



## Dimensions – 67<sup>th</sup> Edition

### Judgment under Pre-GST era

#### *The Commissioner of Customs v. M/s. Gimpex Ltd*<sup>1</sup>

##### Issue for Consideration

Whether interest on refund claim is eligible after expiry of three months from date of receipt of application, even in cases where such application is returned for rectifying defects?

##### Discussion

- The Appellant is aggrieved by an order passed by Hon'ble Tribunal dated July 24, 2017 allowing the appeal filed by the Respondent for claiming interest on delayed refunds to be paid from January 27, 2010.
- The Respondents had exported iron ore fines and were required to pay differential customs duty @ ₹250 per metric tonne if the Fe content exceeded 60%. The test conducted revealed Fe content of 62.1% and the Respondent was directed to pay a differential duty of ₹5.5 Million. Not being satisfied with the analysis report, the Respondent sought the sealed counter samples, and, in the meanwhile,

bank guarantee worth ₹1.37 Million issued by the Respondent was invoked.

- A show cause notice (SCN) issued to the Respondent was subsequently dropped by the Original authority on adjudication.
- Thereafter refund claim of ₹1.37 Million *plus* interest was filed by the Respondent. The application was returned due to certain defects and was re-submitted by the Respondent. The application was again returned with deficiency memo stating non-compliance with original observations. Meanwhile, the authorities challenged the order, which had set aside the demand, before the Hon'ble Tribunal. However, the appeal filed was rejected by the Tribunal and the order was accepted by the authorities.
- Thereafter, a fresh application for refund was filed which was sanctioned by the adjudicating authority. However, the claim for interest was rejected on the ground that application shall be deemed to be received on date of complete application and application for refund had been returned under a deficiency memo. This order was affirmed by the

<sup>1</sup> 2020 (5) TMI 370 – The Hon'ble High Court of Karnataka



appellate authority and the Respondent filed an appeal against it before the Tribunal.

- The Tribunal in its order held that the claims were returned due to issuance of deficiency memo. The conclusion that deficiency memo having been addressed itself would evidence that there cannot be a claim for interest as no SCN was issued, is erroneous. This is because section 11B of the Central Excise Act, 1944 does not contemplate return of refund claim. Reliance was also placed on the decision in the case of *Ranbaxy Laboratories Ltd. v. Union of India*<sup>2</sup> wherein it was held that interest liability should arise after expiry of three months from the date of receipt of an application. Thus, the Tribunal allowed interest from the date of expiry of three months from date of filing of said refund claim, i.e. January 27, 2010 to the Respondent.
- The Hon'ble High Court observed as follows:
  - The Tribunal rightly concluded that the claim for interest would arise after three months from the date of filing of said refund claim.
  - Defect in an application will only render the application as irregular and not illegal. On the other hand, if an application was rejected, then the applicant would have to opt for a fresh filing of refund application.
  - If an application is returned by the department due to deficiencies which are subsequently remedied pursuant to which such application is adjudicated by the authorities, the argument of a defective application for not granting the interest from the date of application should not be correct.
  - The fresh application filed by the Respondent was merged and adjudicated along with the earlier application and in light of such facts the application for refund would not be contrary to section 11B of the Central Excise Act, 1944.

## Judgment

The Hon'ble High Court did not admit the appeal in the absence of any substantial question of law involved for being adjudicated.

### **Dhruva Comments:**

Claim for interest and the relevant date for computation has been a subject matter of debate. The Tribunal judgment is in line with the decision of *Ranbaxy Laboratories Ltd. (supra)* and provides much needed clarity to the authorities while adjudicating claims of refund and interest arising thereon.

## **Circular under GST era**

### **Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal<sup>3</sup>**

- A person aggrieved by an order passed under section 107 or 108 of the of the CGST Act, 2017 (and the respective State GST Acts) can file an appeal before the Appellate Tribunal as per section 112 of the CGST Act, 2017. However, the Appellate Tribunal had not been constituted in view of the order of the Hon'ble Madras High Court in the case of *Revenue Bar Assn. v. Union of India*<sup>4</sup> and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated.
- CBIC had issued an order<sup>5</sup> to state that the time limit to file an appeal before the Appellate Tribunal shall be within three months (six months in the case of appeals by Government) from the date of communication of the order or date on which the President / State President of the Appellate Tribunal enters office, *whichever is later*.
- CBIC had issued another circular<sup>6</sup> wherein it was clarified that the cases should be disposed of speedily without waiting for the constitution of the Appellate Tribunal. Also, the authorities while passing the order should mention in the preamble

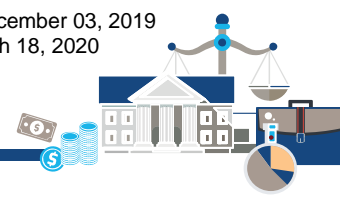
<sup>2</sup> 2011 (273) ELT 3 (S.C.) – The Hon'ble Supreme Court

<sup>3</sup> Trade Circular No. 9T of 2020 dated May 26, 2020

<sup>4</sup> 2019 (9) TMI 983 – The Hon'ble Madras High Court

<sup>5</sup> Order no. 09/2019-Central Tax dated December 03, 2019

<sup>6</sup> Circular no. 132/2/2020-GST dated March 18, 2020

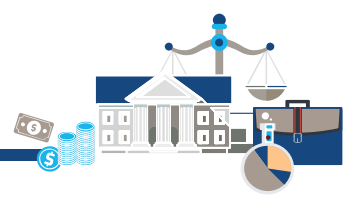


that an appeal can be made to the Appellate Tribunal whenever it is constituted within three months from when the President / State President of the Appellate Tribunal enters office.

- The Maharashtra Government has now issued the present circular (said circular) clarifying the timelines for filing of an appeal before the Appellate Tribunal as stated in the circular (*supra*). Additionally, the said circular also states that if a demand is confirmed and the tax payer proposes to file an appeal against the order under section 112 of the CGST Act, 2017, then the tax payer should submit a declaration, to such extent in the prescribed format, within 15 days from the communication of the said order, else it would be presumed that the tax payer is not willing to file an appeal and the recovery proceedings would be initiated as per the law.

#### **Dhruva Comments:**

The said circular issued by the Maharashtra Government though is in line with the circular (*supra*) issued by the CBIC but the format prescribed for the **declaration** contains an undertaking that the appeal would be filed by the tax payer, before the Appellate Tribunal, **within seven days** from the constitution of the Tribunal. The said timeline appears to run contrary to the timelines prescribed under the law.





## ADDRESSES

### Mumbai

11th Floor, One IndiaBulls Centre,  
Tower 2B, 841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahlanagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2, 11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

### New York

Dhruva Advisors USA, Inc.  
340 Madison Avenue, 19th Floor, New York,  
New York 10173 USA

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

---

**“India Tax Firm of the Year”** 2017, 2018, and  
2019 - International Tax Review's Asia Tax  
Awards

**“India Tax Disputes and Litigation Firm of the  
Year”** 2018 - International Tax Review's Asia Tax  
Awards

**Best Newcomer of the Year 2016** - ASIA -  
International Tax Review's Asia Tax Awards

Dhruva Advisors has been consistently  
recognised as a **Tier 1 Firm in India for General  
Corporate Tax** by the International Tax Review's  
in its World Tax Guide.

Dhruva Advisors has also been consistently  
recognised as a **Tier 1 Firm in India for its  
Transfer Pricing practice** in the International  
Tax Review's Transfer Pricing Guide.

Dhruva Advisors in 2019 for the first time ranked  
as a **Tier 1 Firm in India for Indirect Taxes** in  
International Tax Review's Indirect Tax Guide.

#### Disclaimer:

The information contained herein is in summary form, and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

