

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87862 of 2019

[Arising out of Order-in-Appeal No. MUM-CUS-RN-IMP-55&56/2019-20 dated 28.06.2019 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.]

Vardhman Acrylics Limited

.... Appellant

504, Dalamal House,
Nariman Point, Mumbai - 400 021.

Versus

Commissioner of Customs (Imports)

.... Respondent

New Custom House, Ballard Estate
Mumbai - 400 001.

WITH

CUSTOMS APPEAL No. 87864 of 2019

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Appearance:

Shri Sushant Murthy, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85739-85740/2026

Date of Hearing: 23.02.2026

Date of Decision: 15.06.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Vardhman Acrylics Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing Order-in-Appeal No. MUM-CUS-RN-IMP-55&56/2019-20 dated 28.06.2019 (herein after, referred to as "impugned order" for short) passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.

2.1. Briefly stated, the facts of the case are that the appellants herein *inter alia*, are engaged in the manufacture of acrylic fibre, acrylic tow for which they had imported various equipment, from their overseas supplier M/s Marubeni Corporation, Japan in accordance with the terms and conditions of an Equipment Supply Contract. For the purpose of such import of equipment, the appellants have filed seven Bills of Entry (B/Es) during 17.10.1997 to 24.04.1998 with the Customs appraising group VA and two B/Es on 28.11.1997 and 09.01.1998 before EPCG appraising group in the Commissionerate of Customs, New Custom House, Mumbai. 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 foreign supplier to the appellants, under Customs Valuation (Determination of Price of Imported goods) Rules, 1988 [herein after, referred to as, "CVR of 1988", 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% to 5% of declared assessable value as Extra Duty Deposit (EDD) by the appellants in terms of Circular No.1/1998 dated 01.01.1998 and the earlier instructions issued by the Central Board of Excise & Customs (CBEC), New Delhi.

2.2 Accordingly the import transactions under various B/Es, as above at Mumbai, besides import transactions at other ports were handled centrally to the Special Valuation Branch (SVB), GATT Valuation Cell, Mumbai for detailed examination of the valuation aspects of such imports. Upon detailed examination of records, contracts, joint venture agreement, documents submitted by the appellants, the Assistant Commissioner of Customs, GATT valuation cell, Mumbai by issue of Order-in-Original No.

S/9-50 GATT/97GVC dated 26.10.1998 have held that the relationship has no influence on the pricing between the appellants-importer and the related party supplier; and the transaction value and invoices raised for import of goods were accepted. Therefore, it was held by the original authority in the said order dated 26.10.1998, read with corrigendum dated 17.11.1998, that the declared invoice value for the imported goods as submitted in the B/Es by the appellants shall be accepted under Rule 4(3)(a) of CVR, 1998. Further it was also held that all pending provisionally assessed B/Es of the appellants importer shall be finalised accordingly and the Revenue deposit/EDD may be refunded subject to applicability. 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, for a final review after such period.

2.3 On the basis of aforesaid order-in-original dated 26.10.1998, the appellants importer had filed two separate refund applications both dated 22.01.1999 before the Assistant Commissioner of Customs, Appraising Group VA and EPCG Appraising Group, New Custom House, Mumbai for Rs. 96,42,224/- and Rs.74,23,079/-, respectively. In the meantime, Revenue had filed an appeal before the Commissioner of Customs (Appeals) challenging the order of the original authority dated 26.10.1998 in accepting the transaction value in SVB valuation. The Commissioner of Customs (Appeals) vide Order-in-Appeal No.01/2001-MCH dated 02.01.2001 rejected the departmental appeal on the ground that the technical know-how fees had nothing to do with the manufacture or sale of the imported goods supplied to the appellants and provision of Rule 9(b)(iv) of CVR, 1998 were not invocable in the present case. In the appeal filed by the department against such order of the Commissioner (Appeals) before the Tribunal, by an order dated 23.01.2002, the appeal was dismissed, on the ground that the Review order in this case was passed after lapse of the prescribed period of one year under Section 129D of the Customs Act, 1962, and hence such review order was treated as *non-est*. Considering that the department had not sanctioned refund of EDD, the appellants had approached before the Hon'ble High Court of Bombay in Writ Petition No.1149/2003. In the judgement dated 07.09.2004, by referring to the Customs Reference No.1 of 2004, the Hon'ble High Court of Bombay allowed the WP to be withdrawn by the appellants-importer and Revenue was permitted to withdraw the amount deposited/EDD by appellants,

pursuant to the order of this Court along with accrued interest. Further, the appeal was restored to the file of the Tribunal for fresh hearing and decision on merits of the case. In the Order No. A/465/WZB/06-C.III(CSTB) dated 08.06.2006 passed by the Tribunal, by upholding the order dated 02.01.2001 passed by the Commissioner (Appeal), the Tribunal had rejected the appeal filed by Revenue. Since the refund of EDD was not sanctioned by the department, the appellants having got a favourable order in the first round of litigation, had again approached the Hon'ble High Court of Bombay in Writ Petition No. 2592 of 2007. In the judgement dated 20.12.2007, based on the statement made by the Counsel appearing for Revenue that the refund application is in process and after giving hearing to the petitioners order will be passed within three weeks on the petitioners furnishing the information as called for by them, the petition was disposed of. Accordingly, the provisionally assessed B/Es were finalised on 20.02.2008 and the Assistant Commissioner of Customs, Appraising Group-VA vide Order-in-Original (O-in-O) dated 26.03.2008, had sanctioned the refund of Rs. Rs. 96,42,224/- and similarly the Assistant Commissioner of Customs, Appraising Group-EOCG vide Order-in-Original dated 22.05.2008, had sanctioned the refund Rs.74,23,079/-, but both of them in their respective O-in-O have ordered for crediting the same to Consumer Welfare Fund for the reason that the appellants had taken depreciation benefit on such imported plant and machinery, the claim amount has not been shown separately as break-up figures in the 'Balances/Deposits with Government Authorities; in the books of account, and thereby the appellants had passed on the benefit to the consumer indirectly.

2.4 In the appeal filed against the order of original authority dated 26.03.2008 & 22.05.2008, before the Commissioner (Appeals) the matter was under litigation for a number of times/iteration. In the order dated 31.12.2008, the Commissioner (Appeals) held that the unjust enrichment angle was not applicable and in the appeal before the Tribunal, such order of the Commissioner (Appeals) was set aside and the matter was remanded back to him. In the order dated 14.01.2010, the Commissioner (Appeals) held that the appellants had not successfully crossed the bar of unjust enrichment. In the appeal of the appellants filed before the Tribunal, vide Order dated 20.02.2013, the order dated 14.01.2010 of the Commissioner (Appeals) was set aside and the matter was again remanded back to him. Once again vide Order-in-Appeal dated 28.06.2013, the Commissioner

(Appeals) held that the appellants had not successfully crossed the bar of unjust enrichment and rejected the appeal filed by the appellants. In further appeal filed by the appellants, the Tribunal vide Order No. A/641-642/15/ CB dated 07.01.2015 had held that the incidence of revenue deposit has not been passed on to any other person and thus remanded the matter back to the original authority for deciding on the refund claim. This was also followed by another Order No. M/2635/L5/CB dated 18.05.2015 for rectifying the mistake in mentioning of two amounts of refund claim arising from 7 B/Es and 2 B/Es. In pursuance of this order of the Tribunal, the Assistant Commissioner of Customs, Gr.VA, NCH, Mumbai vide order-in-original dated 13.11.2015 had sanctioned the refund claim for an amount of Rs.96,42,224/- in favour of the appellants. Similarly, the Assistant Commissioner of Customs, EPCG Group, NCH, Mumbai vide order-in-original dated 06.11.2015 had sanctioned the refund claim for an amount of Rs.74,23,079/- in favour of the appellants. However, no interest was paid on such refund claims sanctioned to the appellants. In the appeal preferred by the appellants against the orders of the original authority dated 13.11.2015 & 06.11.2015, the Commissioner of Customs (Appeals) vide orders dated 28.09.2017 & 27.09.2017, respectively, remanded the matter back to the original authority for deciding the issue of interest payable on refund.

2.5 In deciding the matter of interest payable on sanction of refund vide Orders-in-Original dated 07.02.2018 (issued on 28.02.2018) and dated 14.02.2018 (issued on 28.02.2018), the Assistant Commissioners of Customs Appraising Groups VA & EPCG have held that no interest is payable on refund amount sanctioned vide order dated 13.11.2015 & 06.11.2015 and rejected the claim of interest. In the appeal preferred against the said orders of the original authority before the Commissioner (Appeals) vide the common impugned order dated 28.06.2019, he had rejected the appeals filed by the appellants and upheld the orders of the original authority. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3. We heard both sides and have considered the submissions advanced by the learned Advocate appearing for the appellants 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.

4. In the impugned order dated 28.06.2019, 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 2.5 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.96,42,224/- vide Order-in-Original No. 1218/AC/Gr.V/15-16 dated 13.11.2015 and Rs.74,23,079/- vide Order-in-Original No. 670/AC/EPCG/15-16 dated 06.11.2015, whether there is any delay in sanction of refund to the appellants or not?

(ii) if there is a delay, then whether interest under Section 27A of the Customs Act, 1962 is payable to the appellants 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?

The period of dispute in the present case is from October, 1997 to April, 1998, as the nine B/Es covered under the present dispute were filed under Section 46 *ibid* during the period 17.10.1997 to 24.04.1998.

5.1 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 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;

(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 for purposes of assessment.

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 whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where—

- (a) the seller and the buyer have no interest in the business of each other; or
- (b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50.

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with 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 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, 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 it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where

the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

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 proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be ; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon ; or

(c) where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty,

the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, 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 the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.... "

Claim for refund of duty.

Section 27.

(1) Any person claiming refund of any duty and interest, if any, paid on such duty—

(i) paid by him in pursuance of an order of assessment ; or

(ii) borne by him,

may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Customs or Deputy Commissioner of Customs—

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, before the expiry of one year ;

(b) in any other case, before the expiry of six months,

from the date of payment of duty and interest, if any, paid on such duty, in such form and manner as may be specified in the regulations made in this behalf and the application 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 and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year or six months, as the case may be, shall not apply where any duty and interest, if any, paid on such duty has been paid under protest :

Provided also that 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 or six months, as the case may be, shall be computed from the date of issue of such order:

Provided also that where the duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, shall be computed from the date of such judgment, decree, order or direction.

Explanation I.—For the purposes of this sub-section, "the date of payment of duty and interest, if any, paid on such duty", in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

Explanation II.—Where any duty is paid provisionally under section 18, the limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after the final assessment thereof.

(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;....

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 ten ¹[five] per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board ²[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 :..."*

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.

¹ "five" instead of "ten" was inserted w.e.f. 11.05.2021

² Authority for fixing the rate of interest was revised as "Central Government" by substituting for "Board" w.e.f. 12.05.2000

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 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."

5.2 At the outset, it is also made clear that in the above appeals the disputed period pertains to pre-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'. Therefore, assessments under Sections 17 and 18 *ibid* were mandated to be performed by the proper officer of customs under the customs statute.

6.1 According to Section 14 of the Customs Act, 1962, and the erstwhile CVR of 1988 and now the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the assessable 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 fill-up a questionnaire and furnish a list of documents so that finalisation of provisional assessments is expedited.

6.2 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].

6.3 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.

7. 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, 1963. In the Circular No.01/1998-Customs dated 01.01.1998 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 01.01.1998 is given below:

"The existing instructions and the procedure observed in the various Custom Houses in regard to cases taken up by the Special Valuation Branch of the Custom Houses have been reviewed by the Board in the context of several representations received from the trade and industry about inordinate delays in the finalisation of cases involving related personal transactions, payment of royalty and licence fees, technical collaboration agreements between the seller and buyer and also the financial burden on account of the requirement of the extra duty deposit etc.

2. *On the basis of this review, the Board has taken the following decisions :*

xxx

xxx

xxx

xxx

8. *The amount of extra duty deposit presently kept at 5% of the value of the goods should henceforth be reduced to 1% of the value.*

9. *Furthermore, where provisional assessment is being resorted to, the investigation and finalisation of the assessment should be completed within three months of the registration of the case in the SVB of the designated Custom House. If no decision is given within 4 months of the registration of the case, the obtaining of the extra duty deposit should be discontinued. The time- frame for finalisation of investigation should be strictly adhered to irrespective of whether the importer has furnished all the required information or not.*

10. *As regards the cases pending with the SVB of various Custom Houses pending as on 30-4-1997, steps should be taken to complete the investigation and have the issues finally settled by 28th February, 1998. All the concerned Chief Commissioners and Commissioners are requested to put in extra efforts by way of re-deploying officers to achieve this target. As for cases registered from 1-6-1991 to 31-12-1997, all the pending cases should be completed by 30-4-1998.*

11. *In view of the tight time-frame laid down for finalisation of SVB cases in para 9 above, the Commissioners of Customs should institute special monitoring arrangements and review periodically each pending cases and taken suitable steps to arrive at a decision. The Commissioners are wholly responsible for adhering to the prescribed time-frame."*

8.1 Further, for appreciation of the disputed issue over the past 25 years, we have also seen the subsequent instructions issued for the procedure prescribed for investigation of related party transactions in import cases under SVB. The Central Board of Excise & Customs (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 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.

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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.

8.2 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, 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. 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 27A *ibid mutadis mutandis* to EDD as it applies to the duty, as EDD is collected for purpose of Sections 17 & 18 *ibid*.

8.3 On careful examination of the Order-in-Original No. S/9-50 GATT/97 GVC dated 26.10.1998, it clearly transpires that the provisionally assessed B/Es on account of SVB investigation in respect of related party transactions between the appellants importer and M/s Marubeni Corporation, Japan was finalised under Rule 4(3)(a) of CVR, 1988 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. It was also ordered that all pending provisionally assessed B/Es of the appellants 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 appellants 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 it is the practice that the said order stands expired and the assessing groups may resort to provisional assessment again with EDD equivalent to 1% of the assessable value, in respect of related party transactions. The relevant portion of the said order-in-original dated 26.10.1998 is extracted and is given below:

"ORDER

In keeping with the aforesaid facts I, hereby, thus order to accept the transaction value and invoices raised accordingly for goods in terms of Rule 4(a) of Customs Valuation Rule 1988 when the same is imported by M/s. Vardhman Acrylics Ltd, from M/s. Marubeni Corporation Japan after proper and usual scrutiny. Accordingly, all the pending provisional cases also may be finalized and Revenue deposit if any may be refunded subject to applicability.

The above decisions have been taken on the basis of pary's statement and declarations made in their various letters to this branch. In case, there is any factual error or omission in declarations, the same should immediately be brought to this Branch. These decisions will remain in force till the existing collaboration/ agency/ distribution/ agreement/ arrangements and present method of invoicing or pricing remain unchanged. Any change affecting the invoice value materially should be intimated to this branch without delay.

This decision is subject to occasional review/for a final review after a period of 3 years. These decisions shall be review after a period of 3 years. These decisions shall be reviewed as and when information additional or contrary to what is stated is available."

8.4 The above order finalizing the aspect of valuation of imported goods for the purpose of determining the relationship having influenced the transaction value or otherwise, was reviewed by the department and the same was appealed against by the department and was also agitated before the Tribunal and Hon'ble High Court of Bombay for long period till the refund amount was sanctioned to the appellants vide Order dated 06.11.2015 and 13.11.2015. Therefore, the direction in the said order dated 26.10.1998 for finalization of provisional assessments have not been implemented by the department. Consequent to the passing of such order dated 26.10.1998, the appellants importer have filed two refund applications both dated 22.01.1999 claiming refund of EDD for an amount of Rs.96,42,224/- & Rs.74,23,079/-, and the same was received under acknowledgement at the respective Appraising Groups VA & EPCG of New Custom House, Mumbai on 25.01.1999. 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 providing the amount of refund under each of the B/Es and in total.

8.5 From the case records, we do not find that any action had been taken by the department on such refund claims made by the appellant, possibly, since the SVB order dated 26.10.1998 was under appeal. However, much later in response to the refund claim filed by the appellants importer, the Assistant Commissioner of Customs, Gr.VA, New Custom House, Mumbai letter dated 08.07.2016 had informed them that the CBEC Circular No.59/95 dated 05.06.1995 clearly states that "*no interest is payable in respect of revenue deposits (for example deposits for project import etc.)*". The said instructions as contained in Circular dated 05.06.1995 are extracted and given below:

"Subject : Customs Refund Application (Form) Regulations, 1995 - Interest on Refund Instructions - Regarding.

I am directed to say that with the enactment of the Finance Bill, 1995 with effect from 26-5-1995 Section 27A relating to payment of interest on delayed refund of customs duties have become part of the Customs Act, 1962. Consequently, Notification No. 32/95(N.T.) Customs, dated 26-5-1995 has been issued by the Board to specify the rate of interest payable by the Department in the case of delayed

refunds to customs duties in terms of the said Section 27A. The rate of interest fixed for the time being vide the said notification is simple interest of 15% per annum. Instructions have already been issued by TRU as a part of the Budget instructions regarding the payment of interest and the calculation of period for which interest is payable.

2. In order to give effect to the aforesaid provisions and to streamline the procedure for processing of refund applications the Customs Refund Application (Form) Regulations, 1995 have been prescribed by the Board in terms of Notification No. 34/95(N.T.) Customs, dated 26-5-1995. These regulations supersede the Customs Application (Form) Regulations, 1991.

3. The new regulations provide for the form and manner in which an application of refund is to be made. As may be seen, the regulations also provide for the scrutiny of an application and its return to the applicant within a period of 10 working days, if it is found incomplete in any manner or detail. If however, the application is found to be complete in all respects for the purpose of processing the refund claim the same is to be acknowledged within the period of 10 working days. The interest free period of 3 months for processing the claim will be deemed to start from the date of receipt of the complete refund application.

4. The afore indicated provisions warrant that the Department is geared to meet the new standards required by law as the payment of interest by the Government in cases of delayed settlement of refund cases would be detrimental to Government revenue. Accordingly, steps are to be taken by the Commissioners of Customs to closely monitor the performance of the refund cells of the Custom Houses to ensure that all refund claims are settled at the earliest and in any case before the period the interest liability starts. In this direction the centralisation of all types of refund claims and their settlement procedure may be examined by the Commissioners for greater efficiency and accountability.

5. As the period of interest determination starts from the date of receipt of a complete refund application, the responsibility of proper scrutiny of the applications for determining the completeness or otherwise of the applications can not be under estimated. Accordingly, particular importance is to be given to this area of work and it may be ensured that there should be proper selection of officers conversant with such work. In case of delays not warranted in the administrative system, perhaps, Government would be constrained to recover the interest paid from the official who were responsible for such delays.

*6. The finalisation of refund claims are to be closely monitored and it may be ensured that these are decided without fail within the period provided. No Interest liability should normally lie on the Government. It is further desired that all refund claims in future be settled at the level of Assistant Commissioner only (and not by Superintendent/Appraiser). It may be noted that the interest is payable only in respect of delayed refunds of customs duties. **No Interest is payable in respect of deposits (for example deposits for project import, etc.)** Pre audit system as well as issue of cheques should be ensured at utmost speed.*

7. I am directed to say that the Board has desired that this aspect of tax administration be given due importance in view of the revenue

implications. Accordingly, the Commissioners of Customs concerned may evolve a suitable procedure for implementing the new legal provisions. Suitable detailed Standing Order to departmental officers may be issued. Trade may also be advised of this procedure for filing claims in complete forms by issue of a Public Notice. Copies of Standing Order/Public Notice may be endorsed to the Board [Director (Cus.)] and to DGIACCE, Delhi."

8.6 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 or 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 appellants importer had submitted the refund claim application in the prescribed format Part-A and Part-B. However, in view of the appeal filed by the department against the SVB Order dated 26.10.1998, the respective Assistant Commissioners of the appraising group did not scrutinize or act upon the refund claim of EDD made by the appellants.

8.7 We also find that the legal provisions governing refund of duty, *inter alia*, provide for scrutiny of refund claim application and require the proper officer to either reject the refund claim if found not eligible; or to sanction the refund claim and further to pass on the refund amount to the Consumer Welfare Fund; or to the applicant, in case it is established that the burden of duty claimed as refund has not been passed on by the claimant to any other person. There is no provision for keeping it pending indefinitely, on the ground that the decision or order from which the refund is arising is appealed against.

8.8 In the protracted litigation of the present case, the provisionally assessed duties were finally assessed on the basis of the SVB order dated 26.10.1998, by accepting that no further addition to the declared value of imported goods is required by passing the Orders-in-Original/ Refund Order No.792/AC/Gr.VA/RG/2007-08 dated 26.03.2008 and No.228/08 dated 22.05.2008. However, in both these orders, it was concluded that the importer appellants had failed to show that the burden of refund amount claimed has not been passed to their customers or any other person and thus the refundable amount was ordered for crediting to the Consumer Welfare Fund. However, after further appeals before the Commissioner (Appeals) and the Tribunal for a number of times, and finally on careful re-examining of the facts and the balance sheets by the Assistant Commissioner of Appraising Groups-VA & EPCG, and on the basis of the factual examination of the unjust enrichment angle by the Tribunal in Final Order dated 07.01.2015, it was found that the refund amounts is payable to the appellant importer. Further, the Assistant Commissioner of Appraising Groups-VA & EPCG have also recorded in their order that the earlier order dated 26.03.2008 & 22.05.2008 directing to credit the refund amount to the Consumer Welfare Fund (CWF) has not been carried out and thus were available for sanction to the appellant importer, and thus were accordingly sanctioned to them. Further, in terms of the legal provision of Section 27 *ibid* as prevalent at the relevant time, a person could claim refund of duty, which was paid by him in pursuance of an order of assessment, by making an refund application. In the factual matrix of the present case, even though an application for refund was made before the Assistant Commissioner of Customs, Appraising Group VA and EPCG, the effective order of assessment upon finalization of provisional assessment, initiating the clock for refund claim had arisen only on account of passing of Orders-in-Original dated 26.03.2008 & 22.05.2008. Therefore, we are of the view the application for refund could be effective only from that date, on which the two orders were passed for refund of the amount of EDD not being required to be adjusted after finally agreeing to the fact that correct amount of duty to be paid on the imports was already paid by the appellants at the stage of initial import itself. Thus, the period for which interest on delayed refund, if any, would start from the expiry of three months from the respective date of the orders of original authority determining the amount refundable to the applicant, thus enabling appellants importer for filing the claim for refund, to till the date of actual payment of the refund

amount. In other words, when the legal provision under Section 27 *ibid*, as it stood at the relevant point of time, allowed any person for filing of a refund claim of duty paid by him only 'in pursuance of an order of assessment'. Therefore, prior to such passing of an order in finally assessing the duty liability, upon finalization of SVB angle of valuation of imported goods arising from related party transaction, no refund claim can be entertained under Section 27 *ibid*.

8.9 Further, we are also of the considered view, that once the issue of eligibility to sanction refund amount to the appellants importer was determined by finalizing the provisional assessments after accepting the finality of order of SVB dated 26.10.1998 before the Hon'ble High Court of Mumbai in W.P. No. 2592 of 2007, the appellants importer were eligible to be sanctioned with the refund amount claimed by them. The assessments were finalized by the respective Appraising Groups of VA & EPCG on 22.02.2008 and 24.03.2008 respectively, and the refund was sanctioned on the basis of the application for refund that was already available with them vide orders dated 26.03.2008 and 22.05.2008, by directing credit of refund amount to CWF. Therefore, when the issue of finalized duty recoverable from the appellants importer having been determined, and that the amount refundable being in the nature of EDD, these are liable to be refunded to the appellants. However, such refund were finally sanctioned by the Assistant Commissioner of Appraising Groups of VA & EPCG subsequently vide Orders dated 13.11.2015 and 06.11.2015.

8.10 Further, it is not the case of the Department that the EDD paid by the appellants importer was required to adjust the deficiency arising on account of determination of final assessment of duty amount, as in none of the 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 appellants importer was sufficient to discharge the finalised duty, as the transaction value was accepted for final assessment and the EDD was required to be refunded to them. Therefore, from the facts of the case, the amount of EDD is eligible to be paid back/refunded to the appellants importer, once a speaking order was passed on 13.11.2015 and 06.11.2015 in terms of the legal provisions of the Customs statute for accepting the declared value as transaction value, in finally assessing the duty liability.

9.1 Besides the above, we also find that the department had subsequently issued Public Notice No. 5/2012, dated 17-01-2012 for handling the matters of refund of duty, particularly between Centralized Section and Appraising groups, Refund 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 wherever 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]"

Though this instruction was not applicable in the present case, as it was issued subsequently, the central theme of the department is that finalization of B/Es under provisional assessment were to be completed early within short window of five days. On careful perusal of the facts of the present case, we are of the considered view that the Assistant Commissioner who has finalized the provisional assessment should have also processed the refund application consequent to such finalization, 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 passing of Orders-in-Original dated 26.03.2008 and 22.05.2008, is saddled with the liability to pay interest at the prescribed rate, in terms of Section 27A of the Customs Act, 1962. This is also evidential from both the refund claims dated 22.01.1999, complete in all respects, for an amount of Rs.96,42,224/- and Rs.74,23,079/- was duly received at the New Custom House, Mumbai on 25.01.1999, and the same had not been disposed of by the department and was kept pending with them, for deciding the final order of assessment enabling refund of EDD.

9.2 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 judicial forum supports our above view. The relevant extract of the judgements passed by the Hon'ble High Court/Tribunal 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."

9.3 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.

(4) MAFATLAL INDUSTRIES LTD. Versus UNION OF INDIA - 1997 (89) E.L.T. 247 (S.C.)

"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.

(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 as held in the above judgement, was proved by the appellant before the proper officers of customs and the eligible refund has been properly sanctioned by the proper officers in the present case, in compliance with the above judgement of the Hon'ble Supreme Court.

9.4 We further find in the case of *Bihar Foundry & Castings Limited Vs. Union of India & Ors.* – (2026) 42 Centax 3 (Jhar.), it was held that the provisional assessment must be finalized within six months' time in terms of CBEC's Instructions issued to field formations vide F. No. 512/5/72-Cus.VI dated 23.04.1973; and F. No. 511/7/77-Cus.VI dated 09.01.1978 and Circular No. 17/2011-Cus., dated 08.04.2011, 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.

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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
R E C O R D O F P R O C E E D I N G S

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.

Validity unknown
Digitally signed by
GEETA VISHU
Date: 2025.01.10
10:34:16
Reason:

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.

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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 JURISDICTIONREVIEW 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.

9.5 In this regard, we find that the CBEC Circular No. 05/2016-Customs dated 09.02.2016, even though issued in the subsequent period, provides guidance, as it prescribes the procedure for investigation of related party transactions in import cases, and states that where the declared value is found to be acceptable as transaction value, then 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..."

9.6 From the above, it is clear that the appellants importer in the present case, having paid the EDD at the time of provisional assessment and that upon finalization of SVB investigation accepting the declared value as confirming to CVR, 1998 in terms of a speaking order passed by proper officer of customs, are eligible for refund of EDD immediately upon finalization of provisional assessments, in terms of Order-in-Original passed by the Assistant Commissioner of Appraising Groups of VA & EPCG on 22.02.2008 and 24.03.2008 respectively.

10. 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 statute 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.

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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."

11.1 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 appellants importer is eligible for refund of EDD paid over and above the finally assessed duties of customs by the proper officer of customs. Both the Assistant Commissioner of Appraising

Groups of VA & EPCG on 26.03.2008 & 22.05.2008, have examined in detail the eligibility to refund and found that the appellants importer is eligible for refund of EDD. Further, it is also on record that the appellants importer had furnished the financial records, balance sheet and other documents for proving that the burden of EDD paid was not passed on to any other person. In fact, the subsequent orders of the Assistant Commissioner of Appraising Groups of VA & EPCG dated vide 13.11.2015 and 06.11.2015, respectively had examined the same set of financial records and have sanctioned the same refund amounts to the appellants importer. These are self-evident from the relevant extracts of these orders as given below:

Extract of Order-in-Original dated 26.03.2008 of the Assistant Commissioner of Customs, Appraising Group VA for refund of EDD for an amount of Rs. 96,42,224/-

"16. *Importer also submitted the extracts of Balance Sheets for the year 1999-2006 to show that incidence of duty has not been passed on to the Consumer. They have stated that the entire deposit amount so paid by them has been booked as deposit amount in their financial records. They have further stated that they have shown the provisions of deposit amount under loans and advances in each year's Balance Sheet.*

17. *On scrutiny on the Balance Sheet submitted by the importer. It is seen that under the head Balances / Deposits with Government Authorities as on 31.03.1999, the amount shown is 14.20 Crores and Balance as on 31.03.1998 is 5.85 Crores. From this it cannot be inferred that Revenue Deposit, deposited with Customs Authority (and now claimed as refund amount of RS.96,42,224/-) has been included in the schedule 10 of the Balance Sheet. The break-up of the amount due with the Customs Authorities is not shown separately.*

From the Balance Sheet it is also verified that importer has claimed depreciation on plant and machinery.

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19. *From the above observations, it can be concluded that the doctrine of unjust enrichment is applicable in this case and also that the importer has failed to show that the burden has not been passed on to the consumers.*

I pass the following order:

ORDER

I sanction the refund claim of Rupees Ninety-Six Lakhs Forty Two Thousand Two Hundred Twenty Four Only (96.42.224/-). However, I order that same to be credited to Consumer Welfare Fund."

On the same set of facts, the same authority had later sanctioned the refund of EDD to the appellants importer as below:

Extract of Order-in-Original dated 13.11.2015 of the Assistant Commissioner of Customs, Appraising Group VA for refund of EDD for an amount of Rs. 96,42,224/-

"All the above stated detailed analysis establishes that Revenue Deposit amounting to Rs.1,70,65,303/- has been carried forward from the year 1997-98 & 1998-1999 and no amount thereof has been capitalized in the Books of Account and it is standing as recoverable under the head "Loans & Advances" till date. I have verified all the documents/records like journal vouchers, account ledgers, sub-groupings & audited balance sheets etc. and I find that the incidence of the Revenue Deposit has been borne by the Company as the same has not been passed on by them and therefore, granting of refund of the said Revenue Deposit will not enrich them unjustly.

28. *From the re-examination of the records submitted by the importer and keeping reliance on the hearing, oral as well written submissions given by the representatives of the importer during the course of hearing on 05.05.2015, it was found that the observations and finding of the Hon'ble CESTAT vide their Order No. A/641-642/15/CB dated 07.01.2015 and rectification application Order No. M/2635/15/CB dated 18.05.2015 hold good and the fact that the present case is not getting hit by the Unjust Enrichment it is well corroborating with the original books of accounts submitted by the party during the Personal Hearing as also held by the Hon'ble CESTAT in the above stated order.*

29. *All the above stated analysis established that Revenue Deposit amounting to Rs. 1,70,65,303/- was made w.r.to total 9 bills of entry. Out of 9 bills of entry two bills of entry pertains to EPCG Section and 7 bills of entry pertain to Gr. VA.....*

30. *It has also been verified from" The Pay & Accounts Office, 9th Floor, NCH, Mumba" vide their office letter F. No. PAO/Exp/2015-16/1057 dated 01.10.2015, stating that, as the order in original bearing number 792/AC/Gr.VA/RG/2007-08 dated 26.03.2008 in r/o M/s Vardhaman Acrylics Ltd. for creating the amount to Consumer Welfare Fund was not forwarded to their office, refund amount of Rs. 96,42,224/- of M/s Vardhaman Acrylics Ltd. has not yet been credited to Consumer Welfare Fund.*

In view of the above, I pass the following order:

ORDER

I, sanction the refund claim of Rupees Ninety-Six Lakhs Forty Two Thousand Two Hundred Twenty Four Only (96,42,224/-), Vardhaman Acrylics Limited, 504, Dalamal House Nariman Point, Mumbai 21, deposited by them vide RD. No. mentioned above against the respective bills entry."

Extract of Order-in-Original dated 22.05.2008 of the Assistant Commissioner of Customs, Appraising Group EPCG for refund of EDD for an amount of Rs. 74,23,079/-

"10. I have gone through the facts of the case on records and the importer's written as well as oral submission while claiming the refund

- That the refund of revenue deposit of Rs. 74,23,079/- is due to them since the SVB order has attained its finality and all the provisional assessment cases have been finalised dated 24.03.2008.

11. I find that SVB order has attained its finality and all the provisional assessment cases are finalised, the revenue deposit to the tune of Rs. 74,23,079/- has become, therefore, an amount to be refunded on merit. However, I have to examine that in this case doctrine of unjust enrichment is applicable or not.

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16. Importer also submitted the extracts of Balance Sheets for the year 1999-2006 to show that incidence of duty has not been passed on to the Consumer. They have stated that the entire deposit amount so paid by them has been booked as deposit amount in their financial records. They have further stated that they have shown the provisions of deposit amount under loans and advances in each year's Balance Sheet.

17. On scrutiny on the Balance Sheet submitted by the importer, it is seen that under the heading 'Balances / Deposits with Government Authorities' as on 31.03.1999, the amount shown is 14.20 Crores and Balance as on 31.03.1998 is 5.85 Crores. From this it cannot be inferred that Revenue Deposit, deposited with Customs Authority (and now claimed as refund amount of Rs. 74.23,079/-) has been included in the schedule 10 of the Balance Sheet. The break-up of the amount due with the Customs Authorities is not shown separately.

18. From the above observations, it can be concluded that the doctrine of unjust enrichment is applicable in this case and also that the importer has failed to show that the burden has not been passed on to the consumers.

I pass the following order:

ORDER

19. I Sanction the refund claim of Rupees Seventy Four Lakhs Twenty Three thousand Seventy nine Only (Rs. 74,23,079/), however, I order that same to be credited to Consumer Welfare Fund."

Similarly, the Assistant Commissioner of Customs, EPCG Group on the very same set of facts, had later sanctioned the refund of EDD to the appellants importer as below:

Extract of Order-in-Original dated 06.11.2015 of the Assistant Commissioner of Customs, Appraising Group EPCG for refund of EDD for an amount of Rs. 74,23,079/-

"28.....I have checked and verified the original Accounts Ledger of "Other recoverable" and found it to be correct as mentioned in the Balance Sheet and break-up of Advances Recoverable as stated above.

All the above stated detailed analysis establishes that Revenue Deposit amounting to Rs.1,70,65,303/- has been carried forward from the year 1997-98 & 1998-1999 and no amount thereof has been capitalized in the Books of Account and it is standing as recoverable under the head "Loans & Advances" till date. I have verified all the documents/records like journal vouchers, account ledgers, sub-groupings & audited balance sheets etc. and I find that the incidence of the Revenue Deposit has been borne by the Company as the same has not been passed on by them and therefore, granting of refund of the said Revenue Deposit will not enrich them unjustly.

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30. It has also been verified from, "The Pay & Accounts Office, 9th Floor, NCH, Mumbai" vide their office letter dated 14.09.2015, F.No. PAO/REV/CWF/2015-16/990, stating that, as the order in original bearing no. S/40-EPCG-14/1998 dated 22.05.2008 and refund order no. 228/08 dated 22.05.2008 for crediting the amount to Consumer Welfare Fund was not forwarded to their office, refund amount of Rs.74,23,079/- of M/s. Vardhaman Acrylics Limited, has not yet been credited to Consumer Welfare Fund.

In view of the above, I pass the following order:

ORDER

I, order to refund claim of Rupees Seventy Four Lakhs Twenty Three Thousand Seventy Nine only (Rs. 74,23,079/-), to M/s. Vardhaman Acrylics Limited, 504, Dalamal House, Nariman Point, Mumbai 21, deposited by them vide RD. No. 2295/15.01.98 & 2316/17.01.98 voucher: NO 1177/31.1.98 & 1181/31.1.98."

11.2 The facts of the case also indicate that the Assistant Commissioner of Appraising Groups-VA & EPCG having passed their earlier orders dated 26.03.2008 & 22.05.2008 sanctioning the refunds, but only on account of non-fulfilment of unjust enrichment angle had ordered for crediting such refund amount to the Consumer Welfare Fund. However, the fact that such orders were not carried out in crediting the amounts to Consumer Welfare Fund and thus were available for sanction to the appellant importer, and thus were accordingly sanctioned to them vide orders dated 13.11.2015 and 06.11.2015, show that the department had lacked clarity and were not certain on the aspect of applicability of unjust enrichment on EDD amounts paid by the appellants importer.

11.3 Therefore, the adjudicating authorities while sanctioning the refund of EDD vide Orders dated 13.11.2015 and 06.11.2015 should have paid interest for the period of delay caused in refund of EDD beyond three months' time limit. 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 and for which provisional assessments were finalized, in terms of Order-in-Original passed by the Assistant Commissioner of Appraising Groups of VA & EPCG on 26.03.2008 and 22.05.2008 respectively, enabling refund of EDD amount in excess of the final duty payable on imported goods. However, the EDD amounts of Rs. 96,42,224/- and Rs.74,23,079/- were sanctioned only on 13.11.2015 and 06.11.2015 respectively; and thus the interest at appropriate rate fixed by the Central Government under Section 27A *ibid* is payable on the refunded 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 orders dated 26.03.2008 & 22.05.2008 by the Assistant Commissioner of Appraising Groups of VA & EPCG, respectively, till the date of actual payment of such EDD refund amount to the eligible appellants importer i.e., upto 13.11.2015 and 06.11.2015, as ordered by the Assistant Commissioner of Appraising Groups of VA & EPCG, respectively.

12. In view of the foregoing discussions and analysis, we are of the considered view that the common impugned order dated 28.06.2019 is liable to be set aside to the extent it did not grant interest on delayed refund of EDD to the appellants importer, as discussed in detail *vide* preceding paragraphs at 6.1 to 11.3 of this order.

13. In the result, the impugned order is set aside and the appeals filed by the appellants importer are allowed in their favour.

(Order pronounced in the open court on 15.06.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)