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Application for Refund of Import Duty or Interest (Sec 27)

(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the AC/DC of Customs, **before the expiry of 1 year**, from the date of payment of such duty or interest:

Provided further that the limitation of 1 year shall not apply where any duty or interest has been paid under protest.

Provided also that where the amount of refund claimed is less than ₹ 100, the same shall not be refunded.

Explanation.- For the purposes of this sub-section, "**the date of payment of duty or interest**" in relation to a **person, other than the importer**, shall be construed as "**the date of purchase of goods**" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C*) as the applicant may furnish **to establish**
→ that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by

***Note – Section 28C** - Notwithstanding anything contained in this Act or any other law for the time being in force,

- every person who is liable to pay customs duty of excise on any goods shall,
- at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, & other like documents,
- the amount of such duty which will form part of the price at which such goods are to be sold.

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(1B) Save as otherwise provided in this section, the period of limitation of 1 year shall be computed in the following manner, namely:-

- (a) in the case of **goods which are exempt** from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of 1 year shall be computed **from the date of issue of such order**;*
- (b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of 1 year shall be computed **from the date of such judgment, decree, order or direction**;*
- (c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, **from the date of such re-assessment**.*

*(2) If, on receipt of any such application, the AC/DC of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, **he may make an order** accordingly and the amount so determined shall be credited to the Fund :*

Provided that the amount of duty and interest, if any, paid on such duty as determined by the AC/DC of Customs under the foregoing provisions of this sub-section shall, **instead of being credited to the Fund, be paid to the applicant**, if such 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;*

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- (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 CG may, by notification in the Official Gazette, specify;*
- (g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—*
 - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or*
 - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.*

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the CG the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

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(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within 7 days of its re-assembly, and the CG shall seek the approval of Parliament to the notification by a resolution moved within a period of 15 days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

*(5) **For the removal of doubts**, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), **may be rescinded by the Central Government at any time by notification in the Official Gazette.***

Note –

Doctrine of Unjust Enrichment with respect to Refund of Duty – In terms of Sec 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty. Sec 28D creates a statutory presumption that he did pass on the burden of duty, this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is given the refund in terms of Sec 27(2), clause (a) for the importer and clause (c) for the buyer.

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Landmark judgement on Refund –

Nine Member Bench of the Supreme Court in Mafatlal Industries Ltd. Vs UOI – 1997 (89) ELT 247 – The salient features of this judgement can be summarised as under:

- a) The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.
- b) Sec 27 (Customs Act) is self contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgements of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.
- c) Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of sec 11B and refuse to grant relief if the incidence of tax has been passed on.
- d) Whatever amount is collected as duty will have to be paid to the Govt. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

Honourable SC in Solar Pesticides case 2000 (116) ELT 401 – The bar of unjust enrichment will apply to refunds even in case of captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers.

Honourable SC in CCE vs Allied Photographics 2004 (166) ELT 3 – Doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

Interest on Delayed Refund (Sec 27A)

*If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is **not refunded within 3 months from the date of receipt of application** under sub-section (1) of that section, there shall be paid to that applicant interest at **such rate, not below 5% and not exceeding 30% p.a. as is for the time being fixed by the CG by Notification in the Official Gazette, on such duty from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty** : **(Currently, the rate of interest is 6% vide NN 75/2003-Cus (NT) dated 12-9-2003)**)*

Explanation - *Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the AC/DC of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section*

Note –

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

Refund of Export Duty in Certain Cases (Sec 26)

Where on the exportation of any goods any duty has been paid, **such duty shall be refunded to the person by whom or on whose behalf it was paid**, if -

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within 1 year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of 6 months from the date on which the proper officer makes an order for the clearance of the goods.

Note –

This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer.

Refund Claim cannot be a Substitute for Appeal

The Customs Act has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within 1 year from the date of payment of duty or clearance of goods or such other event as specified in section 27. Refund claim cannot be a substitute for an appeal.

In the case of Priya Blue Industries Ltd, 2004 (172) ELT 145 (SC), duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the SC ruled that, “Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Sec 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.”

In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.