NO.8 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) DIARY NO(S).55454/2024
[ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 04-03-2024 IN WPT NO. 5161/2022 04-03-2024 IN WPT NO. 4340/2022 PASSED BY THE HIGH COURT OF JHARKHAND AT RANCHI]

UNION OF INDIA & ORS. PETITIONER(S)

VERSUS

M/S BIHAR FOUNDRY AND CASTINGS LTD. RESPONDENT(S)

(IA NO. 294837/2024 - CONDONATION OF DELAY IN FILING)

Date : 10-01-2025 This matter was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) Mr. N.Venkataraman, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. Akshat Gupta, Adv.
Ms. Agrimaa Singh, Adv.
Mr. Udai Khanna, Adv.
Ms. Aishwarya Sinha, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Despite there being a delay of 179 days, we have nevertheless heard learned counsel for the petitioner on the merits of the matter also.

We do not find any merit in the Special Leave Petition.

Hence, the Special Leave Petition is dismissed both on the grounds of delay as well as on merits.

2

Pending application(s), if any, shall stand disposed of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)

Further, on filing of Review Petition by the department vide Civil Diary No.36368/2025, the Hon’ble Supreme Court had dismissed the same, by holding that there is no merit warranting reconsideration of the impugned order.

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION

REVIEW PETITION (C) NO(S). OF 2025
(@ DIARY NO(S).36368/2025)
IN
SPECIAL LEAVE PETITION (C) DIARY NO(S). 55454/2024

UNION OF INDIA & ORS. ETC. Petitioner(s)

VERSUS

M/S BIHAR FOUNDRY AND CASTINGS LTD. Respondent(s)

O R D E R

Delay condoned.

Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record or any merit in the Review Petition warranting reconsideration of the order impugned.

The Review Petition is, accordingly, dismissed.

Pending application(s) shall stand disposed of.

……, J.
(B.V. NAGARATHNA)

……, J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
SEPTEMBER 02, 2025

Therefore, it transpires that the various issues dealt with in the referred case of Bihar Foundry & Castings Ltd. including the issue regarding the requirement of finalizing the provisional assessment within prescribed time period, have attained finality.

12.1 Learned AR also made an additional submission that there is no time limit for finalisation of provision assessment, as the same has not been provided under Customs (Provisional Duty Assessment) Regulations 2011. He further stated that the said regulations casts duty on the importer for submission of necessary documents for finalisation of provisional assessment. In this regard, we find that Customs (Provisional Duty Assessment) Regulations 2011 have been framed in exercise of the powers vested with the Board/CBEC under Section 157 ibid, for carrying the purposes of the Customs Act, 1962. It is only through an amendment made by the Finance Act, 2018, w.e.f. 29.03.2018, specific purpose of prescribing

the "time and manner of finalisation of provisional assessment" was introduced under clause (d) in Section 157 ibid. Therefore, in absence of specifying that time limit for finalisation of provisional assessment, the same was specified in terms of general instructions issued from time to time for implementation of the provisions of the Act under Section 151A ibid by the Board. In the various instructions issued from time to time as discussed in preceding paragraphs at 8.6 and 8.7, provisional assessments are required to be finalised expeditiously, well within 6 months. In respect of provisional assessments being resorted to for investigation and finalisation of the assessment on SVB cases, time limit of 4 months from the date of reply given by the importer has been provided vide Circular No.11/2011-Customs dated 23.02.2001. In the light of the above and as per the judgements of the Hon'ble Supreme Court referred in the paragraph 10.4 above, we are of the view that the plea advanced by the learned AR that there is no time limit for finalisation of provisional assessment is incorrect and is not valid in terms of the above legal provisions in force during the relevant period of dispute.

12.2 Further, in the case law of the *Commissioner of Customs, Mangaluru Vs. JSW Steels Limited* (supra) relied upon by the learned AR, the facts indicate that importer did not produce the requisite documents while filing the refund claim and the Tribunal did not examine the findings arrived at by the learned original authority and first appellate authority and decided the case by simply relying on the judgement of the Hon'ble Apex Court. Therefore, it was held that the appellant importer cannot take undue advantage of the lapses on their part in not submitting complete documents to enable Revenue to finalize the assessment before ordering refund of EDD. One another order of the Co-ordinate Bench of the Tribunal relied upon by the learned AR in the case of *Vedanta Limited Vs. Commissioner of Customs (Import), Tuticorin* – 2025 (6) TMI 1445 – CESTAT Chennai, has also relied upon the above case of JSW Steels Ltd. (supra), for coming to a conclusion that appellants therein is not entitled to interest on refund. The facts of the case before us, is entirely different as the refund claim of EDD was filed with all requisite documents and even the letter pointing out certain deficiency in submission of documents itemized have been duly submitted by the respondents importer and have been duly acknowledged to have been received by the Custom House, Marmagoa on 30.03.2016 and forms part of the appeal records. Therefore, we find that there is no lapse on the part of the claimant of the refund, in the present case.

12.3 In this regard, we again refer to the CBEC Circular No. 05/2016-Customs dated 09.02.2016, prescribing the procedure for investigation of related party transactions in import cases. In this circular, it is stated that where the declared value is found to be acceptable as transaction value, then the officers shall immediately finalize the same and there would be no need to issue a speaking order for finalising the provisional assessments in such cases. The relevant paragraph of the said circular is extracted and given below:

> ***"Finalisation of assessments***
> *9. Upon receipt of the IR from the SVB, where investigative findings are that the declared value is found conforming to Rule 3 of the CVR, 2007, the customs stations where provisional assessments have been undertaken shall immediately proceed to finalize the same. There would be no need to issue a speaking order for finalising the provisional assessments in such cases…"*

From the above, it is clear that the respondents importer in the present case, having paid the EDD at 1% at the time of provisional assessment and that upon finalization of SVB investigation accepting the declared value as confirming to Rule 3 of CVR, 2007 in terms of a speaking order passed by proper officer of DGV, are eligible for refund of EDD immediately. Besides the above, if the respondents importer are eligible for the excess duty paid at the time of provisional assessment having been found in excess of the finally assessed duty, then they become entitled to refund of such amount of excess duty paid in terms of Section 18(2) ibid.

12.4 We also find from the provisions of sub-sections (3), (4) and (5) to Section 18 ibid, was introduced through Taxation Laws (Amendment) Act, 2006 w.e.f. 13.07.2006, and that these provide for a mechanism to regularise the payments of duty short levied and interest thereon as well as duties that are to be refunded on finalisation of a provisional assessment and interest, if any payable thereon for delay. Thus, it is crystal clear that upon finalization of assessment of imports which are initially provisionally assessed, in case where the duty paid initially is in excess than the duty finally assessed by the proper officer of customs, then the importer is entitled to refund of customs duty paid in excess than the finally assessed duty. Further, the sub-section (4) to Section 18 ibid provide for payment of interest at the rate fixed by the Central Government in terms of Section 27A ibid, in case the amount of excess paid duty is not refunded within three months from the date of final assessment of duty.

13.1 In terms of the provisions of sub-section (1B)(c) of Section 27 ibid, the time-limit for filing refund claim under this section is required to be computed from the date of adjustment of duty after the final assessment thereof. Therefore, in case where the duty paid under of provisional assessment is in excess of the duty finally assessed by the proper officer of customs, then in respect of the entitlement for refund of such excess paid duty, the applicant for refund/respondents importer could file requisite refund application within the time prescribed in the statute calculated from the date of such adjustment upon final assessment of the customs duty. The said time limit prescribed herein is only providing the outer time limit, within which the refund claim can be filed by an applicant as the expression used in Section 27(1) ibid prescribe the time limit as "before expiry of one year" from the relevant date. In harmonious reading of the legal provisions and the circular cited above, we are of the view that the time-limit provided herein is limited for the purpose of refund claims filed under Section 27 ibid. However, as the self-contained adjustment of duty initially paid at the time of provisional assessment with the duty that may be finally assessed, and making good the deficiency by the importer or be entitled to a refund, under sub-section (2) of Section 18 ibid is linked to the ordering of provisional assessment under sub-section (1) therein, including provision of security and EDD, which starts with a *non obstante* clause, we are of the considered view that the provisions of Section 18 would have overriding effect with respect to Section 27 ibid.

13.2 Further, sub-section (3)&(4) of Section 18 ibid also provide for payment of interest at the rate prescribed by the Central Government, in case of deficiency to be paid by the importer, within one month in which the duty provisionally assessed to the date of payment; and in case of refundable amount is not refunded within 3 months from the date of assessment/re-assessment of duty finally till the date of refund of such amount. From the facts on record, it transpires that the customs duty payable under 42 B/Es have been provisionally assessed initially at the time of import for various reasons, including the SVB investigation. The finalisation of such provisional assessment by the proper officer was issued vide Order-in-Original No.82/ADC/SVB/BT/2015-16 dated 09.09.2015; and again re-assessed vide various orders by the Assistant/Deputy Commissioners of appraising group vide Orders-in-Original No. 03/2017 dated 20.01.2017; No. 21/ 2017 -A.C.(B) dated 08.03.2017; No.24/2017-A.C.(A) dated 08.03.2017; No. 158/2017- A.C.(A) dated 09.11.2016; No.

163/2016 dated 30.11.2016 and No. 164/2016 dated 30.11.2016. Therefore, in terms of sub-section (3) to Section 18 ibid, the respondents importer have paid the interest due, wherever it was indicated that there was deficiency in payment of the amount. This is also recorded in the adjudication orders passed by the original authorities. Similarly, in terms of sub-section (4) to Section 18 ibid, the respondents importer are also eligible for interest for the period of delay involved in refund of EDD at the prevailing rate of 6% per annum.

13.3 In this regard, we find that the issue regarding payment of interest on refund have been examined in detail by the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Limited Vs. Union of India and Others* in Civil Appeal No.6823 of 2010, dealing with similar matter of refund under Central Excise statue which is *pari materia* to the similar provisions under the Customs statute. In the judgement of the Hon'ble Apex Court dated 21.10.2011, it was held that liability of payment of interest for Revenue commences from the date of expiry of three months from the date of receipt of the application for refund under Section 11B(1) of the Central Excise Act, 1944. The relevant paragraphs in the said judgement are extracted and given below:

> *"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.*

10.It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. [See: Cape Brandy Syndicate Vs. Inland Revenue Commissioners – (1921) 1 KB 64 and Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax. (2010) 8 SCC 739].

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus:

"Circular No.670/61/2002-CX, dated 1-10-2002

F.No.268/51/2002-CX.8
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs,
New Delhi

Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing – regarding

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No.398/31/98-CX, dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed."

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.

xxx xxx xxx xxx

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

16. As a sequitur, C.A.No.6823 of 2010, filed by the assessee is allowed and C.A.Nos.7637/2009 and 3088/2010, preferred by the revenue are dismissed. The jurisdictional Excise officers shall now determine the amount of interest payable to the assessees in these appeals, under Section 11BB of the Act, on the basis of the legal position, explained within eight weeks from today."

13.4 In the context of the present factual matrix of the case, and in terms of the above discussed legal provisions of the Customs Act, 1962, we are of the considered view that the respondents importer is eligible for refund of EDD paid over and above the finally assessed duties of customs by the proper officer. Both the authorities below, learned adjudicating authority in paragraphs 14 to 16.1 of the Order-in-Original dated 27.07.2017 and the learned Commissioner of Customs (Appeals) as First appellate authority in paragraphs 6.3 to 7, have examined in detail the eligibility to refund and found that the respondents importer are eligible for refund of EDD. Further, learned Commissioner of Customs (Appeals) have also observed that there is nothing on record to corroborate that the respondents importer had not furnished the documents required to finalise the provision assessment in

respect of all the 42 B/Es. Therefore, he gave a specific finding that the adjudicating authority while sanctioning the refund of EDD vide Order dated 27.07.2017 should have paid interest for the period of delay caused in refund of EDD beyond three months' time limit. The said finding, in our view, is duly supported by the legal provisions of Section 18 ibid and the various instructions issued by the CBEC. Thus, we are of the considered view that there is a delay in sanction refund of EDD amount for which refund claim was received by the department on 30.03.2016, by sanctioning the same vide Order dated 27.07.2017; and that the interest at appropriate rate fixed by the Central Government under Section 27A ibid is payable on the amount of EDD, for the period of delay caused in refund of EDD beyond the three months' prescribed time limit. The period of delay for which interest is payable would be determined based upon expiry of three months from the date of adjustment of the finally assessed duty with the duty paid at the time of provisional assessment, by passing the order in SVB investigation issued vide Order-in-Original No. 82/ADC/SVB/BT/2015-16 dated 09.09.2015 i.e. from 08.12.2015, till the date of actual payment of such EDD refund amount to the eligible respondents importer i.e. up to 27.07.2017, inasmuch as actually no appeal had been filed against the order dated 09.09.2015 by Revenue and it had attained finality. Furthermore, the Revenue should have considered sanction of refund when the refund letter was filed on 30.03.2016, when it was quite clear that the issue of EDD arising on account of SVB had attained finality vide order dated 08.12.2015 and that there is no additional amount to be secured by the department as duty, by utilising the EDD, as the transaction value declared by the respondents at the time of import was accepted and all duties of customs due have already been paid at the time of import. Therefore, the department should have atleast paid interest on delayed sanction of refund, for the period commencing from the expiry of three months from the date of submission of the claim i.e., 30th June, 2016 to till the date of actual sanction of refund, which they had failed to do so in the present case.

14. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order dated 23.10.2017 is proper and legal and requires no interference in grant of interest on delayed refund of EDD to the respondents importer, as discussed in detail vide preceding paragraphs at 11.1 to 13.4 of this order.

15. In the result, the appeal filed by the Revenue is dismissed.

16. Stay application filed by the Revenue-appellant also stand disposed of.

(Order pronounced in the open court on 15.05.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha