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CESTAT Mumbai- Refund of Encashed Bank Guarantee Not Subject to Limitation Under Section 27

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Mumbai, has set a precedent in the case of *Oswal Industries Limited vs. Commissioner of Customs (Import)*. The Tribunal addressed the critical issue of whether a bank guarantee encashed by the Revenue during the pendency of an appeal can be treated as "payment of duty" under Section 27 of the Customs Act, 1962. This decision has far-reaching implications for businesses dealing with customs disputes and provisional releases.

Background of the Case

Oswal Industries Limited had imported goods in 2003, which were provisionally released against a bond and a bank guarantee of Rs. 10 lakhs. A dispute arose, leading to a demand for customs duty, which was confirmed by the Order-in-Original in 2006. During the pendency of Oswal's appeal before the Tribunal, the Revenue encashed the bank guarantee and deposited the amount in the government treasury.

In 2016, the Tribunal ruled in favor of Oswal Industries, setting aside the demand for customs duty. Subsequently, Oswal filed an application for a refund of the encashed bank guarantee. However, the refund application was rejected by the Adjudicating Authority and later by the Commissioner (Appeals), citing the limitation period under Section 27 of the Customs Act.

Key Legal Question

The pivotal question before the Tribunal was whether the encashed bank guarantee could be construed as "payment of duty" under Section 27, thereby attracting the limitation period for refund claims.

CESTAT's Observations and Ruling

1. **Bank Guarantee is Not Duty Paid:** The Tribunal clarified that a bank guarantee furnished for provisional release of goods is merely a security and cannot be equated with "payment of duty." Since no duty was determined at the time of furnishing the bank guarantee, Section 27 of the Customs Act does not apply.
2. **Improper Encashment by Revenue:** The Tribunal criticized the Revenue for encashing the bank guarantee during the pendency of the appeal without awaiting its outcome. Such actions were deemed improper and arbitrary.
3. **Supreme Court Precedents:** The Tribunal relied on landmark Supreme Court judgments, including *Oswal Agro Mills Ltd.* and *Patanjali Foods Ltd.*, which held that encashment of bank guarantees cannot be treated as payment of duty and that unjust retention of such amounts is unlawful.

Final Order

The Tribunal set aside the impugned order and directed the Revenue to refund the encashed bank guarantee amount to Oswal Industries forthwith. This decision reinforces the principle that bank guarantees are mere securities and cannot be treated as duty payments.

Implications of the Ruling

This judgment is a significant win for importers and businesses facing similar disputes. It underscores the importance of distinguishing between security and duty payments under the Customs Act. The ruling also serves as a reminder to the Revenue to act judiciously and avoid arbitrary encashment of bank guarantees during pending appeals.

Conclusion

The CESTAT Mumbai's decision in favor of Oswal Industries Limited is a landmark ruling that upholds the principles of justice and fairness in customs disputes. By clarifying the scope of Section 27 of the Customs Act, the Tribunal has provided much-needed relief to businesses and set a precedent for future cases. Importers can now rest assured that their bank guarantees, furnished as security, will not be unjustly treated as duty payments.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Mumbai

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 86354 of 2022

(Arising out of Order-in-Appeal No. MUM-CUS-KV-IMP-194/2020-21
NCH dated 31.03.2022 passed by the Commissioner of Customs
(Appeals), Mumbai Zone I)

Oswal Industries Limited

.....Appellant

43, Bileshwarpura, PO Chhatral
Tal. Kalol, Dist. Gandhinagar

VERSUS

**Commissioner of Customs (Import),
Mumbai**

.....Respondent

New Custom House, Ballard Estate,
Mumbai

APPEARANCE:

Shri Anil K Gidwani, Advocate for the appellant
Shri Rajiv Ranjan, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 86156/2025

DATE OF HEARING : 21.04.2025

DATE OF DECISION : 30.07.2025

Per: AJAY SHARMA

This appeal has been filed assailing the legality of the impugned Order-in-Appeal dated 31.3.2022 whereby the Commissioner of Customs (Appeals), Mumbai Zone-I rejected the appeal preferred by the appellant by affirming the Order-in-

Original dated 09.06.2020 passed by the Asstt. Commissioner of Customs, CRARS (Import), Mumbai.

2. The issue involved herein is confined to the applicability of limitation as prescribed under Section 27 of the Customs Act, 1962 for the refund of bank guarantee furnished by the appellant, which had been encashed by department during the pendency of appellant's appeal before this Tribunal which was subsequently allowed in favour of appellant.

3. The factual matrix, shorn of unnecessary details, in brief are that the appellant imported certain material vide three Bills of Entry dated 21.08.2003. Owing to certain dispute raised by the department, the said goods were provisionally released on 12.01.2004 against execution of Bond and furnishing of Bank Guarantee of Rs. 10 lakhs. A show cause notice was issued proposing demand of customs duty amounting to Rs.10,27,823/- culminating in the Order-in-Original dated 09.06.2006 confirming the aforesaid demand of customs duty. Being aggrieved, the appellant preferred an appeal before this Tribunal. During the pendency of appeal, the department encashed the said Bank Guarantee of Rs.10 lakhs and deposited the same in the government treasury vide challan dated 6.2.2007.

4. The Appeal before this Tribunal was eventually decided in favour of the appellant vide Final Order No. A/93721-

93722/16/CB dated 08.11.2016 whereby the Order-in-Original dated 09.06.2006 was set aside.

5. Pursuant thereto, the appellant filed an application on 19.03.2018, accompanied by a Chartered Accountant's certificate regarding unjust enrichment, for refund of the bank guarantee. The appellant was directed by the department to approach the refund section – SC/CRARS, NCH for further action and following the said direction, the appellant submitted an application on 17.2.2020 for refund of Rs.10 lakhs. The said application was rejected by the Adjudicating Authority vide Order-in-Original dated 09.06.2020 on the ground that it was barred by limitation as prescribed u/s. 27 (1B) of Customs Act, 1962 since the application for refund had been filed after the expiry of one year from the date of the Tribunal's decision. On Appeal filed by the Appellant, the same was rejected by the learned Commissioner (Appeal) on the very same ground of limitation.

6. I have heard learned counsel for the appellant and learned Authorised Representative on behalf of revenue and perused the case records including the written submissions placed on record. As stated earlier, the pivotal question that arises is whether, a bank guarantee furnished for provisional release of goods and encashed during the pendency of appeal, can be construed as 'payment of duty' so as to attract the limitation period prescribed u/s 27 *ibid*. The title of the said provision is '*Claim for refund of*

duty'. The relevant portion of the said section is extracted hereunder:-

"27. Claim for refund of duty

(1) *Any person claiming refund of any duty or interest.-*

(a) *paid by him; or*

(b) *borne by him,*

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

xxx

xxx

xxx

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

(a) *.....*

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

xxx

xxx

xxx"

The title and language of the aforesaid provision is unambiguous and amply clear that it deals with any *claim for refund of duty or interest*. But in the instant matter there is no such claim as no duty was determined at the time of furnishing of bank guarantee. What had been claimed by the appellant is the refund of Rs.10 lakhs furnished as bank guarantee for provisional release of goods. By any stretch it cannot be treated as 'duty paid'.

7. Hon'ble Nine Judges' Constitution Bench of the Supreme Court, in the matter of *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536 while interpreting Section 27 of the

Customs Act, 1962 and also few other provisions, has laid down that Section 27 *ibid* cannot be construed as a device enabling the state to unjustly retain amount not legally due.

8. In a similar matter where the revenue encashed the bank guarantee during the pendency of the appeal, the Hon'ble Supreme Court in *Oswal Agro Mills Ltd. v. Asstt. Collector of Central Excise, Division Ludhiana*; 1995 Supp. (3) SCC 65 (*hereinafter referred to as 'Oswal Agro Mills Ltd. 1'*) found the behaviour of the department highly improper and held that bank guarantees were furnished to secure the interest of the parties till determination of matters pending before the Court and it could not be encashed till the decision of the Court. It further held that the Revenue had no power to get the bank guarantee encashed by using its executive fiat. Therefore while allowing the appeal, the Hon'ble Supreme Court directed the revenue to refund the money, collected by encashing the bank guarantee, forthwith. On a review petition filed by the Revenue, for review of the aforesaid order in *Oswal Agro Mills 1(supra)*, while contending that refund was not permissible having regard to the provisions of Section 11B of the Central Excise Act, the Hon'ble Supreme Court while dismissing the review petition in *Oswal Agro Mills Ltd. v. Asstt. Commissioner of Central Excise, Division Ludhiana*; (1994) 2 SCC 546, has laid down that the bank guarantee is mere security to protect Revenue's interest. The amount of the disputed tax/duty, secured by way of bank guarantee, cannot be said to be paid to the revenue nor can it

be equated with payment of duty. Since there is no question of refund of duty, Section 11B is not attracted. The Hon'ble Supreme Court while dismissing the review petition filed by revenue reiterated the direction contained in *Oswal Agro Mills 1 (supra)* to repay the amount collected upon encashment of the bank guarantee. It is worth mentioning here that Section 11B of the Central Excise Act is *pari materia* to section 27 of the Customs Act, 1962.

9. In yet another decision, very recently the Hon'ble Supreme Court in *Patanjali Foods Ltd. Vs. Union of India; (2025) 30 Centax 305 (S.C.)* while considering an identical issue 'whether in order to get the refund of bank guarantee furnished by the assessee before the High Court, which has already been encashed by Revenue during the pendency of appeal before the Hon'ble Supreme Court, the assessee has to establish the *unjust enrichment* as mandated by Section 27, Customs Act, 1962?' allowed the appeal and reiterated that encashment of bank guarantee offered as security cannot be treated as 'payment of customs duty' and therefore the doctrine of *unjust enrichment* or Section 27 of the Customs Act would not be attracted in such cases. The relevant paragraphs whereof are extracted as under:-

"xxx

xxxx

30.Under the scheme of the Customs Act, duty is assessed provisionally or finally whereafter an assessment order or order-in-original is passed. Post assessment order or order-in-original, the concerned importer is required to pay the assessed duty. If the importer does not pay the duty, revenue can enforce

recovery under Section 142 of the Customs Act as recovery of sums due to the Government. The key word in Section 27 of the Customs Act is 'paid'. Refund thereunder is permissible only if any duty is 'paid' by the claimant which subsequently becomes refundable either fully or in part. In the facts of the present case encashment of bank guarantees offered as security cannot be treated as payment of customs duty. Respondents could have either awaited the decision of this Court or could have directed the appellant to renew the bank guarantees. This they did not do. Instead they resorted to arbitrary encashment of the bank guarantees. Such encashment of bank guarantees cannot be treated as payment of duty or duty paid by a claimant. In such circumstances, the doctrine of unjust enrichment or Section 27 of the Customs Act would not be applicable. It is evidently clear that respondents are holding on to money of the appellant which they are not authorized to do so as per judgment of this Court in Param Industries Limited (supra). They have no authority in law to hold on to such money and, therefore, the same has become totally untenable.

31. In the circumstances, we set aside the impugned judgment and order of the High Court dated 28.04.2016 and direct the respondents to immediately refund the amounts covered by the bank guarantees to the appellant. Since retention of such amounts is unjust and unlawful, the same would carry interest at the rate of 6 percent from the dates of encashment till repayment. Let the repayments with applicable interest be released to the appellant within a period of four months from today.

32. Appeals are allowed. However, there shall be no order as to cost."

10. The bank guarantee is security for the Revenue that in the event the Revenue succeeds or dismissal of assessee's appeal, department's dues will be recoverable, being backed by bank guarantee. In the present matter, the disputed amount which was secured by a bank guarantee cannot constitute as duty because it was furnished prior to determination of duty. Despite knowing that the appellant had filed appeal before this Tribunal,

during its pendency, the Revenue had encashed the bank guarantee without even taking leave of the Tribunal, which is not proper. Challenging the order before the higher appellate forum itself shows that the dispute hasn't attained finality. The department ought to have waited for the final outcome of the appeal. The amount of bank guarantee involved herein cannot constitute payment of duty and the invocation of Section 27 *ibid* is misplaced.

11. Consequently, the impugned order is hereby set aside. The respondent is directed to refund the amount, furnished as bank guarantee, to the appellant forthwith. The appeal is allowed accordingly.

(Pronounced in open Court on 30.07.2025)

(Ajay Sharma)
Member (Judicial)

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