- **Provision of unjust enrichment not applicable in case of inadvertent excess payment of interest - It is in the nature of deposit and not as Duty**

Wind World India Ltd. Vs. Commissioner of Customs (IMP.), Mumbai-II [2016 (1) TMI 420 - CESTAT Mumbai]

Facts:

Wind World India Ltd. (**"the Appellant"**) imported certain capital goods valued at Rs. 2,87,67,110/- for manufacturing of Parts of Wind Operated Electricity Generators under EPCG Licence dated June 23, 2000.No further imports were made against the aforesaid EPCG license and the Appellant approached the DGFT for finalization of the export obligation against the said EPCG licence. Accordingly, DGFT directed the Appellant to pay Customs duty foregone for such import along with interest for the shortfall of export obligation. The Appellant had mistakenly calculated interest at the rate of 24% instead of 15% as provided in Para 5.14 of Handbook of Procedures and thus, the Appellant had deposited an excess amount of interest of Rs. 11,97,763/-. The Appellant made an application for refund of amount of excess interest, however, in absence of any audited or authentic document, the Adjudicating Authority credited the refund to the Consumer Welfare Fund.

Held:

The Hon'ble CESTAT, Mumbai relying upon the case of ***Commissioner of Customs, Cochin Vs. Rajesh Chemicals – [2006 (196) E.L.T. 64 (Tri-Bang)],*** held that the provision of unjust enrichment wouldn't be applicable as the excess amount paid by mistake was in the nature of deposit and not duty. It was further held that the Chartered Accountant's certificate produced by the Appellant showing excess paid interest not passed on and said amount stands recoverable in the Books of Account of the Appellant, proves unjust enrichment even though the test of unjust enrichment was not applicable in the instant case.

- **Demurrage charges paid in respect of post importation activity not includable in assessable value for levy of Customs duty**

C.C.E., Mangalore Vs. Mangalore Refinery & Petrochemicals Ltd. [2016 (1) TMI 325 – Supreme Court]

Facts:

Mangalore Refinery and Petrochemicals Limited (**"the Respondent"**) imported 94204.425 MTs of Crude Oil vide Bill of Entry No. 0924, dated May 23, 2001 and warehoused the same into their shore tanks. However, the goods could not be cleared on time and it was observed that the Respondent had paid demurrage charges among other fees/charges. The Department alleged that demurrage charges were also to be included in the assessable value for the purpose of levy of Customs duty.

Held:

The Hon'ble Supreme Court relied upon the decision in the case of ***Commissioner of Customs, Ahmedabad Vs. Essar Steel Ltd., [2015 (319) E.L.T. 202 (S.C.)]*** and held that the demurrage charges are paid after the goods reached at Indian ports and therefore, it is post-importation event and cannot form part of transaction value. Thus, the Respondent isn't liable to pay Customs duty on these demurrage charges. Accordingly, the appeal filed by Revenue was dismissed.

- **Market value at time of delivery and place of importation is Assessable Value for Customs duty**

Commr. of Cus. & C. Ex., Tiruchirappalli Vs. Hindustan Lever Ltd. [2016 (1) TMI 323 – Supreme Court]

Facts:

Hindustan Lever Ltd. (**"the Respondent"**) imported 3,800 MT of soda ash light from China. The invoice price of these goods was USD 153.50 per MT. However, at the time of importation of these goods, the market price reduced drastically to USD 120 per MT. The Respondent had filed two Bills of Entries through its customs agents, declaring the value of the aforesaid consignment at USD 120 per MT. However, the Department alleged invoice price of the goods which was stated to be USD 153.50 per MT to be taken up for assessment in respect of the aforesaid import.

Period Involved: June, 1997

Held:

The Hon'ble Supreme Court held that in terms of Section 14(1) of the Customs Act as was prevalent during the relevant period, the value of the goods which are imported was to be fixed at the price on which such or like goods are ordinarily sold or offered for sale. Further, the said valuation has to be done at the time of delivery and place of importation or exportation. Thus, the lower authorities had made a mistake in ignoring the relevant documents and invoking the provisions of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 for the purpose of arriving at the value, which was not necessary at all. Thus, the appeal filed by the Department was dismissed.

Our Comments:

It is important to note down the prevalent Section 14 of the Customs Act, which was substituted vide the Finance Act, 2007 effective from October 10, 2007. In terms of substituted Section 14 of the Customs Act, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of

importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)
Author of a book on GST, titled, "GOODS AND SERVICES TAX – INTRODUCTION AND WAY FORWARD" (1st Edition)

A2Z TAXCORP LLP
Tax and Law Practitioners
Delhi:
Flat No. 34B, Ground Floor,
Pocket – 1, MayurVihar Phase-1
Delhi – 110091 (India)
Tel: +91 11 22757595/ 42427056

Allahabad:
B2-3/4-31 Sarojani Apartments
Sarojani Naidu Marg
Allahabad - 211001

Chandigarh:
H. No. 908, Sector 12-A,
Panchkula, Haryana – 134115

Kolkata:
Ist Floor, 10 R G Kar Road
Shyambazar, Kolkata – 700 004
Email: bimaljain@hotmail.com
Web: www.a2ztaxcorp.com
LinkedIn: https://in.linkedin.com/pub/bimal-jain/14/601/4b4
Face book: https://facebook.com/bimal.jain.90
Twitter: https://twitter.com/JainTax

YouTube: https://www.youtube.com/channel/UCp0tT5ShjB4KHJRSlPc3t5w