$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24th September, 2025
Pronounced on: 30th March, 2026
Uploaded on:30th March, 2026

\+ **W.P.(C) 1225/2024**

JAINA MARKETING AND ASSOCIATES .....Petitioner
Through: Ms. Asha Jain Madan, Mr. Mukesh Jain and Mr. Ajay Goyal, Advs.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Ms. Anushree Narain, SSC with Mr. Yamit Jeitley and Mr. Naman Choula, Advs.

WITH

\+ **W.P.(C) 1291/2024**

M/S JAINA MOBILE INDIA PVT. LTD. .....Petitioner
Through: Ms. Asha Jain Madan, Mr. Mukesh Jain and Mr. Ajay Goyal, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents
Through: Ms. Anushree Narain, SSC with Mr. Yamit Jeitley and Mr. Naman Choula, Advs. WITH

\+ **W.P.(C) 1297/2024**

INTEX TECHNOLOGIES (INDIA) LTD. .....Petitioner
Through: Ms. Asha Jain Madan, Mr. Mukesh Jain and Mr. Ajay Goyal, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents
Through: Ms. Anushree Narain, SSC with Mr. Yamit Jeitley and Mr. Naman Choula, Advs.

WITH

+ **W.P.(C) 1325/2024**

U T ELECTRONICS PVT LTD .....Petitioner

Through: Ms. Asha Jain Madan, Mr. Mukesh Jain and Mr. Ajay Goyal, Advs.

versus

UNION OF INDIA ORS .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. YamitJeitley and Mr. Naman Choula, Advs.
Mr. Jagdish Chandra, CGSC with Mr. Sujeet Kumar, Adv.

WITH

+ **W.P.(C) 10977/2017**

LAVA INTERNATIONAL LTD. .....Petitioner

Through: Mr. Yogendra Aldak and Mr. Agrim Arora, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. R. Ramachandran, SSC with Mr. Prateek Dhir, Adv.

AND

+ **W.P.(C) 11319/2017**

LAVA INTERNATIONAL LTD. .....Petitioner

Through: Mr. Yogendra Aldak and Mr. Agrim Arora, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. R. Ramachandran, SSC with Mr. Prateek Dhir, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh J.

1. This hearing has been done through hybrid mode.

I. Factual Background

2. The present petitions have been filed under Article 226 of the Constitution of India raising challenge *inter alia* to the respective orders-in-original *vide* which the refund applications filed by the Petitioners have been decided. In all these cases, the Adjudicating Authority has allowed the refund application of the Petitioners, however, no interest on refund has been granted to them.

I(A). Brief Facts in W.P.(C) 10977/2017 and ***W.P.(C) 11319/2017***

3. The brief background giving rise to ***W.P.(C) 10977/2017*** and ***W.P.(C) 11319/2017*** is that the Petitioner- Lava International Ltd., is a company which is *inter alia* engaged in the business of importing mobile phones, tablets etc. and selling it in India. From 2nd March, 2015 to 16th July, 2015 the Petitioner had imported mobile handsets, including cellular phones, tablets, parts of mobile phone, and had filed 1044 Bills of Exchange *(hereinafter, 'BoEs')* in total, classifying the imported goods under respective tariff headings.

4. It is the case of the Petitioner in these two writ petitions, that the self-assessment of the BoEs was done by the Petitioner by using the ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) portal, an e-commerce portal of the Central Board of Excise & Customs wherein there was no option provided for the Petitioner to avail the exemption in terms of the ***Notification No. 12/2015-C.E.,*** dated 1st March, 2015 for concessional rate. Accordingly, the Petitioner claims that *vide* its letter dated 16th May, 2015 they had informed the Customs Department that the EDI system was not allowing it to pay Countervailing Duty *(hereinafter, 'CVD')* at concessional rate and hence, they should be allowed to file BOEs manually, else the Petitioner will have to pay the CVD

amount under protest.

5. Eventually, with respect to the said imports, the Petitioner had paid 12.5% of the additional Customs Duty in terms of the Customs Tariff Act, 1975 under protest and cleared the goods.

6. Thereafter, the payment of duty under the said 1044 BoEs were challenged by the Petitioner before the Office of Commissioner of Customs (Appeal). *Vide* order dated 30th September, 2015 and 20th November, 2015, appeals filed against 844 BoEs were dismissed. Further, *vide* a separate order dated 30th October, 2015, the appeals filed against the remaining 200 BoEs were also dismissed by the Office of Commissioner of Customs (Appeal).

7. The Petitioner filed an appeal before the Central Excise and Service Tax Appellate Tribunal *(hereinafter, 'the CESTAT')* challenging the orders dated 30th September, 2015 and 20th November, 2015. In its order dated 25th January, 2017, CESTAT directed for *de-novo* assessment of the 844 BoEs within a period of 4 months. In the said order of CESTAT, the Tribunal had followed its own decision in ***M/s. Oppo Mobiles India Pvt. Ltd. Vs. CC Delhi-I vide customs Appeal No. 52548&52557/2016*** dated 05th January, 2017 and remanded the matter for fresh consideration to the Adjudicating Authority.

8. The Petitioner, however, challenged the order of the CESTAT dated 25th January, 2017 before this Court in ***W.P.(C) 2307/2017*** titled ***Lava International Ltd. v. Union of India & Ors.*** wherein the Court in its order dated 10th March, 2017 did not interfere with the decision of the CESTAT and in light of the decisions in ***SRF Ltd. v. Commissioner of Customs, (2015) 14 SCC 596***, and ***Micromax Informatics Ltd. v. Union of India and Ors, 2016 SCC OnLine Del 1238***, directed for the fresh assessment by the Adjudicating Authority to be completed within 2 weeks. The relevant portion of the order

dated 10th March, 2017 passed in ***W.P.(C) 2307/2017*** reads as under:

> *"In these circumstances, the Court is of the opinion that* ***instead of interfering with the order of the CESTAT, the Adjudicating Authority i.e, Commissioner should proceed with the remand with utmost expedition and complete the hearing and render the decision in accordance with the above settled law within two weeks.*** *It is directed accordingly.*
> *The writ petition is allowed in the above terms. All rights and contentions of the parties, including the petitioner's right to move an application under Section 27 of the Income Tax Act, 1961, are reserved."*

9. Following the said order of this Court passed in ***W.P.(C) 2307/2017***, the Petitioner's case is that *de-novo* adjudication was conducted and an order was passed on 25th March, 2017, granting refund to the Petitioner. Pursuant thereto, the Petitioner filed an application for refund under Section 27 of the Customs Act, 1962 seeking refund of the excess Customs Duty paid by it, along with interest from the date of the 844 BoEs. The said application has been decided *vide* the impugned order dated 13th April, 2017 wherein the refund has been granted to the Petitioner, however, interest on such refund has not been allowed. The Adjudicating Authority, after examining the facts, the records on various aspects including in respect of unjust enrichment, in its order dated 13th April, 2017 observed as under:

> *"From above 1 find that Applicant's contention that burden cast upon them to prove that incidence of duty not passed on to customers directly or indirectly successfully discharged by the fact that amount of excess duty paid has been shown as receivable (recoverable) in their balance, has merit, excess duty paid not added to the cost of final product. In view of above noted facts 1 am of considered view that the applicant has been able*

to discharge the onus of unjust enrichment as casted on it and I find that duty paid has not been passed on to any other person directly or indirectly. Accordingly, I hold that the provisions of unjust enrichment clause under Section 28D of the Customs Act, are not applicable to the facts of this case and hence not invokable.

In view of the aforesaid decisions, I am of the considered view that the appellant has discharged the statutory obligation cast on him of rebutting the presumption of unjust enrichment in any satisfactory manner acceptable to law. In this view of the matter, I hold that the claimant has crossed the bar of unjust enrichment and therefore, accordingly I hold that claimant is entitled for refund."

10. Further, the operative portion of the impugned order dated 13th April, 2017 is extracted below:

"ORDER

In view of the above, I sanction the refund claim of Rs.1,09,11,05,670/- (Rupees One Hundred Nine Crore Eleven Lacs Five Thousand Six Hundred Seventy Only) filed by M/s Lava International Ltd. A-56, Sector-64, Noida-201301, order is to be credited account of M/s Lava International Ltd. in terms of provisions of Section 27(2) of Customs Act, 1962."

11. In addition, with respect to the remaining 200 BoEs, the Petitioner had challenged the order of the Commissioner of Customs (Appeal) dated 30th October, 2015 before this Court in ***W.P.(C) 10513/2016*** titled ***Lava International Ltd. v. Union of India & Ors.***

12. In the said ***W.P.(C) 10513/2016,*** this Court, in its order dated 30th November, 2016, took note of the decision of the Supreme Court in ***SRF Ltd. vs. Commissioner of Customs, Chennai 2015 (318) ELT 607 (SC)*** and in

light thereof, held as under:

> *"In the light of the foregoing discussion and the law declared in SRF Ltd. v. Commissioner of Customs, Chennai 2015 (318) ELT 607 (SC), the petitioner's claim has to succeed.* ***A direction is issued to the respondents to process the refund application and pass appropriate orders having regard to the materials placed provided it is filed within two weeks from today.***
>
> *The writ petition is allowed in these terms. No costs."*

13. In pursuance to the order of this Court dated 30th November, 2016, the Petitioner filed an application for refund under Section 27 of the Customs Act, 1962, seeking refund of the excess Customs Duty paid by it, along with interest from the date of the 200 BoEs. The said application has been decided *vide* the impugned order dated 3rd March, 2017, wherein the refund has been granted to the Petitioner, however, interest on such refund has not been allowed. In the said impugned order dated 3rd March, 2017, it has been held as under:

> ***"ORDER***
>
> *In view of the above, I sanction the refund claim of Rs.18,87,85,533/- (Rupees Eighteen Crore Eighty-Seven Lacs Eighty-Five Thousand Five Hundred Thirty-Three Only) filed by M/s Lava International Ltd. A-56, Sector-64, Noida-201301, order is to be credited to account of M/s Lava International Ltd. in terms of provisions of Section 27(2) of Customs Act, 1962."*

14. Hence, in ***W.P.(C) 10977/2017*** and ***W.P.(C) 11319/2017,*** the impugned orders dated 3rd March 2017 and 13th April 2017 stand challenged before this Court on the ground that interest is liable to be paid to the Petitioner on the refund granted to them.

I(B). Brief Facts in W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024, W.P.(C) 1325/2024

15. The Petitioner in ***W.P.(C) 1225/2024 & W.P.(C) 1291/2024***- M/s. Jaina Marketing & Associates *(hereinafter, 'M/s. Jaina Marketing')* is stated to be a partnership firm having its registered office in New Delhi and is engaged in the business of trading electronic goods and consumer electronics. It is also stated that M/s. Jaina Marketing is also engaged in import of goods classified under CTH 8541 in the trade of mobile phones.

16. The facts relevant to the case of the said Petitioner are that during the periods from 18th February, 2014 to 21st February, 2015 and 9th March, 2015 to 16th July, 2015, it had imported mobile phones under various BoEs. At the time of importing the said mobile phones, M/s. Jaina Marketing had classified the goods under Customs Tariff Item 85171290 of Schedule 1 to the Customs Tariff Act, 1975. The said Petitioner had paid customs duty at the rate of 6% till 28th February, 2015 and thereafter at the rate of 12.5% under Section 3(1) of the Customs Tariff Act, 1975 read with Notification No. 12/2012-CE dated 17th March, 2012.

17. It is the case of M/s. Jaina Marketing that in terms of the Notification dated 17th March, 2012, it was liable to pay customs duty at the concessional rate of 1%, instead of 6% or 12.5%. It is stated that the said benefit, however, was not made available on the concerned Government Portal between 17th February 2014 and 17th July, 2015, due to failure of the concerned Department in updating the Electronic Data Interchange system. Thus, M/s. Jaina Marketing although being eligible, however, due to no fault of its own could not avail the benefits of the subject Notification No. 12/2012-CE.

18. It is stated that *vide* letter dated 21st April, 2015 the said Petitioner had sought re-assessment or reconsideration of the relevant BoEs and to consider the payments made towards the customs duty *qua* the imported goods as payments under protest. The said Petitioner sent several communications to the Customs Department for re-assessment of the BoEs and the last communication was sent on 24th January 2022. However, the Customs Department did not re-assess the same during the said period. Thereafter, the BoEs were finally re-assessed *vide* Order-in-Original dated 8th June, 2022, in respect of 1216 Bills of Entry, and the Order-in-Original dated 15th June, 2022, in respect of 176 Bills of Entry, both orders-in-original being the subject matter of ***W.P.(C) 1225/2024.***

19. Further to the above orders, the said Petitioner had filed 17 refund applications on 13th October, 2022 and 17th October, 2022, for the period between February, 2014 to July, 2015. The said applications filed under Section 27(1)(a)/27(1)(b) read with Section 27(2) of the Customs Act, 1962, *inter alia,* had sought refund of the excess amount paid along with interest from the date of payment.

20. It is stated that during the pendency of the said refund applications, the appeal of the Customs Department against the Orders-in-Original dated 8th June, 2022 and 15th June, 2022 came to be rejected *vide* Order-in-Appeal dated 6th April, 2023. The relevant portion of the said order reads as under:

> *"6.3.2 It must be noted that in case of M/s. Jaina Marketing benefit of lower rate of duty had been extended by the Appellate Authority under several orders-in-appeal. Based on these orders when department proceeded to amend the bills of entry the relevant serial number of notifications was found non-existent in the EDI System. The then Principal*

Commissioner of Customs, Imports, ACC New Delhi took up matter with DG Systems vide letter no VIII/12/ACC-Import/Gr VA/PDC-43/2015 dated 21.10.2016 specifically citing orders-in-appeal and highlighted need for modification of EDI to allow re-assessment. This also established that this Respondent was not a fence sitter.

6.3.3 Considering these facts and background, it is evident the Respondents in the present appeals were not fence sitters and had been pursuing their case with the Department since SRF Ltd. judgement (supra). Thus, the letters submitted in 2022 cannot be held to be first application for amendment and must be treated as reminders/follow up letters only. […]

6.4 There is no doubt on the merits that imported mobile phones were eligible for lower rate of CVD for period 17.2.2014 onwards till 16.7.2015. Since the Respondents had been pursuing their case with the Department since issuance of the SRF Ltd. (supra) judgement it is held that the Respondent were eligible for lower rate of CVD in respect of imports made under impugned bills of entry.

xxx xxx xxx

6.10 Thus, considering that the Respondents were not fence sitters as they were pursuing case since pronouncement of judgement in case of SRF Ltd. (supra) and that there is no time limit prescribed under section 149 and same cannot be imported by referencing to a circular or regulation no illegality is found in the impugned orders and the appeals are held to be without merits. I don't find it necessary to deal with other preliminary objections raised by the Respondents.

Order

> *7.0 In light of above discussions and findings, the appeals are rejected and impugned orders are upheld.*
> *Matter is disposed accordingly."*

21. As per the Petitioner, *vide* letter dated 6th July, 2023, it was informed that the Customs Department had chosen to accept the above Order-in-Appeal. Thereafter, *vide* the 17 impugned orders of refund, the Customs Department had sanctioned refund to the tune of Rs. 145,81,14,998/- cumulatively in respect of all the refund applications. The relevant portion of one of the impugned orders reads as under:

> *"20. Now I proceed to examine the claim with respect to time i.e. whether the refund claim submitted by the applicant is well within time and is not hit by bar of limitation to proceed further in the matter. The applicant has filed refund claim application on 17.10.2022 against the excess additional customs duty ('CVD') paid by them during the period from 01.08.2014 to 31.08.2014. I find that the Order-in-Original No. 63/2022-23/PK/DC/GR-5A/ACC-Import was passed on 07.06.2022 by which the Bills of Entry were reassessed. I find that Section 27 (IB) provides a time limit of one year from date of reassessment order.*
>
> *21. Since the amount of CVD claimed as refund in the present case is arising consequently from the order of reassessment, dated 07.06.2022 and refund application is filed on 17.10.2022 i.e. within one year of such reassessment order. Hence, I am of the considered opinion that the refund claim amounting to Rs.12,15,85,871/- is not hit by the bar of limitation.*

26. In view of above noted facts I am of considered view that the applicant has been able to discharge the statutory obligation as casted on it and therefore, accordingly I hold that claimant is entitled for refund. Further, Pre-audit branch has conveyed their approval of the said refund claim vide their letter C No. Cus.Adt/Import/Pre-post Audit/49/2020-21/Pt dated 11.08.2023. 27.

In view of the above, I pass following order: -

ORDER

In view of the above, I hereby sanction the refund claim of Rs.12,15,85,871/- (Rupees Twelve Crores Fifteen Lakhs Eighty-Five Thousand Eight Hundred Seventy-One Only) filed by M/s M/s. Jaina Marketing & Associates, D-170, Okhla Industrial Area Phase-1, New Delhi-110 020, payable by R.T.G.S., in terms of provisions of Section 27(2) of Customs Act, 1962."

22. However, the Petitioner – M/s. Jaina Marketing is aggrieved by the fact that the Customs Department has not granted interest on the sanctioned refund.

23. M/s. Jaina Marketing has also filed one more writ petition being ***W.P.(C) 1291/2024,*** in respect of mobile phones imported during different periods under respective BoEs.

24. Apart from these two petitions filed by M/s Jaina Marketing, there are 2 more writ petitions, being ***W.P.(C) 1297/2024, W.P.(C) 1325/2024*** filed by Intex Technologies (India) Ltd. & U.T. Electronics Pvt. Ltd., respectively, where the sequence of events is similar to that in the petitions filed by M/s Jaina Marketing. Thus, for ease of reference, the relevant details of the all

said four petitions, as also ***W.P.(C) 10977/2017*** and ***W.P.(C) 11319/2017***, are set out below in a tabular form:

Writ Petition No. & Petitioner's Name	**Relevant Period of Import**	**Date of filing application for re-assessment/Date of HC order leading to refund or re-assessment**	**Date of re-assessment order, if any**	**Date of filing of Refund application**	**Date of Refund order (impugned order) and the sanctioned amount)**
W.P.(C) 10977/ 2017 Lava International Ltd.	02.03.2015 to 16.07.2015	10.03.2017 (Order of the HC)	25.03.2017	29.03.2017	13.04.2017 **Rs.1,09,11,05,670/-**
W.P. (C) 11319/ 2017 Lava International Ltd.	02.03.2015 to 16.07.2016	30.11.2016 (Order of the HC)	No re-assessment of BoEs	07.12.2016	03.03.2017 **Rs.18,87,85,533/-**
W.P.(C) 1291/ 2024 M/s Jaina Mobile India Pvt. Ltd.	18.02.2014 to 18.02.2015 and 1.03.2015 To 12.07.2015	21.04.2015 (1st Application for re-assessment)	14.06.2022	12.06.2023	29.08.2023 **Rs. 5,91,44,817/-** (Rs. 5,20,70,702 + Rs. 70,74,115)
W.P. (C) 1225/2024 Jaina Marketing & Associates	18.02.2014 to 18.02.2015 and 09.03.2015 To 16.07.2015	21.04.2015 (1st Application for re-assessment)	07.06.2022 & 15.06.2022	17.10.2022	16.8.2023, 23.8.2023, 25.8.2023, 30.8.2023 and 31.08.2023 **Rs.1,45,81,14,998** (Rs. 12,15,85,871/- + Rs.12,74,26,432/- + Rs. 14,22,07,973/- + Rs. 14,38,64,540/- + Rs. 11,48,04,596/- + Rs. 11,63,92,649/- + Rs. 6,20,71,349/-

					+ Rs. 6,95,61,918/- + Rs. 7,74,88,200/- + Rs. 6,64,24,966/- + Rs. 3,33,33,564/- + Rs. 9,45,47,770/- + Rs. 96,46,488/- + Rs. 6,86,48,390/- + Rs. 6,36,79,049/- + Rs. 7,65,26,738/- + Rs. 6,99,04,502/-)
W.P.(C) 1297/2024 M/s Intex Technologies (India) Ltd.	18.02.2014 to 18.02.2015 and 1.03.2015 To 31.03.2015	15.05.2015 (1st Application for re-assessment)	14.06.2022	14.11.2022	16.8.2023, 21.8.2023, 28.8.2023 and 02.09.2023 **Rs.1,34,17,50,618.75** (Rs. 14,78,82,566/- + Rs.11,99,09,033/- + Rs. 12,99,15,112/- + Rs. 10,60,59,334/- + Rs. 8,83,52,246/- + Rs. 8,65,36,140/- + Rs. 7,86,24,511/- + Rs. 21,83,97,130/- + Rs.5,05,89,866/- + Rs. 9,54,62,440/- + Rs. 5,69,00,907/-

					+ Rs. 2,47,72,116/- + Rs. 5,03,00,482/- + Rs. 8,80,48,735/-)
W.P. (C) 1325/2024 U.T. Electronics Pvt. Ltd.	18.02.2014 To 26.09.2014	02.01.2019 (1st Application for re-assessment)	15.06.2022	15.05.2023	29.08.2023 **Rs. 8,96,03,890/-**

II. Submissions on behalf of the Parties:

II(A). Submissions on behalf of the Petitioner in W.P.(C) 10977/2017 and W.P.(C) 11319/2017(The Lava International Matters):

25. It is the case of the Petitioner in these writ petitions that the challenge raised by them to the impugned orders dated 3rd March 2017 and 13th April 2017 is only against that part of the said orders which deny the Petitioner interest on its refund claim filed pursuant to re-assessment of the 844 BoEs and 200 BoEs respectively.

26. At the outset, the Petitioner submits that it had paid the duty amount in question under protest, as is evident from the protest letter dated 16th May, 2015.

27. The Petitioner submits that this is a case where the Customs Department has unfairly kept their amount with them for close to 2 years, when the excess duty had to be paid due to the electronic system put in place by the Customs Department. However, the said system which did not allow the Petitioner to avail the benefit of the concessional rate of duty which the Petitioner was entitled to in law.

28. It is further submitted that the Petitioner had to challenge the BoEs and only on the conclusion of proceedings, could the Petitioner have filed for interest.

29. It is also the case of the Petitioner that the date of appeals filed by the Petitioner against the BOEs must be treated as the relevant date for the purposes of section 27A of the Customs Act, 1962.

30. It is thus submitted that on the very first instance, when the Petitioner filed its appeal before the Commissioner (Appeals), it has filed the same praying for setting aside of the impugned BOEs and grant of refund along with interest. In such a situation, an appeal against the BOE must be treated as a refund application.

31. It is submitted that the entire purpose of filing of the appeal against the BoEs was only for seeking refund, hence, the appeal is nothing but a refund application.

32. Furthermore, it is submitted that the Petitioner was forced to file an appeal as opposed to filing a refund application because of the stand taken by the Customs Department that no refund claim can be filed directly by the Petitioner.

II(B). Submissions on behalf of the Petitioners in W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024, and ***W.P.(C) 1325/2024:***

33. Ms. Asha Jain Madan, ld. Counsel for the Petitioner appearing in the said four matters, has submitted the amount with respect to the BoEs has been retained by the Customs Department for more than nine years in an illegal manner.

34. It is also submitted that the decision in ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** decision merely reiterated the law in the

judgment dated 26th March, 2015. The same was, however, also following the earlier decisions of ***Thermax (P) Ltd. vs. Collector of Customs, (1992) 4 SCC 440*** and other well-established decisions. Thus, after 26th March, 2015 there was no justification for the Customs Department to collect the customs duty and not to refund the same.

35. The Petitioners' case is that they moved for re-assessment because of the decision in ***ITC Limited vs. Commissioner of Central Excise, Kolkata, (2019) 17 SCC 46***, i.e. after the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** judgment was given. The said applications for assessment were filed in 2015 however, they were only decided much later, *i.e.,* in 2022. The entire delay in the re-assessment cannot give any benefit of enjoying the money belonging to the Petitioners by the Customs Department.

36. Moreover, it is further submitted that the EDI system was not updated despite the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** judgment having clarified the law. The Petitioner, in fact, sought for payment of the duty manually, however, the same was not acceded to.

37. It is further the case of the Petitioners that the representation filed by them on 21st April 2015 for re-assessment of the BoEs leaves no doubt that the Petitioner was willing to deposit the amounts in terms of the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** judgment which was not acceded to by the Customs Department. The impugned orders, in fact, record clearly that the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** judgment is based on ***Thermax (P) Ltd. vs. Collector of Customs (supra)***.

38. Hence, the delay of eight years in the re-assessment should not deprive the Petitioners of enjoyment of their money. The refund was finally granted by the Customs Department vide the impugned orders and the said orders itself

record that the Petitioners were not fence sitters and they have been pursuing their case since the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** judgment.

39. Under these circumstances, it is the submission on behalf of Petitioners that the Customs Department having accepted the applications for refund and refunds having been granted, the same cannot be without interest.

40. It is also submitted by Ms. Madan, ld. Counsel for the Petitioners that the refunds granted in these cases were not under the Customs Act,1962 itself but under the general law, wherein the Customs Department cannot retain money which is not payable by the Petitioners. Thus, the scheme of Section 27 of the Customs Act, 1962, would not be applicable in these cases. Further, reliance is placed upon the decision in ***Industrial Mineral Co. (MC) vs. Commissioner of Customs, Tuticorin, 2018 (361) E.L.T. 669 (Mad.)*** to state that whenever there is a payment made under protest and there is a claim for interest, interest would be liable to be paid. Reliance is also made on the following judgments:

- ***Om Gems and Jewellery v. Principal Commissioner, Directorate of International Customs, Free Trade Agreements (FTA) Cell New Delhi and Others [2023 SCC Online Del 7932]***
- ***Union of India vs. Tata Chemicals Ltd. [(2014) 6 SCC 335]***
- ***G.L. Jain v. Commissioner of Income-Tax and Ors. [2012 5CC OnLine Del 445]***
- ***Civil Appeals Nos. 2995-96/2022 titled Union of India & Ors. vs. Willowood Chemicals Pvt. Ltd. & Anr. [(2022) 9 SCC 341]***
- ***South Eastern Coalfields Ltd. vs. State of M.P. (2003) 8 SCC 648***

41. It is further stated that the claim of interest on behalf of the Petitioners is from the date of deposit. In fact, Ms. Madan, ld. Counsel refers to the counter

affidavit filed by the Customs Department, where it is admitted by the Department that there was some clarity after the ***SRF Limited vs. Commissioner of Customs, Chennai (supra)*** decision. Thus, if that is so, the worst position for the Petitioners would be to be entitled to interest from the date of ***SRF Limited vs. Commissioner of Customs, Chennai(supra)*** decision.

42. In addition, the decision in ***W.P.(C) 5590/2023*** titled ***Sesame Workshop Initiatives (India) Pvt. Ltd. Vs. Union of India & Ors.*** is also relied upon by the Petitioners along with the decision in ***W.P.(C) No. 7853/2017*** titled ***Telecare Network (India) Pvt. Ltd. vs. Union of India,*** wherein on similar facts, the Division Bench had held that the interest would be liable to be paid.

II(C). Per Contra: Submissions on behalf of Deputy Commissioner (Refund) in W.P.(C) 10977/2017 and W.P.(C) 11319/2017:

43. At the outset it is submitted on behalf of Respondent No 2 that the averments made by the Petitioner by way of the petitions are based on a completely erroneous understanding of law under the Customs Act, 1962 and deserves to be dismissed on this very ground alone.

44. It is submitted that the Petitioner has belatedly filed the writ petitions to get over the bar of limitation prescribed under section 128 of the Customs Act, 1962 for filing an appeal against the impugned orders dated 3rd March, 2017 & 13th April, 2017.

45. It is further submitted that under section 128 of the Customs Act, 1962, the limitation period for filing an appeal is 60 days from the date of communication of the order and the Appellate Authority has the power to condone the delay for further period of 30 days and not beyond. In the present case, the petitions have been filed much after the expiry of the

statutory period for filing an appeal. Thus, it is the case of Respondent No. 2 that these aspects of delay, in fact, bely the very plea of the Petitioner that they did not have an efficacious alternative remedy, in as much as, the Petitioner never chose to exhaust the statutory remedy of filing an appeal within the prescribed period.

46. Reliance is also placed by Respondent No. 2 on the order dated 11th December, 2017 passed by this Court in ***W.P.(C) 10977/2017.*** It is the case of Respondent No. 2 that the said order reflects that the Petitioner Counsel had in fact accepted that the impugned order denying interest is appealable. Hence, when that is the case and the Petitioner chose not to pursue the statutory remedy available to it within the limitation period prescribed, it cannot be allowed to circumvent the mandate of law and seek shelter under the writ petitions.

47. It is also submitted on behalf of Respondent No. 2 that interest on the amount of duty to be refunded arises only when the refund claim is not paid within 03 months from filing the claim. However, it is the stand of Respondent No. 2 that it is clearly held in the impugned orders that the refund has been sanctioned within a period of three months from the date of receipt of applications. In view of the above findings of the Deputy Commissioner (refund) in the impugned orders, the Petitioner is not entitled to interest on the amount of duty refunded in both the cases. Mr Ramachandran, ld. Counsel also relies upon the following decisions in support of his submissions:

(i) ***Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive), 2004 (172) E.L.T. 145 (S.C.)***

(ii) ***Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Ltd., (2000) 6 SCC 650***

(iii) ***ITC Limited vs. Commissioner of Central Excise, Kolkata, (2019) 17 SCC 46***

48. It is also submitted on behalf of Respondent No. 2 that it is an admitted fact that the Petitioner had self-assessed the BoEs and paid duty accordingly. The Petitioner's refund claim was processed and sanctioned as per the existing law under section 27 of the Customs Act, 1962. Thus, it is not a case where the Respondents have unduly benefited, as claimed by the Petitioner.

49. Mr. Ramchandran, ld. SSC further submits that in a taxing statue, the Court has to go strictly interpret the provisions. An equitable consideration would be of no avail. It is submitted that till the re-assessment was done, the amount of duty which was deposited by the Petitioner was not refundable in terms of ***ITC Limited (supra)***. Moreover, it is because of the decision in ***SRF Ltd. (supra)*** wherein it was held by the Supreme Court that CENVAT credit was not admissible to the Petitioner, that the legal position became clear. Despite the said position, the Petitioner continued to deposit the paid Customs Duty and, therefore, the Customs Department cannot be blamed for the same.

50. Mr. R. Ramachandran, ld. Counsel for the Customs Department has also handed over his note of arguments which has dealt with various propositions.

51. One submission of Mr. R. Ramachandran is that the amount which has been paid by the Petitioners was duty and not merely a deposit. This is clear from various pleadings in the writ petitions. According to ld. Counsel, deposit and duty are two different concepts and cannot be read interchangeably. Interest is usually given on deposit and not in respect of duty. Since the same

has been deposited by the Petitioners as duty and under the understanding that the Petitioners may not be entitled to exemption, the Customs Department cannot be blamed.

52. It is also disputed that only electronic payment is permissible through ICEGATE. It is submitted that in fact, the petitions mention TR-6 Challans as an evidence of payment of duty, which itself shows that the duty was physically paid. It is submitted by ld. Counsel that the Customs Department does not force any party to take any exemption. The Petitioners ought to have claimed the exemption.

53. It is the submission of ld. Counsel that a protest letter cannot be treated as an application for refund and the same would also not change the character of the amount deposited from duty to deposit. The further submission is that taxation statute must be interpreted strictly and when there is a proper procedure provided for payment of refund and interest under Section 27 and 27(A) of the Customs Act, 1962, the same cannot be judicially re-written. Reliance is placed upon by ld. Counsel for the Customs Department on the following four decisions:

- ***Collector of Central Excise, Kanpur vs. Flock (India) PVt. Ltd. 2000 (120) E.L.T. 285 (S.C.)***
- ***Priya Blue Industries Ltd. vs. Commissioner of Customs (Preventive) 2004 (172) E.L.T. 145 (S.C.)***
- ***ITC Ltd. vs. Commissioner of Central Excise, Kolkata, 2019 SCC Online SC 1227***
- ***Lava International Ltd. vs. Union of India & Ors. High Court of Delhi-W.P. (C) 8752/2017 Order dated 21.07.2023***
- ***Union of India vs. Ind-Swift Laboratories Limited (2011) 4 SCC 635.***

54. According to ld. Counsel, the Petitioner in ***10977/2017 and W.P.(C) 11319/2017*** ought to have first gotten the re-assessment done before seeking refund.

II(D). Per Contra: Submissions on behalf of Deputy Commissioner (Refund) in W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024, and ***W.P.(C) 1325/2024:***

55. Ms. Anushree Narain, ld. Counsel appearing for the Customs Department in ***W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024,*** and ***W.P.(C) 1325/2024*** submits that under the Customs Act, 1962, there is no refund permissible except as per Section 27 and 27 (A) thereof. She relies upon Section 27(2) and 27(3), as also upon the explanation in Section 27(A) of the Customs Act, 1962 to argue that the three months' time is provided for making the refund after the sanction order is issued.

56. Reliance is also placed upon the nine-judge Bench decision in ***Civil Appeal No. 3255/1984*** titled ***Mafatlal Industries Ltd. vs. Union of India*** wherein the Supreme Court has held in the context of the Customs Act,1962, that the person claiming the refund has the burden of duty to show that the person would be entitled to refund. This would be by evidencing that the Custom Duty has not been passed on to a third party. Until and unless this burden is discharged by the Petitioners, the refund could not have been granted in this case even if the Customs Department was wrongly detaining the amounts. According to Ms. Narain, ld. Counsel, this burden was discharged only finally when the Order-in-Original was passed on 7th June, 2022 and not before that. Once the said order was passed in terms of the explanation in Section 27(A) of the Customs Act, 1962, there was an appeal which was filed by the Department which was finally decided on 6th April, 2023. Thereafter,

within three months after the said order, the amounts have been refunded.

57. Thus, according to Ms. Anushree Narain, ld. Counsel, there is no delay whatsoever in the refunds and no interest would be liable to be paid.

II(E). Rejoinder Submissions on behalf of the Petitioner in W.P.(C) 10977/2017 and W.P.(C) 11319/2017:

58. The Petitioner submits that the Respondent's objection regarding the maintainability of the Writ Petition is misconceived.

59. It is submitted that merely because the appellate remedy is barred by limitation does not mean that the petitions are not maintainable. It is further submitted that powers of the High Courts under Articles 226 & 227 of the Constitution are conferred by the Constitution and it cannot be diluted or nullified by any statute or legislation.

60. In support of the above stated submission, ld. Counsel for the Petitioner has also relied upon the judgment of the High Court of Gujarat in case of ***Panoli Intermediate (India) Pvt. Ltd.* v. *Union of India, 2015* (326) *ELT* 532 *(Guj.)*.**

61. The Petitioner also relies upon the following judgments in support of their argument that a writ petition is maintainable even if the statutory appeal is barred by limitation:

- ***Phoenix Plasts Co. v. C.C.Ex (Appeal-I), Bangalore, 2016 (344) ELT 148 (Kar.)***
- ***Practice Strategic Communications India P. Ltd. v. CST Domlur, 2016(344) ELT 148 (Kar.)***
- ***JCB India Ltd v. Union of India, 2014 (301) ELT 209 (P&H)***

62. It is also the case of the Petitioner that they were forced to pay additional duty under protest, as the EDI system did not allow filing of the

BoEs claiming concessional rate of duty under ***Notification No. 12/2012-CE.*** As the EDI system was not allowing the Petitioner to file the BoEs with CVD 1%, the Petitioner requested permission to file manual BoEs till the time EDI system was rectified for enabling on-line filing under the above notification entry.

63. However, since the abovementioned request was not accepted, the Petitioner was forced to file the BoEs through the EDI system on payment of CVD at 12.5% instead of 1% for the interim period, under protest.

64. Thus, it is their case that if the Petitioner was allowed to claim the exemption at the outset or if it was allowed to file manual BoEs, then it would not have had to pay the amount in question. The amount was collected by the Respondents without any authority of law. Thus, under such facts and circumstances, the Petitioner must be granted interest on the amount it was forced to pay else it would amount to gross injustice.

65. According to the Petitioner, it is entitled to interest from the date of deposit of the Customs Duty in respect of the subject imports *i.e.,* March, 2015, itself in terms of Section 27A of the Customs Act, 1962. In support of their submissions, during the course of arguments, ld. Counsel for the Petitioner relies upon the following decisions:

(i) Indure Ltd. & Anr. v. Commercial Tax Officer & Ors.*, *2010 (9) SCC 484

(ii) Goldstone Engineering Ltd. v. Union of India, 2005 (181) E.L.T. 11 (A.P.)

(iii) Calcutta Iron & Steel Company v. CESTAT Chennai*, *2017 (350) E.L.T. 327 (Mad.)

66. In addition, ld. Counsel for the Petitioner has further relied upon the decision of Supreme Court in ***ITC Limited vs. Commissioner of Central Excise, Kolkata***, ***(2019) 17 SCC 46*** to state that there can be no doubt that re-assessment is required to be done before any refund application can be considered with respect to BoEs. Inasmuch as in the present case, the re-assessment has been done and the refund has been allowed after following the process prescribed under ***ITC (supra)***, the Petitioner cannot be deprived of the statutory interest.

67. Mr. Yogendra Aldak, ld. Counsel for the Petitioner also reiterates that the protest has been registered by the Petitioner from inception itself. It is his submission that the judgments in ***Civil Appeals Nos. 1337-40/2005*** titled ***Sandvik Asia Ltd. Vs. Commissioner of Income Tax I, Pune and Ors.*** and ***Civil Appeal No. 6301/2011*** titled ***Union of India vs. Tata Chemicals Ltd.*** would fully cover the present position, in as much as even in those cases, there was a deposit which was made incorrectly and eventually, refund, along with interest thereon was granted.

ANALYSIS & FINDINGS:

68. The common issue that is to be decided in these writ petitions is whether interest would be liable to be granted to the Petitioners on the refund amounts and if so, for what period, and at what rate.

69. The facts of the cases are mostly not in dispute. The Petitioners imported various mobile devices, including phones, tablets, parts, etc. between the respective time periods. Upon such imports, the Petitioners paid customs duty. The Petitioners also paid 12.5% or 6% of additional customs duty, also known as Counter Vailing Duty (*hereinafter 'CVD'*) in terms of Sections 3(1) and 3(5) of the Customs Tariff Act, 1975.

70. It is the case of the Petitioners that the CVD was paid under protest, however, this position is disputed by the Customs Department.

71. According to the Petitioners, the CVD payable was only 1% at concessional rates and hence, the entire remaining amount of 11.5% or 5% paid as CVD, along with interest was liable to be refunded to the Petitioners.

72. The payment made under the various BoEs was on the basis of self-assessment done by the Petitioners themselves and there were no separate assessment orders which were passed. The Petitioners in few of the cases then challenged these self-assessed BoEs and sought setting aside of the same before the Commissioner (Appeals), Customs, which was rejected *vide* the impugned orders. The CESTAT had remanded the matters to the Adjudicating Authority.

73. The Adjudicating Authority then re-assessed, finalised the BoEs and granted exemption, allowing the benefit of concessional rate of duty to the Petitioners. Pursuant to the said orders, the Petitioners filed a request for refund of excess CVD and other consequential duties, along with interest. These refund applications were scrutinised and deficiencies were pointed out and the same were again refiled. Subsequently, the impugned orders were passed in all the respective matters.

74. Insofar as the interest on refund is concerned, the Adjudicating Authority held in all the cases that the date of receipt of refund application duly completed and filed would be the relevant date under Section 27(A) of the Customs Act, 1962.

75. On behalf of the Petitioners, detailed arguments have been made and reliance has been placed on various judgments to argue that interest on refund ought to be given as a matter of right, as the same would be completely unjust

enrichment of the concerned Department, if rejected.

76. It is their submission that since inception itself, in view of the decision in ***SRF Ltd. (supra),*** the payment of CVD was not called for and the Petitioner was entitled to exemption.

77. In order to appreciate this submission, the background of the decision rendered in ***SRF Ltd. (supra)*** deserves to be noted.

78. In ***SRF Ltd. (supra),*** the Supreme Court was considering whether if credit is not availed of in respect of input of capital goods used in the manufacture of the final goods, whether the CVD would be liable to be paid at all or would the Petitioner be entitled to exemption from CVD.

79. Before the Supreme Court, the Department had argued that in cases where credit under CENVAT Credit Rules, 2004 is not admissible, fulfilment of condition of ***Notification No.6/2002-CE*** dated 1st March, 2002 did not arise.

80. However, the Supreme Court held to the contrary and followed the decision in ***Thermax Private Limited vs. Collector of Customs (Bombay) New Customs House [1992 (4) SCC 440]*** as also, ***AIDEK Tourism Services Private Limited v. Commissioner of Customs, New Delhi' (Civil Appeal No. 2616 of 2001)***.

81. Thus, in ***SRF Ltd. (supra)***, the Appellant was given benefit of exemption from payment of CVD. This decision was rendered on 26th March, 2015. The relevant portion of the said decision is set out below:

> ***5.*** *In the present case, the admitted position is that no such Cenvat credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid notification is that in the case of the appellant, no such credit is admissible under the Cenvat Rules. On this basis, Cegat has come to the*

conclusion that when the credit under the Cenvat Rules is not admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in Ashok Traders v. Union of India [(1987) 32 ELT 262 (Bom)] , wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw naphtha used in HDPE in the foreign country, Central excise duty leviable under the Indian Law can be levied or paid." Thus, Cegat found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.

***6.** We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this Court in Thermax (P) Ltd. v. Collector of Customs [(1992) 4 SCC 440] , which was affirmed by the Constitution Bench in Hyderabad Industries Ltd. v. Union of India [(1999) 5 SCC 15].*

***7.** In a recent judgment pronounced by this very Bench in Aidek Tourism Services (P) Ltd. v. Commr. of Customs [(2015) 7 SCC 429] , the principle which was laid down in Thermax (P) Ltd. [(1992) 4 SCC 440] and Hyderabad Industries Ltd. [(1999) 5 SCC 15] was summarised in the following manner: (Aidek Tourism case [(2015) 7 SCC 429] , SCC pp. 436-37, paras 17-18)*

"17. The ratio of the aforesaid judgment in Thermax (P) Ltd. [(1992) 4 SCC 440] was relied upon by this Court in Hyderabad Industries Ltd. [(1999) 5 SCC 15] while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein.

18. In Hyderabad Industries case [(1999) 5 SCC 15] (SCC pp. 23-24, paras 10-11), the Court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the

*Tariff Act. The Explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the Explanation is that the article is produced or manufactured in India. The second limb to the Explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word "so" implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the Explanation, if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. [**Ed.**: The matter between two asterisks has been emphasis supplied.] For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon [**Ed.**: The matter between two asterisks has been emphasis supplied.]."*

8. *We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that the appellants were entitled to exemption from payment of CVD in terms of Notification No.*

6/02. The appeals are allowed and the demand of CVD raised by the respondent authorities is set aside.

82. Since the interpretation of the Customs Department was rejected by the Supreme Court in the abovesaid case, hence, the case of the Petitioner is that they were clearly covered by the judgement in ***SRF Ltd. (supra)*** and ought to have been extended the benefit thereof.

83. In effect, therefore, the case of the Petitioners is that though there was no doubt even prior to the decision in ***SRF Ltd. (supra)*** that the Petitioners need not have deposited CVD, at the least, post the decision in ***SRF Ltd. (supra)*** on 26th March, 2015 they were entitled to the exemption in terms of ***Notification No.6/2002-CE***. Thus, CVD having been wrongly deposited interest is liable to be granted on the refund amounts.

84. The further case of Petitioners is that the ICEGATE portal, which was to be used for clearance of goods, did not give the option to the Petitioners for availing the benefit in terms of ***SRF Ltd. (supra),*** and they were thus, forced to deposit the CVD. Thus, it is not sufficient that merely refunds are granted. The Petitioners are entitled to payment of interest on the said refund as well from the date of deposit itself and in any case, from after the decision in ***SRF Ltd. (supra)*** was rendered on 26th March, 2015.

85. The decision of ***SRF Ltd. (supra)*** was considered by the Coordinate Bench of this Court in two separate judgements. Firstly, in ***Micromax Informatics Ltd. (supra),*** where on similar import of mobile phones, Micromax had paid CVD of 6% as against 1% CVD.

86. In the said matter, the Court noticed the decision of the Supreme Court in ***Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) 2004 (172) E.L.T. 145 (S.C.)*** and ***Aman Medical Products Ltd. Commissioner of***

Customs (2010) 250 ELT 30 (Delhi). Further, in ***Micromax Informatics Ltd. (supra),*** it also took note of the change in Section 27 of the Customs Act, 1962, post 8th April, 2011 and observed as under:

> *"12. An important change that has been made is that a person can now claim refund of any duty or interest as long as such duty or interest was paid or borne by such person. The conditionality of such payment having been made pursuant to an order of assessment does not exist. Secondly, once an application is made under Section 27(1) of the Act, it is incumbent on the authority concerned to make an order under Section 27 (2) determining if any duty or interest as claimed is refundable to the applicant. The proviso to Section 27(2) of the Act sets out the instances where refund should be paid to the claimant instead of being credited to the Consumer Welfare Fund. The only relevance as far as payment of duty under protest is concerned is indicated in the second proviso to sub-section (1) of Section 27 of the Act which states that the limitation of one year shall not apply in such event. In other words, whether or not the duty is paid under protest once an application for refund is made in the requisite manner and form as prescribed, it is incumbent on the authority to deal with such an application. Where there is an assessment order, the authority will take it into account in deciding the application for refund. If such assessment order has been reviewed or modified in appeal such further order will obviously be taken into account. In other words, under Section 27 of the Act, as it now stands, it is not open to an authority to refuse to consider the application for refund only because no appeal has been filed against the assessment order, if there is one.*
>
> *13. As far as the present case is concerned, there was indeed no assessment order as such*

passed by the customs authorities. Although under Section 2 (ii) of the Act, the word 'assessment' includes a self-assessment, the clearance of the goods upon filing of the B/E and payment of duty is not per se an 'assessment order' in the context of Section 27 (1) (i) as it stood prior to 8th April 2011, particularly if such duty has not been paid under protest. In any event, after 8th April 2011, as noticed hereinbefore, as long as customs duty or interest has been paid or borne by a person, a claim for refund made by such person under Section 27 (1) of the Act as it now stands, will have to be entertained and an order passed thereon by the authority concerned even where an order of assessment may not have reviewed or modified in appeal.

14. The Assistant Commissioner (Refund), in the present case, appears to have not noticed the decision of this Court in Aman Medical Products Limited (supra) which was rendered in the context of Section 27 of the Act as it stood prior to 8th April 2011. Further he failed to notice that the said provision has undergone a significant change with effect from 8th April 2011. The impugned order of the Assistant Commissioner (Refund) rejecting the refund claim of the Petitioner on the ground of maintainability was, for the aforementioned reasons, plainly erroneous.

15. Consequently, the Court sets aside the three impugned orders dated 21st December 2015 passed by the Assistant Commissioner (Refund) in respect of the refund claims of the Petitioner for the months of August, September and October 2014 and restores the said applications to the file of the Assistant Commissioner (Refund) for being dealt with on merits in accordance with law."

87. Secondly, in ***Telecare Network (India) Pvt. Ltd. v. Union of India 2019 (368) E.L.T, 36 (Del.)***, a decision rendered on 6th August, 2018, a Coordinate Bench of this Court, discussed ***SRF Ltd. (supra)*** and ***Thermax Private Limited (supra)***, as also the decision of ***Mafatlal Industries Ltd. v. Union of India, 1997 (89) E.L.T. 247 (S.C.)*** and observed as under:

> *"5. The facts of the present case are that the petitioner imported mobile handsets during the period 26.03.2015 to 22.06.2015. During this period, it filed 103 Bills of Entries (hereinafter referred to as 'BoE') for import of mobile phones in India. It self-assessed duty, through ICEGATE [i.e. Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs (CBEC)]. It is submitted that ICEGATE provided no option to the Petitioner to avail the exemption under the concerned notifications; it consequently paid additional customs duty (commonly known as "CVD") leviable under Sections 3(1) and 3(5) of the Customs Tariff Act, 1975, @ 12.5%, though payable at 1%, classifying them under the relevant items of the Customs Tariff of Schedule 1 to the said Customs Tariff Act, 1975 (CTA). The Petitioner claims that it was made to pay the excess amount towards CVD @12.5% for imports of the mobile phones classified under CTI 8517 under mistake of fact and law that the duty payable was at 12.5%, being totally unaware of the fact that the Supreme Court had already declared the law in the case of M/s SRF Limited v Commissioner of Customs, Chennai 2015 (14) SCC 596 in terms of which it was eligible for availing the concessional rate of CVD at 1% in terms of Notification No. 12/2012- CE dated 17.03.2012 (as amended from time to time). The benefit of concessional rate was available subject to fulfilment of condition No.16 of the Notification which provided that the assessee should not have taken credit in respect of the goods under the CENVAT Credit Rules, 2004 [hereafter "the Credit Rules"] in respect of the inputs and capital*

goods used in the manufacture of these goods. Before the law was declared by the Supreme Court in the case of SRF Limited (supra), the Revenue was consistently denying the benefit of the notification to assessees on the ground that no CENVAT Credit on inputs and capital goods was admissible under the Credit Rules to the assessee for manufacturing of mobile phones as the goods were not manufactured in India but were imported, therefore, condition No. 16 was not fulfilled as only those conditions could be satisfied which were capable of satisfaction.

6. It is submitted that following the judgment in the case of Ashok Traders v. Union of India 1987 (32) ELT 262 (Bom) of the Bombay High Court, it was held that the condition which could not be satisfied and had to be treated as not satisfied. In the case of SRF Limited (supra) decided on 26.03.2015, dealing with similar issue as to whether the assessee is entitled to the benefit of Notification No. 12/2012 CE, the Court held that the assessee was entitled to exemption from payment of CVD in view of the law already declared in the cases of Thermax Private Limited v. Collector of Customs (Bombay), New Customs House 1992 (4) SCC 440; Hyderabad Industries Ltd. v. UOI 1999 (5) SCC 15; AIDEK Tourism Services Private Limited v. Commissioner of Customs, New Delhi 2015 (7) SCC 429 that for quantification of additional duty in the case of import, it has to be imagined/presumed that the article imported had been manufactured or produced in India to examine what amount of excise duty was leviable. The condition of availing CENVAT was held to be irrelevant and furthermore, the presumption that such goods were manufactured in India and excise duty leviable on it had to be drawn and then an ascertainment would be essential to determine the extent of CVD to which the importer would be entitled and the refund application were to be processed on the basis of the said principle. The demand of the CVD raised in the said cases was thus set aside.

7. It is stated that after the declaration of the law

in SRF Limited (supra), in particular, the respondents have been giving the benefit of concessional rate of duty to others till the statutory amendment took place in Notification No.12/2012 as held in order dated 28.01.2016 passed in C/5l815 to 51874 and 51878 to 51899/2016 by CESTAT. The Petitioner complains that it has thus been subjected to discrimination. The petitioner states that since it merely imported the mobile phones and not manufactured them, it could not possibly have taken credit in respect of the said imported goods under the provisions of Credit Rules, 2004 as held by the Supreme Court in SRF Limited (supra). Thus, the Petitioner was eligible for the exemption from payment of CVD at enhanced rate; it claimed the refund application on 24.6.2016 claiming refund of extra amount paid towards CVD during the period of 26.03.2015 to 22.06.2015. The refund application of the Petitioner was accompanied by relevant documents. It is submitted that the Respondents had issued various deficiency memoranda to the Petitioner (its office letters dated 29.09.2016, 26.10.2016 and 11.11.2016). It is submitted that in its letter of 06.10.2016 the petitioner submitted detailed additional submissions and had disputed the fact that the claim was time barred under Section 27 of the Act. It was stated inter-alia as under:

> *"With respect to the eligibility of refund, we would like to submit that the Company has claimed refund of the amount deposited in excess of the actual duty payable on import of mobile phones. The amount paid in excess is not under any of the provisions of the Act and cannot be termed as 'duty' paid or payable under this Act. Thus, provisions of Section 27 of Act shall not be applicable in the instant case. In this respect, we would like to draw reference from the decision of Hon'ble Supreme Court in the case of Union of India and Others vs. I. T.C. Limited, 1993Supp (4) SCC 326,*

wherein it has been held that any money which is realized in excess of what is permissible in law would be a realization made outside the provisions of the Act. Thus, any amount paid in excess of what was payable is outside the ambit of law.

8. The respondent Customs authorities, who resist the present proceeding for refund, claim that in terms of Section 128 of the Customs Act, 1962, any person aggrieved by any decision or order passed under the Customs Act by an officer of Customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs (in this case, the Assistant Commissioner of Customs) may appeal to the Commissioner (Appeals). The order dated 03.02.2017 falls well within the ambit of these provisions but the petitioner has chosen to directly approach this Court without exhausting the appellate remedy available. It is submitted, besides that the petitioner in the present petition has contended that excess duty was paid by it during the relevant time under the mistake of law and since the duty itself was not payable, the same shall not be hit by the bar provided under Section 27 of the Customs Act, 1962. In this regard the Revenue relies upon the law laid down by the Constitutional Bench of the Supreme Court in Mafatlal Industries Ltd. v. Union of India 1997 (89) ELT 247 (SC).

9. The Revenue points out that the petitioner paid the duty consciously and after deliberation; therefore, the deposit of amounts towards duty were not contrary to law. Therefore, consequent action had to be undertaken by it within limitation prescribed under the Act. Its inaction in filing the refund application within the prescribed period of limitation as per Section 27 cannot be overlooked or even rectified since the said mistake needs to be corrected by filing within the period of one year from the date of payment only. The delay in filing of application for refund beyond the prescribed period of one year cannot be condoned by any adjudicating authority, appellate

authority or tribunal.

10. In SRF Limited (supra), the company had imported Nylon Filament Yarn falling under Chapter 54 of the CTA and claimed NIL rate of additional duty of Customs/ Countervailing Duty (CVD) on account of serial No. 122 of Notification No. 6/2002-CE dated 01.03.2002. The Deputy Commissioner of Customs denied the benefit of the Notification on account of non-fulfilment of that condition that no CENVAT credit under Rule 3 or Rule 11 of the Credit Rules has been taken in respect of the inputs or capital goods used in the manufacture of Nylon Filament Yarn or Polypropylene Multifilament Yarn of 210 deniers with tolerance of 6 per cent. The importer appealed; the Supreme Court in its judgment relied on AIDEK (supra) as well as Thermax (supra). In AIDEK (supra), it was held that:

> *"15. The ratio of the aforesaid judgment in Thermax Private Limited (supra) was relied upon by this Court in Hyderabad Industries Ltd. (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where „a like article is not so produced or manufactured". The use of the*

word „so" implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words „if produced or manufactured in India" do not mean that the like article should be actually produced or manufactured in India. As per the explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon"

11. Based on the judgment in AIDEK (supra) and having regard to the facts of the CASE, the Supreme Court allowed the appeal in favour of the importer and held that it was entitled to exemption from payment of CVD in terms of the Notification.

12. There is no dispute about the applicability of SRF Ltd (supra); indeed the Revenue's refrain during the hearing was that the amounts could not be refunded because the claims were time-barred and that the petitioner has an alternative remedy. This Court is of opinion that the plea of alternative remedy- an unoriginal and frequently used stereotypical defence by public bodies – in such cases at least dodges the crux of any dispute, i.e the liability of the concerned public body or agency on merits. Sans any dispute with respect to facts, this Court finds it entirely unpersuasive, since Article 144

> *of the Constitution, compels all authorities to give effect to the law declared by the Supreme Court (as in this case, the SRF Limited judgment). The other plea which the Customs had relied on, to defeat the petitioner's refund application was Section 27 (3) which confines refunds to the situations contemplated in Section 27 (2), notwithstanding any judgment, order or decree of the court.* ***This Court is at a loss to observe the relevance of that reasoning, given that SRF Limited (supra) had ruled in principle that import implied a deemed manufacture, without any corresponding obligation on the part of the importer to have availed CENVAT credit. As such, the amount claimed was not duty and could not have been recovered by the Customs authorities in the first instance, given the declaration of law in SRF Limited (supra). Therefore, they cannot now seek shelter under Section 27 (3) to resist a legitimate refund claim."***

88. Thus, both, in ***Micromax Informatics Ltd. (supra)*** and in ***Telecare Network (India) Pvt. Ltd. (supra),*** the Coordinate Benches of this Court held that the refund applications filed by the Petitioners deserved to be entertained and had accordingly directed the Adjudicating Authorities to pass fresh orders on the refund applications.

89. This court would have been bound by these decisions rendered under similar circumstances by the Coordinate Benches, however, the decision in ***Micromax Informatics Ltd. (supra)*** was thereafter challenged before the Supreme Court in a batch of cases in which the lead matter was ***ITC Limited v. Commissioner of Central Excise (2019 SCC Online SC 1227)***.

90. In ***ITC Limited (supra),*** the Supreme Court was considering as to whether when BoEs are self-assessed and the goods are processed for clearance, whether refund applications could be filed without reopening the

self-assessments. The Supreme Court, while deciding the said matter, considered the following judgments:

- ***Micromax Informatics Ltd. (supra)***
- ***SRF Ltd. (supra)***
- ***Aman Medical Products v. Commissioner of Customs, Delhi (supra)***
- ***Priya Blue Industries Ltd. (supra)***

91. The Supreme Court also considered the definition of assessment, pre and post the Finance Act, 2011, as also Section 27 of the Customs Act, 1962, pre and post the Finance Act, 2011. The Supreme Court, in ***ITC Limited (supra)***, then observed as under:

> *"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self assessment is an order of assessment as per section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts*

(supra).

44. The provisions under section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. *In Hero Cycles Ltd. v. Union of India 2009 (240) ELT 490 (Bom.) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).*

45. Reliance was also placed on a decision of Rajasthan High Court with respect to service tax in Central Office Mewar Palace Org. v. Union of India 2008 (12) STR 545 (Raj.). In view of the aforesaid discussion,

we are not inclined to accept the reasoning adopted by the High Court, that too is also not under the provisions of the Customs Act.

46. The decision in Intex Technologies (India) Ltd. v. Union of India has followed Micromax (supra). The reasoning employed by the High Courts of Delhi and Madras does not appear to be sound. The scope of the provisions of refund under Section 27 cannot be enlarged. It has to be read with the provisions of Sections 17, 18, 28 and 128.

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

48. Resultantly, we find that the order(s) passed by Customs, Excise, and Service Tax Appellate Tribunal is to be upheld and that passed by the High Courts of Delhi and Madras to the contrary, deserves to be and are hereby set aside. We order accordingly. We hold that the applications for refund were not maintainable. The appeals are accordingly disposed of. Parties to bear their own costs as incurred."

92. The ratio of the above judgement is that even if BoEs have been filed on the basis of self-assessment, unless and until the said self-assessment is re-assessed, applications for refund cannot be made or considered. The Supreme Court while passing the decision, followed the rationale in ***Priya Blue Industries Ltd. (supra),*** wherein the Court has held as under:

"5. Under Section 27 of the Customs Act, 1962 a claim for refund can be made by any person who had (a) paid duty in pursuance of an Order of Assessment or (b) a person who had borne the duty. It has been strenuously submitted that the words "in pursuance of an Order of Assessment" necessarily imply that a claim for refund can be made without challenging the Assessment in an Appeal. It is submitted that if the assessment is not correct, a party could file a claim for refund and the correctness of the Assessment Order can be examined whilst considering the claim for refund. It was submitted that the wording of Section 27, particularly, the provisions regarding filing of a claim for refund within the period of 1 year or 6 months also showed that a claim for refund could be made even though no Appeal had been filed against the Assessment Order. It was submitted that if a claim for refund could only be made after an Appeal was filed by the party, then the provisions regarding filing of a claim within 1 year or 6 months would become redundant as the Appeal proceedings would never be over within that period. It was submitted that in the claim for refund the party could take up the contention that the Order of Assessment was not correct and could claim refund on that basis even without filing an Appeal.

6. We are unable to accept this submission. Just such a contention has been negatived by this Court in Flock (India)'s case (supra). Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 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 over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

93. Thus, after the decision in ***ITC Limited (supra),*** it is the settled position in law that refund applications cannot be filed or entertained, unless the original assessment order, whether by self-assessment or an assessment by the Customs Department is re-assessed.

94. The claim for interest is clearly recognised under Section 27(A) of the Customs Act, 1962. The said provision reads as under:

> ***"27A. Interest on delayed refunds.—If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three 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 five per cent and not exceeding thirty per cent. per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:"***

Such interest would be liable to be paid after the expiry of three months from the date of receipt of application for refund. In case the refund has not been issued even upon expiry of the said three months, interest is liable to be paid.

95. Further, in terms of Section 27(1A) of the Customs Act, 1962, the documentary evidence has to accompany the application for refund as well. The said provision is extracted below for reference:

> ***27. Claim for refund of duty****.—(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 Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the*

expiry of one year, from the date of payment of such duty or interest:

xxx xxx

(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 him and the incidence of such duty or interest, has not been passed on by him to any other person.

96. It is also noted that various judgments have upheld the requirement of payment of interest on refunds. The judgements of the Supreme Court and various High Courts considered interest as nothing more but compensation.

97. For instance, in ***Union of India through Director of Income Tax v. M/s Tata Chemicals Ltd. 2014 (6) SCC 335***, the Supreme Court, while considering a matter under the Income Tax regime, held that refunds have to be accompanied with interest as a matter of course. Similar views have also been expressed in the context of GST regime, wherein in case of GST refunds, interest has been granted.

98. Further, in ***Union of India versus Metal Distributors Ltd. 1992 (60) E.L.T. 196 (Bom.)***, the Bombay High Court held that where the amount paid is without authority of law, interest is liable to be granted on the refund amount.

99. In ***Indure Ltd. v Commercial Tax Officer & Ors. (2010) 9 SCC 461***, when sales tax was paid by the Petitioner under protest, simple interest of 6% was granted.

100. In ***Goldstone Engineering Ltd. Union of India, 2005 (181) E.L.T. 11(A.P.)***, excise duty which was paid under compulsion and protest, was held

to be liable to be refunded with interest from the date of deposit under protest.

101. In ***Calcutta Iron and Steel Company v. CESTAT Chennai, 2017 (350) E.L.T. 327 (Mad.)***, amounts deposited during DRI investigation were held as being liable to be refunded with interest from the date of payment.

102. In ***ONGC v. Commissioner of Customs, Mumbai, (2007) 10 SCC 484***, the Supreme Court went to the extent of holding that interest is liable to be paid on the principle of restitution. The relevant paragraph of the said judgment is extracted below:

> *"6. The appellant is a public sector undertaking. The respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution.* ***In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we directed that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium India (P) Ltdd. V. ONGC and Mcdermott International Inc. v. Burn Standard Co. Ltd."***

103. A review of all the above decisions leaves no manner of doubt that interest would be liable to be paid, if there is a delay in granting refund.

104. The Customs Department, on the other hand, relies upon the decision of Delhi High Court in ***Lava International Ltd. v. Union of India & Ors. W.P.(C) 8752/2017*** wherein, following the decision of ***ITC Limited (supra)***, the refund itself was not granted to the Petitioner in the following terms:

> *"11. From the aforesaid it is manifest that perhaps and in light of the view as expressed in ITC Limited, the refund itself may not have been liable to be granted to the petitioner.* ***Undisputedly, the prayer for refund was not***

made consequent to the assessing officer or appellate authority holding that the petitioner had been held liable to pay duty in excess of what was required. ITC Limited bids us to hold that a claim for refund would sustain only if it be the outcome of an adjudication which ultimately finds that the assessee was forced or compelled to pay duty over and above what was due under the Act. While it is true that the order of 03 February 2017 has not been questioned or assailed by the respondents, we are faced with the situation of whether a prerogative writ should issue despite the petitioner being liable to be viewed as being ineligible to the grant of refund in light of ITC Limited.

12. We find that the ends of justice would warrant the prayer for interest being refused since substantial justice clearly appears to have been meted out to the petitioner. *The Court bears in mind that the issuance of a writ is essentially discretionary. A writ would not issue where the same may lead to or perpetuate an illegality or the conferral of a benefit which is otherwise unsustainable or result in the grant of relief which would be unjustified. The ends of justice would thus warrant the order impugned being left untouched and the prayer for interest being negatived. Ordered accordingly."*

105. With respect to the issue raised pertaining to the payment having been made by the Petitioners under protest, the case of the Petitioners is that right from the initiation itself, the payment was made under protest. In support of this plea, reliance is placed upon a letter dated 16th May 2015 in ***W.P.(C) 10977/2017*** & ***W.P.(C) 11319/2017*** which is stated to have been filed before the Customs Department on 19th May, 2015, where the Petitioner took the position that in view of ***Notification No. 12/2015-C.E***., dated 1st March, 2015, which amended the ***Notification No.12/2012-CE***, the excise duty structure for mobile phones was only 1% and not 12.5%, if no Credit under Rule 3 or Rule

13 of the CENVAT Credit Rules, 2004, was taken by the Petitioners in the inputs or capital goods.

106. In the said letter, it is also claimed that the deposit of 12.5% of CVD is being made under protest.

107. This letter is, however, denied by the Customs Department on the ground that the said letter was an afterthought, post the decision of the Supreme Court in ***SRF Ltd. (supra).*** Moreover, it is argued by the Customs Department that the decision in ***SRF Ltd. (supra)*** was rendered on 26th March, 2015, but the Petitioners continue to pay higher CVD till 16th July, 2015.

108. It is also argued that a letter of protest cannot constitute a re-assessment of the self-assessed BoEs in terms of the decision in ***Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd., (2000) 6 SCC 650*** wherein the Supreme Court observed as under:

> *"9. A right of appeal is a creature of the statute. It is a substantive right. An order of the appellate authority is binding on the lower authority who is duty bound to implement the order of the superior authority. Refusal to carry out the direction will amount to denial of justice and destructive of one of the basic principles in the administration of justice based on hierarchy of authorities.*
>
> ***Coming to the question that is raised there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order****. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for*

appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. ***This position, in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot be countenanced.*** *The view taken by us also gain support from the provision in sub-rule (3) of Rule 11 wherein it is laid down that where as a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer, may refund the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act.* ***Therefore, an order which is appealable under the Act is not challenged then the order is not liable to be questioned and the matter is not to be reopened in a proceeding for refund which, if we may term it so, is in the nature of execution of a decree/order.*** *In the case at hand it was specifically mentioned in the order of the Assistant Collector that the assessee may file appeal against the order before the Collector (Appeals) if so advised."*

CONCLUSION IN W.P.(C) 10977/2017 & W.P.(C) 11319/2017

109. Having considered the several judicial precedents on different aspects, the ultimate question that arises for consideration is whether interest would be liable to be granted to the Petitioner in ***W.P.(C) 10977/2017*** & ***W.P.(C) 11319/2017***.

110. Firstly, in ***W.P. (C) 10977/2017***, it is noted that it is the claim of the Petitioner that re-assessment/*de-novo* adjudication of the BoEs had, in fact, taken place, pursuant to the order of this Court dated 10th March, 2017 in ***W.P. (C) 2307/2017.***

111. The said re-assessment/*de-novo* adjudication took place *vide* an order

dated 25th March, 2017, passed by the Deputy Commissioner of Customs, Group V & Group VA. While the said order of re-assessment/*de-novo* assessment, passed by the Deputy Commissioner of Customs has not been placed on record by the Petitioner before this Court, either along with its petition or during the course of hearings, the same has been duly recorded by the Commissioner (Refunds), while passing the impugned order dated 13th April, 2017, in the following terms:

> *"17. In compliance to the order of the Hon'ble CESTAT, Delhi and further order of the Hon'ble High Court of Delhi, the Deputy Commissioner of Customs, Group V and Group VA, re-assessed the subject Bills of Entry after granting exemption provided at Sr. No.263A/254A of the Notification no. 2012/2012-CE and allowing the benefit of concessional rate of duty at 2% under Sl. No. 132 of the Notification No.01/2011-CE as the case may be in pursuance to judgement of the Hon'ble Apex Court in the case of* ***SRF Ltd. v. Commissioner of Customs, Chennai****, [2015(318) ELT 607 (SC)].*
>
> *18. After re-assessment of subject Bills of Entry by the Deputy Commissioner of Customs, Group (VA) (841 BoEs i.e., pertaining to Mobile Phones and their spare parts), New Delhi and the Deputy Commissioner of Customs, Group (V) (3 BOEs pertaining to tablets), New Delhi, the applicant vide its letter dated 27.03.2017 requested to refund excess CVD and other consequential duties paid by them found refundable on re-assessment/Final Assessment of 844 Bills of Entry, along with interest."*

112. Hence, considering that the said position regarding re-assessment has been accepted by the Commissioner (Refunds) while passing the impugned order dated 13th April, 2017, the Court is refraining from interfering with the same.

113. On the other hand, in ***W.P.(C) 11319/2017***, the Petitioner had challenged the order dated 30th October, 2015 passed by the Commissioner of Customs (Appeal) directly before this Court in ***W.P.(C) 10513/2016***. In the said writ petition, this Court directly issued a direction to the Customs Department to process the refund application filed by the Petitioner and pass appropriate orders. Hence, the Petitioner directly filed an application for refund in the said case, without any formal re-assessment of its BoEs.

114. In the present two cases, the decision in ***ITC Ltd. (supra)*** was not rendered when the applications for re-assessment were actually filed. In fact, in these two cases, the fresh adjudication was to be conducted or refunds were to be processed in terms of the orders passed by the Delhi High Court, as stated above.

115. Thereafter, the refunds have been granted in both the matters. In ***W.P. (C) 10977/2017,*** the fresh adjudication was directed to be undertaken vide order dated 10th March, 2017 in ***W.P. (C) 2307/2017.*** Pursuant to this, the impugned refund order was passed on 13th April, 2017, i.e. within approximately 1 month from the date of the order of this Court. In ***W.P.(C) 11319/2017,*** the processing of refund was directed by the High Court on 30th November, 2016 and the refunds were finally granted on 3rd March, 2017, i.e. within 3 months and 3 days from the said order.

116. Further, it is also clear that in these cases, the refunds were granted to the Petitioners within a period of three months from filing the application for refund, *i.e.* within the period stipulated in Section 27(A) of the Customs Act, 1962. Under these circumstances, though at first blush, it clearly appears that the Respondents have enjoyed the amount deposited by the Petitioner. However, since the refunds have been granted to Petitioner within the three-

month period, no interest would be liable to be paid.

117. Further, even prior to the period of filing the application for refund, there has been no undue delay on part of the Department in re-assessing or processing the applications of the Petitioner, once the said applications for re-assessment or for seeking refund have been filed by Petitioner, pursuant to the orders of this Court. Hence, this Court is unable to find any justification whatsoever, that entitles the Petitioner to interest upon the refund amounts that have been granted and duly processed to them in a time bound manner.

CONCLUSION IN W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024*, and *W.P.(C) 1325/2024

118. In ***W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024,*** and ***W.P.(C) 1325/2024***, it is the case of the Petitioners that they had sought re-assessment of the BoEs *vide* their respective letters and thereafter, similar representations were also made by them.

119. The re-assessments were done by the adjudicating authority after a substantial period of time had passed from the date of filing for re-assessment and in the said respective orders of the adjudicating authority, the authority also considered the relevant exemption notifications following the decision in ***SRF Ltd. (supra)***. The BoEs were thus directed to be amended in all these 4 petitions being ***W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024,*** and ***W.P.(C) 1325/2024*** *vide* separate orders date 7th June, 2022, 14th June, 2022, 14th June, 2022 & 15th June, 2022. For instance, the order for reassessment dated 7th June, 2022 in ***W.P.(C) 1225/2024*** was passed in the following terms:

> *"* *ORDER*
>
> *i. I order for amendment of the bills of entry as mentioned in Annexure-1 to the importer's self-declaration dated 04.06.2022, to add the benefit of S.no. 263A (ii) of the Notification no. 12/2012-CE dated 17.03.2012 in respect of the goods declared as mobile phones, under Section 149 read with Section 154 of the Customs Act, 1962; and for consequent re-assessment under Section 17(4) read with section 17(5) of the Customs Act, 1962."*

120. Similar orders of re-assessment have been passed in all the four cases. Upon re-assessment, multiple refund applications were filed by the Petitioners between 2022-2023 in these four cases with respect to their respective BoEs, requesting *inter-alia* for refund of excess amount collected along with consequential relief, including interest from the date of payment.

121. In the meantime, appeals were filed by the Customs Department challenging the orders dated 8th June, 2022, 14th June, 2022, 14th June, 2022 & 15th June, 2022. The said appeals were decided on 6th April, 2023, upholding the orders challenged therein, thus holding that the Petitioners were eligible for lower rate of CVD. This decision of the Commissioner (Appeals) was accepted by the Customs Department on 6th July, 2023. Accordingly, the refund claim was raised by the Petitioners and the same was allowed by the Commissioner (Refund), allowing the refund to the Petitioners in all these cases vide the impugned orders. However, no interest was granted to the Petitioners.

122. These orders giving the refund went into the issue of unjust enrichment raised by the Customs Department in terms of ***Mafatlal Industries Ltd. v. Union of India, (1997) 89 ELT 247 (SC)*** and then sanctioned the refund, *albeit* without interest. Thus, it is not in dispute that the refund amount has

been paid to the Petitioners. The only question is whether the Petitioners are entitled to interest and if so, for what period and at what rate.

123. In terms of the above discussion on several judgments, including ***ITC Limited(supra),*** re-assessment of the BoEs was necessary and the same was duly filed for by the Petitioners in these 4 writ petitions. Re-assessment orders were also passed in favour of the Petitioners. Thus, refund applications were filed by the Petitioners on dates, as provided in the table provided above.

124. The refund was also granted by the Commissioner (Refund) in all these petitions, however, no interest has been granted, despite the refund orders being passed beyond the stipulated period of 3 months from the date of filing of refund applications in ***W.P.(C) 1225/2024, W.P.(C) 1297/2024,*** and ***W.P.(C) 1325/2024***.

125. Thus, the Petitioners are clearly entitled to interest in these cases.

126. Further, it is a matter of fact that the additional customs duty was paid by the Petitioners in these cases, which was clearly was not payable in terms of the decision in ***SRF (supra)***. This position has also been re-affirmed by the Commissioner (Refunds), while allowing refund to the Petitioners vide the impugned orders.

127. Insofar as these four petitions are concerned, the first applications for re-assessment were filed on 21st April, 2015 in ***W.P.(C) 1225/2024,*** in ***W.P.(C) 1291/2024,*** on 15th May, 2015 in ***W.P.(C) 1297/2024*** and on 21st January, 2019 in ***W.P.(C) 1325/2024***.

128. However, the re-assessment orders were passed several years later. After the re-assessment orders were passed, entitling the Petitioners to concessional rates of Customs Duty, the Department filed appeals against the said re-assessment orders which were also dismissed. Hence, refund

applications were filed by the Petitioners and the amounts were refunded.

129. However, for the period from when the re-assessment applications were filed by the Petitioners to the date of passing of re-assessment orders, there was a substantial delay on part of the Department.

130. For the delay in Department's passing of the re-assessment orders, the Petitioners cannot be blamed or expected to unduly suffer. Accordingly, the Court is of the view that in the said four writ petitions, the interest would be liable to be paid to the Petitioners. It deserves to be noted that more than seven years elapsed from date of applications for re-assessment till date of order of refund. At the time when the applications for re-assessment were filed, the ***ITC (supra)*** judgment had not been delivered. The refunds were finally allowed as the additional customs duty was not at all payable in terms of ***SRF (supra)*** which was the prevalent law prior to the ***ITC (supra)*** decision. The Petitioners cannot be deprived of their valid refund amounts for such a long period. Thus, interest is payable. **The said interest shall be computed from the date when the first re-assessment application was filed by the Petitioners, to the date of actual refunds in respect of all the BOEs.**

131. Accordingly, let the interest be computed as per rates prescribed in the statute in all these matters and be paid within three months, in respect of all the BOEs in ***W.P.(C) 1225/2024, W.P.(C) 1291/2024, W.P.(C) 1297/2024, W.P.(C) 1325/2024***.

132. The impugned orders in these 4 writ petitions are modified with the direction that the Deputy Commissioner (Refund) shall compute the interest payable and grant such interest to the Petitioners within a period of three months.

133. The petitions are disposed of in said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

MARCH 30, 2026
Rahul/dj/ss