CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

CUSTOMS APPEAL NO. 85981 OF 2021

[Arising out of Order-in-Appeal No. 214(CRC-I) 2021/JNCH/Appeals dated 22.03.2021 passed by the Commissioner of Customs (NS-III) Raigad].

PNP POLYTEX PVT LTD Appellant
A-601-607 Mangal Arambh Building,
Kora Kendra, Borivali West,
Mumbai-400092**.**

VERSUS

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-III Respondent
Jawaharlal Nehru Customs House,
Nhava Sheva, Dist-Raigad,
Maharashtra-400707**.**

APPERANCE:

Ms. Neha Anchlia, Advocate for the Appellant
Shri L.B.D'Coasta, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85649/2026

Date of Hearing: 16.04.2026
Date of Decision: 08.05.2026

Grant of interest from 10.03.2018 on refund received earlier, in respect of seventeen refund applications filed in the year 2004, for GSI being inadvertently paid by the appellant at the time of clearance of goods and its confirmation by the Commissioner (Appeals) is assailed before this Tribunal, as appellant claims to have been entitled to get interest from three months after filing of refund applications in June 2004.

2. Factual backdrop of this case dates back to 2003 when appellant filed seventeen Bills of Entry for clearance of its imported PVC quoted cloth, that was being cleared upon payment of basic customs duty @ 25% plus CVD @ 16% plus GSI (*Additional duties of excise on goods of special importance) @ 5% plus SAD @ 0% with applicable cess and as they came to know that in terms of Notification NO. 7/2003-CE dated 01.03.2003, such GSI duty @ 5% was not leviable, appellant importer filed appeals before the Commissioner (Appeals) against assessment of seventeen Bills of Entry that was decided in appellant's favour on 31.03.2004 vide Order No. A 49/2004 (JNCH), Mumbai. Appellant was also granted consequential relief by the Commissioner (Appeals) who allowed their appeals. Department filed Review petition against the said assessment for not including SAD but it was rejected by the Commissioner of Customs on dated 16.06.2005 on the ground that Department had not initiated any action under Section 28 of the Customs Act nor filed any appeal under Section 128 of the Customs Act against the said assessment order. Accordingly, appellant filed seventeen Refund Applications for Rs. 48.28 Lakhs before the Refund Sanctioning Authority in 2004 within the stipulated time period of one year and received acknowledgments from Group-3 Wing of the Respondent. Appellant did wait for the refund and pursue the matter through every modes of communication and was informed that after the applications were traced out and processed, it would be sent to the Refund Section, as reveals from letters dated 21.02.2007. They then filed all duplicate Refund applications with covering letter dated 21.09.2007 but ultimately received a request letter from the Commissioner on dated 20.06.2008 asking them to submit Refund Application in proper form alongwith original documents as no original copy of Refund application was filed before the Department (copy at page-81 of the Appeal Memo). Appellant then requested them that they had submitted Refund Applications twice and requested the Commissioner to internally transfer the same to the concerned Cell. On 21.05.2009, they received a Deficiency Memo having reference of another deficiency memo stated to have been

issued on 21.02.2009 that could not be complied as deficiency memo contained instructions to produce re-assessment of Bills of Entry etc., which were initiated by the Revenue at their end and not by the appellant. After lapse of three years, again another Deficiency Memo dated 26.12.2012 was issued that was complied with upon production of all documents on dated 18.02.2013 including C.A. Certificate after which appellant followed up on several occasions for grant of refund with interest by writing letters (dated 19.12.2015 to the Commissioner and to the Chief Commissioner on dated 18.05.2018). Follow up letters were also sent in 2016 after which Deficiency Memo dated 21.09.2016 was again issued that was complied again on 15.10.2016 upon submission of documents. Again after a gap of eight months another Deficiency Memo dated 31.05.2017 was issued that was also complied with by the appellant on 07.06.2018 but Refund Order was passed on 01.11.2018 granting refund of Rs. 38,94,277/- upon calculation made on re-assessment of Bills of Entry. It was accepted by the Appellant but no interest was granted at the first instance. Appellant challenged the same before the Commissioner (Appeals) who remanded the matter back to the Refund Sanctioning Authority cum Adjudicating Authority, who ultimately granted interest on refund from 20.03.2018 to 01.11.2018, i.e. till the date of sanction of Refund, by holding last clarification given by appellant during personal hearing on 20.12.2017 as date of filing of completed refund applications. Legality of this order was challenged before the Commissioner (Appeals), who confirmed the Order-in-Original and being unsuccessful appellant has approached this forum for necessary relief/remedy.

3. During course of hearing of the Appeal Ms. Neha Anchlia, Argued that all seventeen Refund Applications were filed in 2004 with due acknowledgment from the Respondent Department, copy of which were re-submitted in September 2017 and it is clearly mentioned in the Order-in-Original as well as in the request letter

dated 20.06.2008 received from the Commissioner of Customs asking for production of original applications but the same was no more available with the appellant since already submitted to the Refund Sanctioning Authority. She further submitted that after keeping quiet for more than three years upto 2007 and in response to every reminder sent to them, Respondent Department was sending Deficiency Memos at intervals on dated 21.05.2009, 26-12-2012, 21.09.2016 at almost three years interval and ultimate Deficiency Memo that was sent eight months thereafter on 31.05.2017 speaks volume about the negligent manner in which appellants refund applications were handled by the Department and disregarding the express provision available in the Statute as contained in para 27A of the Customs Act 1962, refund was sanctioned from the date of last submission of documents by the Appellant during the personal haring on dated 28.12.2017 with clarifications. With reference to Hon'ble Supreme Court's decision passed in the case of Union of India and others Vs. M/s. Hamdard (Waqf) Laboratories-[2016(3) TMI 68-SC, IVRCL Infrastructures and Projects Ltd., Vs. Union of India [2010(6) TMI 193-BHC and Commissioner of Customs Vs. Gimpex Ltd. [2020 (373) ELT 512 (Kar), she further argued that in all of those decisions, interest was allowed by the Hon'ble Appellate Courts including the Apex Court from three months after the date of filing of Refund claim, by following the precedent decision passed in the case of Ranbaxy Laboratories Ltd., Mumbai Vs. Union of India as reported in 2011 (273) ELT 3, in view of express provision, contained in Section 27A of the Customs Act. Further, in the case of Hamdard (Waqf) Laboratories (Respondent) cited supra, Hon'ble Supreme Court had taken on record, at para 11, the submissions of Ld. Senior Counsel for the Revenue that application for refund not meeting the requisite criteria stipulated under the Statutory Provisions is to be held as if there was no application filed in the eye of law and the period has to commence from the date when the defect was rectified, as observed in the order passed by the Adjudicating Authority here in the Appellant's own case also, but has negated the same by assigning

reasons at para 21 that such deficiencies in the application can be sought for removal from the assessee within two days of filing of such application before the Revenue and if still discrepancy was there, it can proceed with the adjudication and rejection of application for refund but it cannot by any stretch of imagination, carry the same beyond three months when it is required to be concluded within three months for which the Notification issued by Customs vide Notification No. 35/95-ST (NT) dated 26.05.2019 containing explanation that for the purpose of payment of interest under Section 27A of the Act, the applications shall be deemed to have been received on the date on which completed applications, as acknowledged by the a proper officer, has been made is of no consequence apart from the fact that appellant had filed completed applications and those were duly acknowledged by the Assistant Commissioner of Customs , apprising Group-3, JNCH that they had received application with all relevant documents including certificate from the Chartered Accountant. Further in response to all Deficiency Memos appellant had re-submitted those documents and on every occasion they had also filed Chartered Accountant's Certificate alongwith other documents including on 18.02.2013. further appellant also assorted through its counsel that even after submission of C.A.'s certificate in 2017, Respondent Department sought for certain clarifications during personal hearing and after tendering the same, Order-in-Original was passed, which exercise could have been done also in 2004 after all necessary documents were received by the Respondent Department and therefore, the order passed by the Commissioner (Appeals) in confirming payment of interest three months from the date of clarification tendered on 20.12.2017, when refund was made on 01.11.2018, is un-disputably erroneous and the same is required to be set aside.

3.1 Moreover, concerning acceptance of re-assessment order in reducing the refund amount payable, it is required to be placed on record that appellant had never disputed the re-assessment though it

was unusual on the part of Respondent Department to complete the re-assessment on 08.10.2018, almost after 15 years of assessment and clearance of goods. More importantly this is not an appeal in which legality of sanction of the refund was questioned since legality of not granting interest from the relevant date is in dispute, to be determined by this forum.

4. In response to such submission Ld. Authorised Representative Mr. L.B.D' Coasta, submitted that appellant was granted interest when it was due for such grant of interest, as could be noticed from the order passed by the Commissioner (Appeals) and the observation made in the refund applications that it becomes complete only when appellant submitted Chartered Accountant's certificate on 20.12.2017 as well as accepted revised refund computation, is not required to be interfered by this Tribunal since it had earlier sought for refund of 48.28 lakhs but was ultimately granted refund of 38,94,277/- as in the re-assessment the amount was re-determined as such.

5. I have gone through Appeal Paper Book, submissions made by the parties, relevant judicial decisions on the issue relied upon documents filed in support of the appeal etc. Filing of seventeen sets of Refund Applications within stipulated period for grant of refund by the Commissioner of Customs to the appellant challenging assessment order has been duly acknowledged by the Respondent Department in its applications, one of the sample copy is being attached to the application reads the date as 02.06.2004. In the order passed by the Refund Sanctioning- Adjudicating Authority on dated 29.11.2019, he also acknowledged the fact of filing of refund claim before the CRC-I on 24.10.2008 and before Group-III in the year 2004. Series of factual events narrated above would go to show that from 2004 to 2018 till Bills of Entries were re-assessed on 08.10.2018, at the instance of Respondent Department, the refund applications were kept pending under one pretext or the other and

Statutory Auditor's report to justify exclusion of unjust enrichment, as sought through Deficiency Memo dated 21.05.2009, was already filed by the Appellant in 2004 alongwith Refund Applications as well as in 2007 while re-submitting the duplicate refund applications and thereafter, in compliance to Deficiency Memo of 2012 on 18.02.2013, it was surprising that with all these developments neither refund, as sought was granted, nor any personal hearing was taken up to justify not granting of such refund to the appellant despite the fact that Section 27A of the Customs Act commands that if any duty, not ordered to be refunded under Section 27A(2) of the Customs Act, to the applicant within three months of receipt of its application, there shall be paid to the applicant, interest at the rate as Central Government may specify on or from the date immediately after expiry of three months from the date of receipt of such application till the date of refund of that duty. Therefore, without the aid of any judicial precedent also, under the Statutory Provision, Respondent Commissioner was duty bound to pay the interest three months after 02.06.2004, on which date applications were filed before them for refund and since no Deficiency Memo as required under Notification No. 34/95-Customs (NT) was sent to the appellant or application was returned back to the appellant within ten working days on its receipt, Respondent Department is to pay interest at the applicable rate, as determined by the Government of India for the entire period for which it had kept applications on hold without disposal. Further the Statute had not distinguished the nature of application for which the terms used by the Department in several Notifications including 'completed applications' as acknowledged by the proper officer or 'deficient application' as pleaded by Ld. Senior Counsel before the Hon'ble Supreme Court in Hamdard case, cited supra, would have no relevance so as to hold a contrary view against such Statutory provisions. Hence in view of clear and unambiguous terms contained in Section 27A of the Customs Act, 1962 and in view of the precedent decision as settled by Hon'ble Supreme Court in several cases including that of Ranbaxy India, cited supra, the following order is passed:

The order

6. The appeal is allowed and the Order-in-Appeal No. 214(CRC-I)2021/JNCH/Appeals dated 22.03.2021 passed by the Commissioner of Customs (NS-III) Raigad in confirming grant of interest, from three months after the date of Chartered Accountant's Certificate was explained on 20.12.2017 upon re-submission, is hereby modified in granting interest at applicable rate on refunded amount, as sanctioned, three months after the date of filing of refund applications on 02.06.2004 till refund is granted on 01.11.2018, which Respondent Department is directed to pay within 2 months of receipt of this order.

(Order pronounced in the open court on 08.05.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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