

Question 1

Write a detailed note on “relevant dates for submission of refund application” with reference to the provisions of the Customs Act, 1962

Answer

According to **section 27(1)** of the Customs Act, 1962, a refund claim should be lodged before the expiry of **one year from the date of payment of such duty or interest**. The period of limitation of one year should be computed in the following manner:

- (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
- (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.
- (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.
- (d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof.
- (e) Where the refund arises as a result of any judgement/decreed/order/direction of the Appellate Authority/Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/decreed/order/direction.

The time limit of one year is not applicable if **duty is paid under protest**. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Question 2

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of “unjust enrichment” will apply in the following cases:

- (i) *refund of excess interest paid by the assessee.*
- (ii) *refund of duty on car imported for personal use.*

Answer

The bar of unjust enrichment applies in case of refund of customs duty under **section 27(2)** of the Customs Act, 1962. In the given cases, the applicability of the doctrine has been examined as under –

10.2 Customs and Foreign Trade Policy

- (i) The bar of unjust enrichment **will apply in case of excess interest paid** by the assessee as the words used under section 27(1) and 27(2) are “duty and interest, if any, paid on such duty”. The payment of interest is inextricably laced with payment of duty. Thus, the excess amount of interest paid by the assessee will be refunded to him only if he does not pass on the incidence of such interest to any other person.
- (ii) The principle of unjust enrichment **will not apply to refund of duty on car imported for personal use**, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an **individual for his personal use**, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

Question 3

Write a brief note on sanctioning of refund of customs duty under section 27(2) of the Customs Act, 1962 under which refunds will not be credited to the consumer welfare fund.

Answer

The amount of duty and interest found refundable, instead of being credited to the Fund, will be paid to the applicant if the amount is relatable to:-

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75;
- (f) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify

Section 28D of the Customs Act, 1962 provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, **shall be deemed to have passed the full incidence of such duty to the buyer**. Further, section 27(2) lays down that the refund of duty and interest, if any, should be credited to the consumer welfare fund.

Question 4

The assessee had imported capital goods under a licence with a condition to fulfill an export obligation within a certain time limit. The assessee, however, failed to discharge the export obligation within the said time limit. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently the assessee fulfilled the export obligation and consequently, the Department cancelled the bank guarantee.

The assessee, thereafter, filed a refund claim for the amount realized by invocation of the bank guarantee. The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Examine briefly, with the help of any decided case law, whether the stand taken by the Department is correct in law.

Answer

The facts of given case are similar to the facts of **CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.)**. The High Court, in the instant case, observed that when the Department had accepted the fulfillment of export obligation, there was no need to invoke the bank guarantee or to retain the amount. The High Court held that the Department's claim that refund had been time barred was not sustainable as **furnishing of bank guarantee** in order to fulfil the export obligation **could not be regarded as payment of duty**.

The High Court relied on the Supreme Court's ruling in the case of **Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC)**, wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Therefore, it can be inferred that since section 27 governs the refund of 'duty', the limitation prescribed therein for refund of duty arising in various circumstances would not apply to refund of a bank guarantee wrongly encashed by the Department as furnishing of bank guarantee cannot be equated with payment of duty. Therefore, the stand taken by the Department is not correct. Applying the principle laid down in this case, the Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Revenue is not correct in law.

Question 5

M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices.

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

Answer

Section 18 (dealing with provisional assessment) **incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment also**. Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

10.4 Customs and Foreign Trade Policy

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

Question 6

Malhotra Ltd. imported certain parts of a machine and filed a Bill of Entry. Malhotra Ltd. paid a higher duty in ignorance of a notification which allowed him payment of duty at a concessional rate.

Later Malhotra Ltd filed a refund claim under section 27 of the Customs Act, 1962 by producing a certificate issued by a Chartered Accountant (CA) to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person. The refund claim was rejected by the department as there was no other evidence (like balance sheet, ledger accounts, sales invoices prior to or after import etc.) other than the certificate issued by CA.

Discuss with reference to decided case law, if any, whether the stand taken by the Department is correct in law.

Answer

Yes, the Department's plea is justified in law. The facts of the given case are similar to the case of **CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)** The High Court, in the instant case, noted that section 27 of the Customs Act mandates the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, in the given case, the assessee had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the High Court held that the assessee could not be granted refund merely on the basis of the said certificate as Chartered Accountant's certificate alone is not sufficient evidence to rule out the unjust enrichment under customs.

In the light of the above discussion, it can be inferred that Malhotra Ltd. is not entitled for refund claim.

Question 7

Does the principle of unjust enrichment apply to refund of import duty paid on capital goods? Whether uniformity in price before and after assessment is a sufficient proof to establish that duty burden has not been passed on?

Answer

The Large Bench of the Tribunal in the case of **SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB)** has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. The Larger Bench

also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons.

Question 8

Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.

Answer

Section 26A of the Customs Act, 1962 makes provision for refund of import duty paid on clearance of imported goods capable of being easily identified as such imported goods, if following conditions are fulfilled:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
- (ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- (iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
- (iv) the importer does not claim drawback under any other provision of this Act; and
- (v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.
- (vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
- (vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.
- (viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

Exercise

1. *With reference to the Customs Act, 1962, explain the circumstances under which refunds will not be credited to the Consumer Welfare Fund.*
2. *Discuss the provisions in respect of interest on delayed refunds.*
3. *List the document to be attached with the refund claim.*