

OD-10

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CUSTOMS]
ORIGINAL SIDE

CUSTA/2/2025
IA NO: GA/1/2025
COMMISSIONER OF CUSTOMS (PREVENTIVE), KOLKATA
VS
M/S. RAYMOND APPAREL LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
A N D
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 2nd August, 2025

Mr. Uday Sankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.
...for appellant.

Mr. Rahul Tangri, Adv.
Mr. Shovit Betal, Adv.
...for respondent.

The Court : This appeal filed by the department/revenue is directed against an order dated 2.5.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata in Customs Appeal No.75200/2023.

The revenue has raised the following substantial questions of law for consideration :

- “a) *Whether the refund application was required to be made within one year from the judgment and order of the Hon’ble Supreme Court of India in the case of M/s. SRF Vs. Commissioner of Customs Chennai*

as per provision of sub-section 1B(b) of section 27 of the Customs Act, 1962?

- b) Whether the refund application dated 06.02.2018 filed by the respondent is time barred and liable to be rejected?*
- c) Whether the impugned order dated 02.05.2024 passed by the Learned Tribunal is contrary to the provision of section 27 of the Customs Act, 1962 and also not sustainable in view of the Circular No.24/2004-Cus. Dated 18/03/2024 and the judgment and order of the Hon'ble Supreme Court of India passed in the case of ITC Ltd. Vs. CCE, Kolkata – IV?"*

The revenue is aggrieved by the order passed by the learned Tribunal dismissing their appeal challenging the Order-in-original dated 16.6.2022 passed by the Commissioner (Appeals), Kolkata. By the said order the appellate authority held that duty paid under protest tantamounts to challenge to the assessment and further challenging/modification of the assessment for the purpose of refund in such case, the application of the decision of the Hon'ble Supreme Court in *ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV [2019-VIL-32-SC-CU]* could not apply. Further, the appellate authority held that the department has not disputed that duty has been paid under protest by the respondent for all 174 bills of entry and no infirmity can be attributed to the impugned refund order for not fulfilling the requirements of challenge/modification of the bills of entry in terms of the decision of the Hon'ble Supreme Court in *ITC Ltd.* Accordingly, the appellate authority affirmed the Order-in-original dated 24.5.2021, by which the original authority

sanctioned refund amounting to Rs.7,98,08,012/- paid against 174 bills of entry under section 27 of the Customs Act, 1962.

The contention raised by the department before the learned Tribunal as well as before us is that the ratio of the decision of the Hon'ble Supreme Court in the case of ITC Ltd. is clear that unless the assessment order is not modified as per law, the refund claim under section 27 does not arise, that is, the refund proceedings cannot be used as a substitute for appeal proceedings and the effect of 'under protest' is only in the context that the time limit under section 27 would not apply. Further, it was contended that the very protest made by the respondent came to an end after the decision of the Hon'ble Supreme Court in *SRF Ltd. Vs. Commissioner of Customs, Chennai, 2015 (318) ELT 607 (SC)* and the protest made by the respondent would not survive beyond the date of judgment of the Supreme Court dated 26.3.2015.

The learned Tribunal considered the said contention raised by the revenue and rejected the same after taking note of the decision of the co-ordinate Bench of the learned Tribunal. Identical issue came up for consideration in the case of *Kisan Cooperative Sugar Factory Ltd. Vs. Commissioner of Central (2018) 8 GSTL 365 (All.)*. In the said case the assessee filed refund application after four years in the year 2009 and the same was rejected invoking the provisions of section 11B of the Central Excise Act, 1944. In the said case though the Tribunal found that the assessee therein had made the deposit of the disputed demand of duty amount under protest rejected the refund application on the ground of limitation because, according to the

Tribunal, the assessee therein made the refund application belatedly after expiry of one year from the date of the judgment of the Court. The Court took into consideration of the decision of the Hon'ble Supreme Court in *Mafatlal Industries Ltd. Vs. Union of India*, 1997 (89) ELT 247 (SC) and held that in view of the specific finding recorded that duty amount has been paid under protest, limitation of one year to make the claim of refund under section 11B would not apply at all to such a case and, therefore, the amount is liable to be refunded to the appellant therein along with interest excluding the period for which the appellant therein had not applied, that is, upto 2009 from the date it became liable to be refunded. Direction was issued to the effect that the principal amount is to be refunded but no interest be given from the date the writ petition was allowed to the date when the appellant therein made the application for refund, that is, 2009 and the interest beyond that time may be given.

There are other decisions of the Tribunal on the very issue holding that the assessee paying duty under protest and intimating to the Assistant commissioner by letter that since it required consignment urgently for its product it would be clearing payment of duty under protest and such protest alleged by the assessee would remain till the disputed issue was settled finally by higher appellate forums and in the absence of any order indicating vacating of protest on an adverse order having been passed against the assessee, duty having been paid under protest would not be hit by limitation prescribed under section 27 of the Customs Act. Furthermore, in *Sinkhal Synthetics & Chemicals*

Ltd. Vs. CCE, Aurangabad, 2002 (143) ELT 17 it was held that the refund of duty paid under protest will not be hit by the bar of unjust enrichment. The third Principal Bench of the Tribunal in the case of *Collector of C. Ex Vs. Prestige Engineering (India) Pvt. Ltd., 1989 (41) ELT 530 (Tribunal)* held that once a protest has been lodged, it became the duty of the Assistant Collector to dispose of the protest by an appealable order so that the assessee could go in appeal against those orders. Unless the Assistant Collector disposes of the protest in the aforesaid manner, as enjoined under Rule 233B, the protest cannot be deemed to have subsided.

The co-ordinate Bench of the Tribunal in the case of *Commissioner of Commissioner of Customs, Tuticorin vs. Sakthi Sugars Ltd., 2020 (372) ELT 577 (Tri. – Chennai)* held that the marking of protest itself gives information to the department that there is no requirement for reassessment. The assessment under Section 17 of the Customs Act, 1962 cannot be said to be finalised when the respondent therein has marked the protest while paying duty. It was further held that mark of protest is an information to the department that the assessee is not making payment of cess/duty voluntarily and then department has to initiate proceedings to vacate the protest and pass speaking order of reassessment. Similar view was taken by the co-ordinate Bench of the Tribunal in *HDFC Bank Ltd. Vs Principal Commissioner of GST & CE, 2020 (7) TMI 362 – CESTAT Chennai*.

The learned senior standing counsel appearing for the appellant would contend that even assuming the refund is to be sanctioned, interest is

not payable. We had noted that in the case of *Kisan Coopertive Sugar Factory Ltd.*, the Court denied interest for the period of delay that is, from the date on which the writ petition filed by the assessee therein was allowed till filing of the application for refund.

In the instant case, the respondent has not claimed interest from the initial date but they have claimed interest only after expiry of the period of 90 days from the date on which the application for refund was granted. Therefore, the said objection raised by the revenue would not arise in the instant case.

For all the above reasons, we find that the learned Tribunal was fully justified in dismissing the revenue's appeal.

For the above reasons, the appeal is dismissed and the substantial questions of law are answered against the revenue.

The revenue is directed to effect refund in favour of the respondent together with interest as ordered within a period of three days from the date of receipt of the server copy of this order.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)