CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 54730 of 2023

(Arising out of Order-in-Original No. 115/AKS/2021 dated 28.08.2021 passed by the Assistant Commissioner (Refund) of Customs, Air Cargo Complex(Imports), New Customs House, New Delhi)

M/s Nikon India Pvt Ltd, **....Appellant**
Plot No.-71, Sector-32, Institutional Area,
Gurugram, Haryana - 122001

Versus

Assistant Commissioner of Customs, **....Respondent**
Refund Section, Near IGI Airport,
New Customs House, New Delhi- 110037

APPEARANCE:
Shri V. Lakshmikumaran, Shri Dhruv Matta and Shri Shobhit Jain, advocates for the appellant

Shri PRV Ramanan, special counsel , and Shri Rakesh Kumar, authorised representative of the department

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing : 09.04.2026
Date of Decision : 27.04.2026

FINAL ORDER NO. 50794/2026

JUSTICE DILIP GUPTA:

M/s Nikon India Pvt. Ltd.[1] has filed this appeal to assail that portion of the order dated 27.01.2023 passed by the Commissioner of Customs (Appeals)[2] that has denied interest to the appellant on the amount deposited by the appellant pursuant to directions issued by the Supreme Court in the pending Civil Appeal filed by the appellant against the decision of the Tribunal.

2. The appeal was filed by the appellant before the Commissioner (Appeals) to assail the order dated 28.08.2021 that was passed by the Assistant Commissioner (Refund)[3] while deciding the refund claimed by the appellant of an amount of Rs. 1,23,53,68,897/- with

1. **the appellant**
2. **the Commissioner (Appeals)**
3. **the Assistant Commissioner**

interest. This amount included an amount of Rs. 90,84,11,091/- deposited by the appellant towards the pre-deposit at the time of filing the earlier before this Tribunal and an amount of Rs. 1,13,69,57,806/- deposited by the appellant pursuant to the directions contained in the interim order dated 03.01.2019 of the Supreme Court in Civil Appeal No. 1832 of 2018 filed by the appellant. The Assistant Commissioner sanctioned the amount of Rs. 1,23,53,68,897/- but denied interest to the appellant. The appellant had, therefore, filed an appeal before the Commissioner (Appeals) to claim interest on the said amount. The Commissioner (Appeals) granted interest to the appellant on the amount of pre-deposit but denied payment of interest to the appellant on the amount deposited by the appellant pursuant to the directions issued by the Supreme Court.

3. This appeal has, therefore, been filed with a prayer that a direction be issued to the respondent to pay interest to the appellant on the amount of Rs. 1,13,69,57,806/- deposited by the appellant in terms of the directions contained in the order dated 03.01.2019 of the Supreme Court.

4. It transpires from the records that during the period from March 2012 to February 2014, the appellant had imported various models of 'Digital Still Image Video Cameras' and claimed exemption under a Notification 25/2005-CUS dated 01.03.2005[4], which was subsequently amended by Notification dated 17.03.2012.

5. Investigation was initiated by the Directorate of Revenue Intelligence against the imports of 'Digital Still Image Video Cameras' made by the appellant and based on the investigation a show cause

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4. the Exemption Notification

notice dated 19.08.2014 was issued to the appellant under section 28(4) of the Customs Act, 1962[5] alleging that the appellant had incorrectly claimed exemption from payment of duty under the Exemption Notification.

6. The appellant submitted a reply to the show cause notice and denied the allegations made therein but an order dated 28.10.2016 was passed by the Additional Director General (Adjudication) confirming the demand proposed in the show cause notice. The appellant filed an appeal before the Tribunal and made the pre-deposit of 7.5% of the duty demanded in terms of section 129E of the Customs Act. The Tribunal, by an order dated 19.12.2017, confirmed the duty demanded but granted relief to the appellant in respect of payment of Education Cess and Secondary and Higher Education Cess.

7. The appellant filed an appeal before the Supreme Court on 31.01.2018 under Section 130E of the Customs Act. The appeal was admitted by the Supreme Court on 05.03.2018. During the pendency of the appeal before the Supreme Court, the appellant filed an interlocutory application on 26.11.2018 with a request to permit the appellant to deposit the principal amount of differential duty confirmed by the Tribunal so as to stop the accrual of notional interest. The appellant also stated that it would deposit the amount under protest and would keep this amount as an amount recoverable in its book of account. The prayer made in the application was, therefore, to permit the applicant to deposit the disputed amount of Rs. 1,13,69,57,806/- with the respondent within such time as the Supreme Court may direct on the condition that the deposited

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5. the Customs Act

amount will be refunded to the appellant expeditiously with applicable interest in the event the appeal was allowed by the Supreme Court.

8. This application came up for orders before the Supreme Court on 03.01.2019 and the order passed is reproduced below:

> "Having heard the learned counsel for the applicant and the learned counsel for the Revenue the prayer made in the I.A. (No.169351/2018) is allowed. **The applicant (M/s Nikon India Pvt. Ltd.) in Civil Appeal No.1832 of 2018 is allowed to deposit amount of Rs.1,13,69,57,806/-) (Rupees One hundred and thirteen crore Sixty Nine lakh Fifty Seven thousand Eight hundred and Six) with the respondent within two weeks from today subject to the condition that the said amount will be refunded to the appellant/applicant forthwith with applicable interest in the event of the appeal being allowed.**
> I.A. is disposed of in the above terms."
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> **(emphasis supplied)**

9. Pursuant to the aforesaid direction of the Supreme Court, the appellant deposited the said amount before the department on 15.01.2019. Ultimately, the Supreme Court, by judgment dated 09.03.2021, allowed the appeal filed by the appellant and set aside the entire demand of duty, interest and penalty.

10. The appellant thereafter, by a letter dated 27.05.2021 addressed to the Assistant Commissioner claimed refund of Rs. 1,23,53,68,897/- with applicable interest of 6% per annum. The appellant explained that this amount included Rs. 9,84,11,091/- that was deposited by the appellant towards the pre-deposit at the time of filing of the appeal before the Tribunal and an amount of Rs. 1,13,69,57,806/- that was deposited by the appellant with the department pursuant to the directions issued by the Supreme Court

on 03.01.2019. Along with this communication, the appellant also enclosed Form-A relating to refund of duty/penalty.

11. A deficiency memorandum dated 04.08.2021 was, however, issued by the Assistant Commissioner requesting the appellant to submit certain documents so that the refund claim of the appellant could be processed. The appellant submitted the documents and thereafter the Assistant Commissioner passed the order dated 20.08.2021 sanctioning refund of Rs. 9,84,11,091/- deposited by the appellant towards mandatory pre- deposit as also of Rs. 1,13,69,57,806/- that was deposited by the appellant under protest pursuant to the directions issued by the Supreme Court on 03.01.2019. The Assistant Commissioner, however, rejected the claim of the appellant for grant of interest on the aforesaid two amount for the reason that the amount had been refunded to the appellant within three months from the date the documents were submitted by the appellant.

12. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), by an order dated 27.01.2023, disposed of the appeal by granting interest to the appellant on the amount of pre-deposit, but interest on the amount deposited by the appellant pursuant to the directions of the Supreme Court was denied.

13. In respect of the interest on the amount of pre-deposit, the Commissioner passed the following order

> "**5.3** Insofar as interest on Rs. 9,84,11,091/- is concerned, I note that this amount was pre-deposit under Section 129E of the Customs Act, 1962 and was deposited on 21.12.2016 as pre-condition for filing appeal before Hon'ble CESTAT. Thus, interest on refund of this amount is

> governed by Section 129EE of the Customs Act, 1962 which provides as under xxx.
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> **Thus, the Appellant is eligible for interest @ 6% [as notified by the Central Government vide Notification No. 70/2014-Cus. (N.T.), dated 12.08.2014] on amount of Rs. 9,84,11,091/- from date of deposit till date of refund in terms of Section 129EE."**
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> **(emphasis supplied)**

14. In respect of the amount deposited by the appellant pursuant to the directions of the Supreme Court, the Commissioner (Appeals) after reproducing the order dated 03.01.2019 passed by the Supreme Court on the interlocutory application filed by the appellant, denied interest for the following reasons:

> "**5.4** From the above note that the Hon'ble Supreme Court allowed the Appellant to deposit Rs. 1,13,69,57,806/" subject to the condition that the said amount will be refunded to Appellant forthwith with applicable interest in the event of the appeal being allowed". The Appeal was allowed by the Hon'ble Supreme Court 09.03.2021, therefore the amount of Rs. 1,13,69,57,806/- deposited by the Appellant becomes refundable with the Applicable interest.
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> **5.4** In respect of Rs. 1,13,69,57,806/- which was paid on 15.01.2019 pursuant to the Hon'ble Supreme Court's Order. I note that the Order dated 03.01.2019 passed by Hon'ble Supreme Court on I.A. No. 169351 of 2018 in C.A. No. 1832 filed by the Appellant reads as under.
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> From the above I note that the Hon'ble Supreme Court allowed the Appellant to deposit Rs. 1,13,69,57,806/- "subject to the condition that the said amount will be refunded to Appellant forthwith with applicable interest in the event of the appeal being allowed." The Appeal was allowed by the Hon'ble Supreme Court 09.03.2021, therefore the amount of Rs. 1,13,69,57,806/- deposited by the Appellant becomes refundable with the Applicable interest.
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> **5.5** I note that in the Order dated 03.01.2019 passed by the Hon'ble Supreme Court, the

> expression 'applicable interest' is used. **This amount was paid by the Appellant as duty with sole purpose of avoiding interest liability on confirmed duty demand. Refund of this amount would be governed by Section 27 of the Customs Act, 1962 and accordingly the "applicable interest" is governed by Section 27A of the Customs Act, 1962. This amount is clearly out of purview of Section 129EE.**
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> **5.6 Further, the Hon'ble Supreme Court has used the term "applicable interest". Thus, the Appellant can claim interest only if the same is applicable and not otherwise. Since the refund of Rs. 1,13,69,57,806/- is governed by Section 27A of the Customs Act, 1962 and the refund application had been disposed within three months of filing of the same, no interest is applicable in respect of this amount."**
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> **(emphasis supplied)**

15. This appeal has been filed with a prayer that interest at the rate of 6% per annum may also be granted to the appellant on the amount of Rs. 1,13,69,57,806/- deposited by the appellant pursuant to the directions issued by the Supreme Court on 03.01.2019.

16. Shri V. Lakshmikumaran, learned counsel for the appellant, assisted by Shri Dhruv Matta and Shri Shobhit Jain made the following submissions:

(i) The amount deposited under directions of a court order is not in the nature of a 'duty'. To support this contention, learned counsel placed reliance on the judgment of the Supreme Court in **Tata Refractories Ltd and Another vs Sales Tax Officer and Others**[6];

(ii) In the present case, payment was a 'deposit' pursuant to an order of the Supreme Court, and so refund proceedings will not be governed by section 27 of the Customs Act. To support this

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6. (2003) 1 Supreme Court Case 65

contention reliance has been placed on the judgment of the Gujarat High Court in **Commr of Cus (Preventive) vs Ghaziabad Ship Breakers Ltd**[7]; and

(iii) Deposits made before the Supreme Court can only be characterized as pre-deposits under section 131 of the Customs Act which relates to payment of any dues to the government arising as a result of an order under section 129B(1) of the Customs Act. To support this contention, learned counsel placed reliance on the judgment of the Supreme Court in **the Daily Thanthi vs Commissioner of Customs (Appeals) and Ors.**[8]

17. Shri P.R.V. Ramanan, learned special counsel appearing for the department, however, supported the impugned order and made the following submissions:

(i) It is clear from the refund application filed by the appellant that section 27(1)(b) of the Customs Act was invoked. The section refers to 'duty' as distinct from-pre deposit under section 129EE of the Customs Act;

(ii) Even in the letter enclosing the refund claim, the appellant claimed the amount of Rs. 1,13,69,57,806/- as differential duty;

(iii) The refund application could have been filed only under section 27 of the Customs Act as was held by the Supreme Court in **Mafatlal Industries Ltd vs Union of India**[9]**.**;

(iv) The appellant is not justified in contending that the amount deposited by the appellant pursuant to the order of the Supreme Court should be treated as a deposit under section 129(E) of the Customs Act and interest should be paid in terms of section 129EE of

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7. 2010(259)E.L.T.522(Guj.)
8. 2021(376)ELT615(Mad.)
9. 1996(12)TMI50-Supreme Court

the Customs Act. The judgment of the Madras High Court in **Daily Thanthi** would not be applicable as the reasons given by the Madras High Court are contrary to the judgment of the Supreme Court in **Mafatlal Industries**;

(v) The appellant is not entitled to interest on the amount deposited pursuant to the order of the Supreme Court for the reason that the amount was refunded within three months of the submission of the documents; and

(vi) The expression, 'applicable interest' referred to the order of the Supreme Court relates to both the applicability of the interest from the point of delay and the rate of interest to be applied.

18. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

19. The appellant had filed a Civil Appeal before the Supreme Court under section 130E of the Customs Act against the order dated 19.12.2017 passed by the Tribunal confirming the duty demanded. The appeal was admitted but during the pendency of the appeal, the appellant filed an interlocutory application on 26.11.2018 with a request to permit the appellant to deposit the principal amount of differential duty confirmed by the Tribunal so as to stop the accrual of interest. The appellant specifically stated in the application that it would deposit the amount under protest and would keep this amount as an amount recoverable in its book of accounts. The prayer that was made in the application was to permit the applicant to deposit the disputed amount with the respondent within such time as the Supreme Court may direct on the condition that the deposited amount will be refunded to the appellant expeditiously **with**

applicable interest in the event the appeal was allowed by the Supreme Court. The Supreme Court by order dated 03.01.2019 allowed the appellant to deposit Rs. 1,13,69,57,806/- with the department within two weeks from the date of the order **subject to the condition that the said amount will be refunded to the appellant/applicant with applicable interest in the event of the appeal being allowed.**

20. It is not in dispute that the appellant deposited the said amount within the time granted by the Supreme Court. The Supreme Court, ultimately, by judgment dated 09.02.2021, allowed the Civil Appealappeal filed by the appellant and set aside the entire demand of duty, interest and penalty.

21. The appellant then submitted a letter dated 27.05.2021 to the Assistant Commissioner of Customs for grant of refund of Rs. 1,23,53,68,897/- with interest. The relevant portion of the communication is reproduced below:

> "**5.** The appeal of the Applicant was disposed by the Hon'ble CESTAT by Final Order 58446-58450/2017 dated 19.12.2017. The decision of the Hon'ble CESTAT confirmed the demand of duty, interest, and penalty of the OIO. The Applicant was allowed relief on the portion where it had claimed exemption for payment of education cess and secondary and higher education cess.
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> **6.** The Applicant preferred an appeal against the CESTAT order before the Hon'ble Supreme Court of India on 10.03.2018. After admission of the appeal before the Hon'ble Supreme Court, the Applicant had filed an Interlocutory Application No. 169351 of 2018 on 26.11.2018. In this application, the Applicant had requested the Hon'ble Supreme Court's permission to deposit the principal amount of differential duty to stop the notional accrual of interest and as a goodwill

gesture in line with its internal corporate governance and risk assessment norms. In its application, the Applicant had prayed that the deposit was under protest and should not be regarded as a payment of differential duty. It was further submitted that the Applicant would keep the amount of INR 1,13,69,57,806 as amounts recoverable in its books of accounts. This Interlocutory Application filed by the Applicant is enclosed as Annexure-3.

7. The Hon'ble Supreme Court took cognizance of the application and by its order dated 03.01.2019, permitted the Applicant to make the deposit. The Hon'ble Supreme Court also recorded directions for the Customs Authorities to refund the matter forthwith with applicable interest to the Applicant in the event the appeal is allowed. The order of the Hon'ble Supreme Court dated 03.01.2019 is enclosed as Annexure-4. **Pursuant to the Hon'ble Court's order, the Applicant made a deposit of INR 1,13,69,57,806 to the Commissioner of Customs Import, New Delhi vide letter dated 15.01.2019.** The proof of deposit vide letter dated 15.01.2019 and TR6 Challan 1125 dated 15.01.2019 are enclosed as Annexure-5.

8. The Hon'ble Supreme Court passed its final judgment in the Civil Appeal No. 1832/2018 on 09.03.2021. Vide the judgment, the Hon'ble Supreme Court allowed the appeal filed by the Applicant and set aside the entire demand of duty, interest and penalty. The decision of the Hon'ble Supreme Court dated 09.03.2021 is enclosed as Annexure-1.

9. Hence, pursuant to the judgment of the Hon'ble Supreme Court, the Applicant has become entitled to a refund of an amount of Rs. 1,23,53,68,897/- (INR 9,84,11,091 towards pre-deposit + INR 1,13,69,57,806 towards deposit directed by the Hon'ble Supreme Court) along with applicable interest till the date such refund is made to the Applicant.

> **10. Thus, we hereby request your kind office to grant us the refund of INR 1,23,53,68,897/- along with applicable interest of 6% per annum**.
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> **11.** The payment of pre-deposit and differential duty as mentioned above was made much after the clearance of goods. Further, the deposits of these amounts have been shown by the Applicant as "receivables in their books of account. This has also been certified by the letter dated 25 May,2021 issued by an independent charted accountant. Copy of the CA's certificate and relevant extracts from the balance sheet are enclosed herewith as Annexure-6. Thus, the deposit made by the applicant has not been passed on. Therefore, the doctrine of unjust enrichment will have no application in the present case.
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> **13.** It is our request that such refund and applicable interest be processed forthwith as per the directions of the Hon'ble Supreme Court in its order dated 03.01.2019 and in any case no later than 15 days from this application as per Circular No. 984/08/2014-CX dated 16.09.2014. Should any further documents be required by you, kindly let us know, we shall be happy to provide the same.
>
> Form-A required for refund is filled and attached herewith."
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> **(emphasis supplied)**

22. The appellant clearly stated that in terms of the interim order dated 03.01.2019 of the Supreme Court and the final judgment dated 09.03.2021, the appellant became entitled to refund of the amount with applicable interest till the date such refund was made to the appellant. The appellant also indicated the applicable rate of interest as 6% per annum. With the letter, the appellant also enclosed Form-A.

23. The contention of the learned counsel of the appellant is that in view of the directions contained in the interim order dated

03.01.2019 of the Supreme Court, the department was under an obligation to forthwith refund the amount to the appellant with applicable interest when the Civil Appeal filed by the appellant was allowed by the Supreme Court. Learned counsel, therefore, submitted that not only was the department required to refund the amount, but the department also had to pay the applicable interest and, therefore, denial of the interest to the appellant is clearly in the teeth of the directions of the Supreme Court.

24. Learned special counsel appearing for the department, however, submitted that refund of the amount and the interest could be granted to the appellant only in terms of section 27 of the Customs Act. Learned special counsel also submitted that under section 27A of the Customs Act, interest has to be paid on the amount ordered to be refund under section 27(2) of the Customs Act if the amount is not refunded within three months from the date of receipt of the application and since in the present case the refund was made within three months from the date of submission of the complete documents by the appellant, the appellant would not be entitled to interest.

25. The issue, therefore, that arises for consideration in this appeal is, whether the provisions of sections 27 and 27A of the Customs Act would be applicable to the facts of the present appeal. This issue has to be examined in the light of the directions contained in the interim order dated 03.01.2019 of the Supreme Court.

26. A perusal of the interim order leaves no manner of doubt, that the appellant was permitted to deposit the **amount of Rs. 1,13,69,57,806/-** with the respondent within two weeks from the date of the order **subject to the condition that the said amount**

will be refunded to the appellant forthwith with applicable interest in the event of the appeal being allowed. The appellant was, therefore, not required to file any application under section 27 of the Customs Act for refund of the amount and interest. The appellant was only required to inform the department that the Civil Appeal filed by the appellant has been allowed by the Supreme Court by judgment dated 09.03.2021 and, therefore, the amount deposited by the appellant pursuant to the directions contained in the interim order dated 09.03.2021 of the Supreme Court, had to be refunded forthwith to the appellant with applicable interest and on receipt of such information, the department had to comply with the directions of the Supreme Court.

27. In this connection, it would be pertinent to refer to the decision of the Supreme Court in **Tata Refractories**, wherein a similar interim order dated 15.03.1995 passed by the High Court in a writ petition came up for interpretation. The relevant portion of the interim order that was passed by the High Court is reproduced below:

> **"**... In the event the petitioner succeeds in the second appeal, then the Sales Tax Authorities would refund the amount with interest at the rate of 18 per cent per annum. The writ application is disposed of."

28. The writ petition was, ultimately, allowed. The writ petitioner, however, instead of asking the respondent State to repay the amount deposited, filed an application under the provisions of the Orissa Sales Tax Act for refund of the amount. The State took advantage of this procedure followed by the appellant, and denied interest to the appellant. Against this order of the State, the appellant filed a fresh writ petition. The High Court dismissed the writ petition holding that interest could be granted to the writ petitioner only under section 14

of the Orissa Sales Tax Act. It is against this order of the High Court that an appeal was filed before the Supreme Court. The Supreme Court noted that the State took the benefit of the interim order and retained the amount deposited by the appellant and, therefore, it cannot be permitted to contend when it comes to refund that the directions issued by the High Court in the interim order dated 15.03.1995 will not be binding on it and it is only the provisions of the statute that will bind. The Supreme Court further made it clear that any deposit made pursuant to the interim order will be governed by the conditions imposed in the order directing such deposit and not by the provisions of the Orissa Sales Tax Act. The relevant portion of the judgment of the Supreme Court is reproduced below:

> **"3. The appellants herein had challenged an interim order made by the Additional Commissioner of Sales Tax in a writ petition before the High Court of Judicature, Orissa, Cuttack in OJC No. 1200 of 1995. The High Court in the said writ petition made an order on 15-3-1995 in the following terms:**
> **"... In the event the petitioner succeeds in the second appeal, then the Sales Tax Authorities would refund the amount with interest at the rate of 18 per cent per annum. The writ application is disposed of."**
> **4. Subsequently, the appellant succeeded in the proceedings and the amount directed to be deposited by the High Court as per the abovenoted order became liable to be refunded to the appellant**. For reasons better known, instead of asking the respondent State to repay the amount deposited by them, **the appellant seems to have filed an application under the provisions of the Orissa Sales Tax Act ("the Act") for refund of the amount in deposit. Taking advantage of this procedure followed by the appellant, the respondent State has denied the appellant the benefit of**

interest granted by the High Court vide its order referred to hereinabove.

5. Aggrieved by the denial of that part of the interest which was due to them under the orders of the High Court, the appellants again approached the High Court in writ petition in OJC No. 11998 of 2000 wherein the High Court taking a very narrow view of the matter held that the appellant is entitled only to the interest that was permissible under Section 14 of the Act.

7. It is to be noted that the order of the High Court in the earlier writ petition, namely, OJC No. 1200 of 1995 was made by the High Court in the exercise of its power under Articles 226 and 227 of the Constitution of India wherein while directing the appellants to deposit the amount quantified therein, the High Court also issued a direction to the respondent State that it should refund the amount with interest at the rate of 18% per annum in the event of the appellants succeeding in the second appeal. This order is definitely not one made under the provisions of the Act. The respondent State which took benefit of the said order and retained the amount deposited by the appellant, **cannot now be permitted to say when it comes to refund the direction issued by the High Court in its order dated 15-3-1995 will not be binding on it and it is only the provisions of the statute that will bind.** As noted above, it is not by invoking the provisions of the Act, the deposit was directed to be made by the High Court, hence, any direction made while making an order under Articles 226 and 227, to deposit any sum of money will be governed by the conditions imposed in the order directing such deposit. On the contrary, if any such condition as to the interest had not been made by the High Court while directing the deposit of the amount then it could be said that the refund which may become payable will be governed by the provisions of the State Act. **In the instant case, since the very order which directed the deposit itself has directed the refund with 18% interest, we**

> **have no doubt in holding the said order as to mean that the refund should be made with interest at the rate of 18% from the date on which the amount was deposited pursuant to the order of the High Court dated 15-3-1995.**"
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> **(emphasis supplied)**

29. Learned special counsel appearing for the department, however, submitted that the directions were issued by the High Court in a writ petition, but in the present case, the appellant had filed a Civil Appeal. Learned special counsel appearing for the department also contended that there is no specific direction as to the percentage of interest payable nor is there any specific direction that refund to be granted would not be governed by the provisions of the Customs Act.

30. This distinction drawn by the learned special counsel appearing for the department is not justified. It is the condition of the interim order that has to be examined and not whether that interim order is passed in a writ petition or in a Civil Appeal. The interim order is absolutely clear. It provides that the appellant shall deposit the amount which shall be refunded to the appellant forthwith with applicable interest in the event of the appeal being allowed. Thus, when the Civil Appeal filed by the appellant was allowed, the department had to ensure compliance of the interim order and forthwith refund the amount with **applicable interest**. The department cannot urge that merely because the appellant had used the word 'differential duty' in the letter and had also filed the refund application in Annexure-A, the provisions of section 27 of the Customs Act would be applicable. The Supreme Court in **Tata Refractories** had observed that merely because appellant had filed the refund application under the provisions of the Orissa Sales Tax

Act, it will not mean that the provisions of the said Act would apply, and it is the interim order of the High Court that will prevail.

31. It is, therefore, clear from the aforesaid decision of the Supreme Court in the **Tata Refractories Ltd** that the amount had to be forthwith refunded to the appellant in terms of the directions of the Supreme Court contained in the interim order dated 03.01.2019 and section 27 of the Customs Act cannot be made applicable by the department. Interest was, therefore, not required to be paid under section 27A of the Customs Act. The amount and the interest had to be refunded in terms of the directions of the Supreme Court in the Civil Appeal that was filed by the department.

32. The department is also not justified in contending that the amount deposited by the appellant pursuant to the interim order passed by the Supreme Court should be treated as 'duty'.

33. In this connection, reference could be made to the decision of the Gujarat High Court in **Ghaziabad Ship Breakers.** The Gujarat High Court made it clear that any amount deposited during the pendency of an appeal before the High Court or the Supreme Court would be by way of deposit under section 129A of the Customs Act and not by way of 'duty'. The relevant observation are:

> "**2.** Without going into the chequered history of the case which is chronologically set out in the impugned order of the Tribunal, **the basic facts necessary for determination of the controversy in issue are that vide order dated 19-3-2001 made by the adjudicating authority duty demand came to be confirmed against the respondent. The appeal against the said order came to be dismissed for non-payment of the amount of pre-deposit. Ultimately, the matter was carried up to the Supreme Court. During the period September, 2004 to November, 2004, the**

respondent-assessee deposited the entire demand made under the order in original when the Special Leave Petition to file appeal against the order of the High Court was pending before the Supreme Court.

3. Pursuant to the aforesaid order the matter came up before the Tribunal, and **the Tribunal** vide order dated 13-12-2005 recorded that the respondent had complied with the stay order and **remanded the matter to Commissioner (Appeals) for deciding the same on merits. Commissioner (Appeals), in turn, remanded the matter to the Adjudicating Authority. The Adjudicating Authority vide order dated 24th April, 2006 held that the assessee was liable to pay differential duty amounting to Rs. 9,21,836/- and ordered that the same should be adjusted against duty of Rs. 16,21,583/- already paid by the assessee. It was directed that the excess duty amounting to Rs. 6,99,797/- would be admissible for refund subject to the fulfillment of the conditions under Section 27 of the Act and that the assessee may file refund claim if so desired**. Against the order of the Adjudicating Authority, the assessee preferred the appeal before Commissioner (Appeals) who dismissed the appeal. The assessee carried the matter in second appeal before the Tribunal which came to be allowed.

8. Another aspect of the matter is that under Section 129E of the Act in case of any appeal under the Chapter, the person desirous of appealing against an order relating to any duty and interest demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under the Act, is required to deposit with the proper officer duty and interest demanded or penalty levied. Section 129-E of the Act falls under Chapter XV under the heading Appeals. Chapter XV of the Act is comprised of various provisions from Section 128 to Section 131C of the Act. Section 130 of the Act which provides for appeal to High Court and Section 130-E of the Act which provides for

> appeal in Supreme Court also fall under Chapter XV. **Thus, an appeal before the Supreme Court would also be an appeal under the said Chapter as envisaged under Section 129E of the Act. Thus, any amount deposited during the pendency of an appeal before the High Court or the Supreme Court would also be by way of deposit under Section 129E of the Act and has to be treated accordingly.**
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> **9. Adverting to the facts of the present case, it is an undisputed position that the amount in question had been deposited by the respondent during the pendency of the appeal before the Supreme Court. In the circumstances, it is apparent that the amount so deposited would squarely fall within the ambit of Section 129-E of the Act and has to be treated as pre-deposit. Thus, the contention raised on behalf of the appellant that the amount has been paid by way of duty and not pre-deposit, being contrary to the provisions of section 129E of the Act, does not merit acceptance**."
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> **(emphasis supplied)**

34. It would be seen from the aforesaid decision of the Gujarat High Court that during the pendency of the Civil Appeal before the Supreme Court, the assessee had deposited the amount. It is regarding this deposit of amount that the Supreme Court rejected the plea of the department, that it was towards the 'duty' under section 27 of the Customs act and not towards pre-deposit.

35. The present appeal is on a better footing as here the amount was deposited by the appellant not only during the pendency of the Civil Appeal but also pursuant to the interim directions issued by the Supreme Court.

36. In **Daily Thanthi**, the Madras High Court also had an occasion to examine this issue. A writ petition had been filed before the High Court for refund of the amount deposited by the petitioner during the

pendency of the Civil Appeal before the Supreme Court with interest. The Madras High Court held that the payments made during the pendency of the appeal before the Supreme Court have to be considered as pre-deposit akin to the amount deposited under section 129E of the Customs Act and cannot be treated to amount paid towards duty. The relevant portion of the order passed by the Madras High Court is reproduced below:

> "**Thus, if such payments are made pending appeal for want of stay order, it has to be considered as pre-deposit akin to the amounts deposed under Section 129E of the Customs Act, 1927/Section 35F of the Central Excise Act, 1944. Therefore, the amount that was paid by the petitioner pending its appeal was not "duty" though miscellaneous Challan slows payment of duty**, nevertheless it has to be considered as amount paid for the purity of Section 131 of the Customs Act, 1962."
>
> **(emphasis supplied)**

37. Thus, as the amount deposited by the appellant cannot be treated as amount deposited towards 'duty', the provisions of section 27 of the Customs Act will not be applicable as it deals with claim for refund of 'duty'.

38. The contention of learned special counsel appearing for the department that the decision of the Gujarat High Court in **Ghaziabad Ship Breakers** and of the Madras High Court in **Daily Thanthi** will not be applicable to the facts of the present case cannot be accepted. Learned special counsel appearing for the department has not placed any decision to substantiate that the decisions of the Gujarat High Court in **Ghaziabad Ship Breakers** and of the Madras High Court in **Daily Thanthi** have been set aside or have been distinguished. The

proposition of law laid down in these two decisions would, therefore, have to be considered while deciding the issue raised in this appeal. Thus any amount deposited during the pendency of the Civil Appeal before the Supreme Court cannot be treated as amount paid towards duty.

39. Learned special counsel appearing for the department also contended that when the Supreme Court directed that the amount will be refunded to the appellant forthwith with **applicable** interest in the event of the appeal being allowed, the department had to examine both the issues, namely, whether interest at all would be paid and if so, then at what rate.

40. This submission of the learned special counsel appearing for the department cannot be accepted. A plain reading of the interim order of the Supreme Court leaves no manner of doubt that the directions of the Supreme Court that the amount should be refunded forthwith with applicable interest can only mean that the appellant would be entitled to interest which would be at the applicable rate. The said order cannot be interpreted to mean that the appellant would be entitled to interest, if applicable. The appellant has claimed interest at the rate of 6% per annum and it is not the case of the department that interest at the rate of 6% per annum is not the applicable rate of interest.

41. The view taken by the Commissioner (Appeals) that interest would not be payable to the appellant if it was not refunded within three months from the date of receipt of the application in terms of the provisions of section 27A of the Customs Act cannot, therefore, be sustained.

42. The inevitable conclusion that follows from the aforesaid discussion is that the appellant is entitled to interest at the rate of 6% per annum from the date of deposit of the amount by the appellant pursuant to the directions of the Supreme Court till the date of payment.

43. The impugned order dated 27.01.2023 passed by the Commissioner (Appeals) to the extent it has denied interest to the appellant on the amount of Rs. 1,13,69,57,806/- deposited by the appellant pursuant to the directions contained in the interim order dated 03.01.2019 of the Supreme Court in Civil Appeal No. 1832 of 2018 filed by the appellant is set aside. A direction is issued to the respondent to forthwith pay interest to the appellant at the rate of 6% per annum from the date of deposit till the date of payment. The appeal is, accordingly, allowed.

(Order pronounced on **27.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Apoorva