



TAX ALERT

Excess Duty wrongly paid
cannot be withheld by
the Department :
Section 27 not
attracted



Excess Duty wrongly paid cannot be withheld by department - Section 27 of Customs Act not applicable

2016-TIOL-715-HC-MAD-CUS

Issue: Whether excess amount wrongly paid at the time of duty payment would attract provisions of Section 27 relating to refund of Duty?

Facts: The Appellant Company had imported “Electro Plating Process” and paid duty through online e-payment mode. While making the payment, due to some technical error, the appellant’s bank account got debited nine times. The Company informed the bank about the excess payment made and consistently pursued with the Custom officers for a period of 18 months but no refund of the excess amount was made. Being aggrieved, the Company filed a refund application before Assistant Commissioner of Customs (Refunds) who rejected the application on the ground that the application was filed beyond the permissible period of 1 year as provided in Section 27 of the Customs Act, 1962. An appeal filed against the aforesaid order was rejected by the Appellate Commissioner who held that Section 27 of the Customs Act is not applicable to the case. It was further stated that the Appellant have not explained the delay to file refund application and failed to take timely action. Thereafter the appellant preferred the present Writ Petition before the Hon’ble High Court.

Appellant’s Contention: That the company had been corresponding with the department to get the refund for the 18 month period before filing an application for refund. It was further contended that Customs Department cannot withhold the amount without any reason.

Revenue’s Contention: That the company can only file an Appeal before the CESTAT under Section 129A of the Customs Act, 1962.

High Courts Observation: As the Appellant Commissioner himself stated that Section 27 will not apply (as the refund relates to excess amount wrongly paid and such excess amount is not “duty”) hence time period of 1 year provided in Section 27 shall also not be applicable (as contented by the Assistant Commissioner).

Held: The amount withheld by department is incorrect and the same is to be refunded to the appellant within a period of four weeks from the date of this order.