

Liability to pay duty upon confiscation includes interest for delay – SC upholds the decision of Bombay High Court

26 July 2024

Summary

The Supreme Court (SC) has upheld the Bombay High Court's decision that customs duty and interest is required to be paid upon redeeming confiscated goods by paying a redemption fine. The SC has affirmed that the owner of goods has a liability to pay customs duty, even after confiscated goods are redeemed post payment of fine and such liability is distinct from the assessment and determination of duty. Once liability to pay duty arises, interest on delayed payment of such duty follows.

Facts of the case

- Navayuga Engineering Co. Ltd. (the appellant) had availed customs duty exemption under a notification dated 1 March 2002, for certain self-propelled hydraulic piling rigs intended exclusively for road and bridge construction for NHAI and PWD.
- Later, investigations revealed violations of import conditions by the appellant, leading to the deposit of customs duty along with interest.
- A show cause notice (SCN) was issued proposing confiscation of goods valued at INR 48.55 crore, with a duty liability of INR 17.38 crore under Section 28 of the Custom Act, 1962 (Customs Act), along with interest under Section 28AB of the Customs Act, and penalties under Sections 112(a) and (b) and 114A of the Customs Act.
- The appellant filed an application before the Settlement Commission, claiming no violation and asserting that they accepted liability to avoid prolonged litigation.
- The Settlement Commission upheld the duty liability but waived penalties, directing the refund of interest paid by the appellant, holding that interest under Section 28AB of the Customs Act was inapplicable in confiscation proceedings initiated under Section 124 of the Customs Act.

Issues raised before the SC

- Is there a liability to pay customs duty when confiscated goods are redeemed after payment of fine under Section 125 of the Customs Act?
- Does the liability to pay such duty includes the liability to pay interest on delayed payment under Section 28AB of the Act?

Petitioner's contention

- It was submitted by the appellant that the Settlement Commission's finding that interest under Section 28AB of the Customs Act is not payable in confiscation proceedings initiated under Section 124 of the Customs Act was correct.

- They argued that once the duty liability arises under Section 125(2) of the Customs Act due to the redemption of confiscated goods, Section 28 of the Customs Act, which includes provisions for interest under Section 28AB of the Customs Act, does not apply.

Bombay High Court's observations and ruling

- The High Court held that interest can be levied only when there is a substantive provision enabling it. Section 125 of the Customs Act has no such enabling provision, not even the procedure to assess duty.
- Therefore, assessment of duty must necessarily be done under Section 28 of the Customs Act and once Section 28 procedure is adopted, application of Section 28AB of the Customs Act is inevitable.
- The High Court, distinguished Jagdish Cancer case and held that interest under Section 28AB of the Customs Act is payable even for proceedings under Section 125 of the Customs Act and remanded the matter to the Settlement Commission to calculate and recover interest under Section 28AB of the Customs Act.

Supreme Court's observations and Judgment [Civil appeal no. 1024 of 2014, order dated 23 July 2024]

- **Confiscation provision prescribes payment of duty:** The section 125(2) of the Customs Act clearly provides that, where any fine in lieu of confiscation of goods is imposed, the owner of such goods shall be liable to any duty and charges payable with respect to such goods. Thus, the law clearly provides that the liability to any duty and charges, that are payable, shall be paid in addition to the fine.
- **Liability to pay customs duty is distinct from liability to pay confiscation fine:** The SC held that the owner of confiscated goods has a liability to pay customs duty even after redeeming the goods by paying a fine under Section 125 of the Customs Act. The duty liability under Section 125(2) of the Customs Act is distinct from the assessment and determination of duty under Section 28 of the Customs Act. The duty obligation arises when the option to redeem the goods is exercised and accepted by the Department. Once the liability of confiscation is withdrawn after the option to pay fine is exercised and the goods are redeemed, it is natural for the goods to be subjected to duty.
- **Interest on delayed payment:** The SC opined that once Section 28 of the Customs Act is applied to determine the duty obligation under Section 125(2) of the Customs Act, the interest on delayed payment of duty under Section 28AB of the Customs Act also becomes applicable.
- **Provision of levying interest:** The SC upheld the High Court's view that interest can be levied only when there is a substantive provision enabling it. Section 125 of the Customs Act does not have such a provision, so duty assessment must be done under Section 28 of the Customs Act, making the application of Section 28AB of the Customs Act inevitable.
- **Jagdish Cancer case ratio:** The SC clarified that the Jagdish Cancer case is not an authority for the proposition that duty calculation, determination, or assessment under Section 125 of the Customs Act cannot be made under Section 28 of the Customs Act. The decision in Jagdish Cancer case indicated that duty liability arises under Section 125(2) of the Customs Act upon exercising the option to redeem confiscated goods. However, the assessment of such duty follows the procedure under Section 28 of the Customs Act.
- **HC's decision upheld and appeal disposed:** The SC upheld the decision of the High Court, confirming that the appellant is liable to pay customs duty and interest under Sections 28 and 28AB of the Customs Act respectively, upon redeeming confiscated goods by paying a fine. The appeal was disposed of with no order as to costs.

Our comments

Earlier, in the case of Jagdish Cancer it was held that the duty in confiscation proceedings is payable only under Section 125 of the Customs Act and not under Section 28 of the Customs Act, and therefore, question of interest does not arise. Referring to this case, the SC has clarified that, this does not preclude the use of Section 28 of the Customs Act for calculating and assessing the duty, including applying interest on delayed payments under Section 28AB of the Customs Act.

Through this judgment the SC has affirmed the principle that while the duty liability originates from the redemption option under Section 125 of the Customs Act, its calculation and assessment are governed by Section 28 of the Customs Act, thereby attracting the interest provisions of Section 28AB of the Customs Act.

Connect
with us on



@Grant-Thornton-Bharat-LLP



@GrantThorntonIN



@GrantThorntonBharat



@GrantThorntonBharatLLP



@Grantthornton_bharat



GTBharat@in.gt.com

© 2024 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, a member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.