

### **Limitation period for granting refund not applicable to refund of Custom duty paid in excess**

The Hon'ble Customs, Excise & Services Tax Appellate Tribunal, Bangalore ("**CESTAT**") in the matter of *M/s FCI OEN Connectors v. Commissioner Of Central Tax & Central Excise, Cochin [Final Order No.20795/2021 dated October 21, 2021]* held that when the customs duty is paid in excess, the department is liable to refund the same and the limitation provided under Section 27 of the Customs Act, 1962 ("**the Customs Act**") will not be applicable.

M/s FCI OEN Connectors ("**the Appellant**") filed the current appeal being aggrieved of the Order-in-Appeal passed by the Commissioner (Appeals), Kochi, whereby the Commissioner (Appeals) has upheld the rejection of refund claim under Section 11B of the Central Excise Act, 1944 ("**the Central Excise Act**"). Factually, It is the case of the Appellant that they have filed a refund claim of Rs.14,88,888/- being the Service tax paid on ocean freight for the period April 2017 to June 2017 but High Court of Gujarat in the case of *SAL Steel Ltd. v. UOI [2019 (9) TMI 1315-Gujarat HC dated September 06, 2019]* has clearly held that the levy in question was ultra vires Section 64, Section 66B and Section 65B(52) of the Finance Act, 1994 ("**the Finance Act**") which decision was followed by the Gujarat High Court again in the case of *Polycab India Limited Vs UOI [2020 (2) EMI 410- Gujarat HC dated January 30, 2020]* wherein, the High Court had held that the levy of service tax on ocean freight is unconstitutional.

The Hon'ble CESTAT after considering the rival contentions and after going through all the various decisions relied upon during the course of arguments clarified that it is a case where the Service tax has been held to be unconstitutional hence, the tax which is paid would amount to the one paid under mistake of law.

Further, the CESTAT relied upon the case *M/s DHL Express India Pvt. Ltd. Vs Commissioner of Service Tax [2021-TIOL-1830-HC-KAR-CUS dated October 12, 2017]* and held that when the customs duty is paid in excess, the department is liable to refund the same and the limitation provided under Section 27 of the Customs Act will not be applicable. Therefore, held that the lower authority has erred in law and fact, solely relying on Section 27 of the Customs Act while dismissing the application of the Appellant.

Hence, CESTAT do not find any justification in the reasons adopted for rejection of the refund claim by the lower authorities. Therefore, set aside the Order-in-Appeal and allowed the appeal.

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