



2025:DHC:5429-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 09th July, 2025

+ **W.P.(C) 3754/2022**
CMR GREEN TECHNOLOGIES LIMITEDPetitioner
Through: Ms. Gulafsha Gupta, Adv.

versus

UNION OF INDIA & ANR.Respondents
Through: Ms. Samiksha Godiyal, SSC
with Mr. Tenzing Bhutia & Mr.
B.D. Rao Kundan, Advs. for
R/CIBIC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India challenging the order dated 24th November, 2021 passed by the Customs Excise & Service Tax Appellate Tribunal (hereinafter 'CESTAT') as also the order dated 17th June, 2021 passed by the Commissioner (Appeals).
3. The brief background is that the Petitioner had imported 197 consignments of Aluminium scrap from different countries and the same was presented for clearing before the Assessing Officer (hereinafter 'AO'). However, the transaction value was not accepted by the AO and duty was collected from the Petitioner. According to the Petitioner, the same was excess duty and therefore, the Petitioner approached the Principal Commissioner (Appeals). The reassessment of the goods by the AO was set aside in appeal



and the original assessments as per the Petitioner were accepted by the Commissioner which led to refund of a sum of Rs.8,75,22,009/-.

4. When the said refund order was passed on 13th September, 2019, the Assistant Commissioner of Customs (Refund) directed as under:

“In view of above, I sanction the refund claim of Rs. 8,75,22,009/- (Eight crores seventy five lacs twenty two thousand and nine only) out of which an amount of Rs. 8,60,21,916/- will be paid through RTGS and the remaining amount of Rs. 15,00,093/- will be re-credited to the license of the importer.”

5. It is not in doubt that the amount of Rs.8,60,21,916/- has already been paid to the Petitioner. The only challenge is in respect of the amount of Rs.15,00,093/- which was re-credited to the license of the importer.

6. The Petitioner challenged this order to the extent that the amount of approximately Rs.15,00,093/- was re-credited into the license and not paid to the Petitioner. The appeal was filed belatedly and hence the Commissioner of Customs (Appeals) dismissed the said appeal *vide* order dated 17th June, 2021 in the following terms:

*“In view of above discussion and findings, **I dismiss the Appeal No. APPL/DLH/CUS/ICD/PPG/52/2021 against OIO dated 13.9.2019 on ground of limitation.** I allow Appeal No. APPL/DLH/CUS/ICD/PPG/45/2021 and partially set aside the impugned Order dated 09.3.2021 to the extent of order of disbursement of part refund by crediting in the impugned licences. I direct the Adjudicating Authority to issue order for the disbursement of impugned refund by way of RTGS in place of re-crediting in the respective licences within 30 days of receipt of this order.”*

7. A second appeal was preferred before CESTAT, Chandigarh which



was also dismissed in the following terms:

“4. Heard Shri Ashok Kumar Sikka DGM for the appellant and gone through the records placed before me, it is a fact on record that the adjudication order was received by the appellant on 13.09.2019 and the appeal has been filed before the Ld. Commissioner (Appeals) on 11.02.2021 whereas the statutory period of filing the appeal expires on 12.11.2019 which could have been extended by another 30 days on showing the reason for causing the delay to the satisfaction of the appellate authority. Beyond the said period, the appellate authorities have no authority to condone the delay. As the facts of the case are not in dispute, in that circumstances, I don't find any infirmity in the impugned order, the same is upheld and the appeal filed by the appellant is dismissed.”

8. As can be seen from the above two orders, the only reason why the appeal was not entertained was that the same was filed belatedly with a delay of 559 days. The Court notes that in this case, the original order was passed on 13th September, 2019 and the appeal ought to have been filed by 12th December, 2019, *i.e.*, within a total period of three months. Since there was a delay beyond the said period without any substantial reason, the appeal was dismissed and the said order was also upheld by CESTAT.

9. Ld. Counsel for the Petitioner submits that the scheme of re-crediting was abolished by the Government *vide public notice No. 06RE2013(2009-14)* dated 18th April, 2013 and was not applicable at the time when the order was passed by the Commissioner (Refunds) and hence the directions to re-credit to the licence was totally untenable. Ld. Counsel further submits that in effect therefore, the department continues to retain the amount.

10. Ms. Samiksha Godiyal, Ld. Senior Standing Counsel for the



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Respondents submits that the delay in filing the appeal was of the Petitioner and the Respondent cannot be blamed for the same. Id.Counsel for the Respondent submits that CESTAT and Commissioner (Appeals) could not have condoned the delay.

11. Heard. The short question is whether the amount of Rs.15,00,093/- could be re-credited to the Petitioner's licence or was it to be paid directly to the Petitioner. Admittedly, the re-crediting scheme was not in existence when the order dated 13th September, 2019 was passed. The sum of Rs.15,00,093/, therefore, continues to be retained by the Respondents which would not be permissible as the same would constitute unjust enrichment.

12. In these facts and circumstances, since the re-crediting scheme had abolished the amount could not have been directed to be re-credited with the licence of the Petitioner. Accordingly, it is directed that the Respondents shall refund the said amount along with interest to the Petitioner within a period of three months from today. However, considering that the Petitioner was also at fault having filed the appeals belatedly, instead of the statutory interest of 6%, it is directed that the amount shall be repaid with simple interest at 4% p.a.

13. Accordingly, the present petition is disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 9, 2025/kp/v/Ar.