

C.M.A.Nos.71 & 131 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N. SENTHILKUMAR**

C.M.A. Nos.71 & 131 of 2025

M/s.Adyar Gate Hotel Ltd.,
Represented by its Managing Director,
Mr.Manish Goyal,
Having office at No.152, TTK Road,
Alwarpet, Chennai - 600 018. ... Appellant in CMA No.71 of 2025

M/s.Adyar Gate Hotel Ltd.,
Represented by its Joint Managing Director,
Mr.Manish Goyal,
Having office at Welcome Group Park
Sheraton Hotel & Towers,
TTK Road,
Chennai - 600 018. ... Appellant in CMA No.131 of 2025

Vs.

1. The Commissioner of Customs,
Chennai – II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs (Refunds),



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Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents in both CMAs

Common Prayer : Civil Miscellaneous Appeals filed under Section 130 of the Customs Act, 1962, against the final order No.42082/2018 dated 20.07.2018 and Misc. order No.40019/2019 dated 17.01.2019 passed in Appeal No.C/40351/2017 respectively by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

In both CMAs:

For Appellant : Mr.Hari Radhakrishnan

For Respondents : Mr.Rajnish Pathiyil,
Senior Standing Counsel

COMMON JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

The present two Civil Miscellaneous Appeals were originally filed as Writ Petitions. Based on an order of this Court dated 21.08.2024, the appellant has amended the form of the petitions, raising substantial questions of law as arising from orders dated 20.07.2018 and 17.01.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

2.The two substantial questions of law admitted read as follows:



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(i) Whether the Hon'ble Tribunal had erred by failing to appreciate the Hon'ble Commissioner (Appeals) had already allowed the refund claim along with interest in terms of Section 27 A of the Customs Act, 1962, and that the issue before the Hon'ble Tribunal was limited to grant of interest from 02.08.1999?

(ii) Whether the Customs Department had acted without jurisdiction by disallowing the claim of EPCG benefit in terms of Notification No.28/97-Cus dated 01.04.1997 and consequently, whether the appellant is entitled to interest from the date of payment of duty as a compensatory measure in terms of the decision of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. V. Commissioner of Income tax, Pune, reported in 2006 (196) ELT 257 (SC)?

3.We have heard the detailed submissions of Mr.Hari Radhakrishnan for the appellant and Mr.Rajnish Pathiyil learned Senior Standing Counsel for the respondents.

4.The appellant is a hotel and had imported light and light fittings on 25.05.1999, vide Bill of Entry No.15041. It had applied for, and had been issued a license under the Export Promotion Capital Goods (EPCG) Scheme, claiming benefit of reduced rate of import duty in terms of Notification No.28/97-Cus dated 01.04.1997. A copy of the license has been furnished and indicates in the Annexure, that the goods in respect of



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which the customs benefit has been extended constitute 'capital goods'.

5. The Annexure to the license reads as follows:

*OFFICE OF THE JDGFT, MADRAS
EXPORT PROMOTION CAPITAL GOODS SCHEME ITEM LIST
FOREIGN TRADE REGULATION*

*Licence No. 04500471/1/13/10/1/01 File Number :04/36/021/00109/AM99
Dated-16-DEC-98*

*I E Code Number 0492021856 Category :EPCG Licence 101 Licencing
Period: AM99*

*Messers: WCLCOMGROUP PARK SHERATON HOTEL & TOWERS,
A UNIT OF ADAYAR GATE HOTEL LTD.,
132,T.T.K.ROAD,
CHENNAI, T.N. 600018*

Details of NEW CAPITAL GOODS sought to be Imported:

<i>Sl. No.</i>	<i>Description of CG</i>	<i>Qty</i>	<i>Unit</i>	<i>CIF (in Rs)</i>	<i>CIF (in FC)</i>	
1.	MODULAR BAR EQUIP 188834/19.9.98			Rs.13,53,419	31,696	US DOLLARS
2.	BAR EQUIP- C981433/16.10.98.			Rs.2,80,710	6,574	US DOLLARS
3.	BEGA LIGHT FIXTURES-16.9.98.	101	Number	Rs.3,11,553	13,063 (not legible)	DEUTSCH MARK
4.	LIGHT SOUND IMAGE LIGHT FITTINGS- WL3223RIL/14.10.98	75	Number	Rs.3,01,605	12, 463	SINGAPORE DOLLAR
5.	ARCHITECTURAL LIGHTINGS- FAX/10.10.98			Rs.14,18,023	58,596	SINGAPORE DOLLAR
6.	PACIFIC TECHNICAL LIGHT	110	Number	Rs.9,26,666	38,292	SINGAPORE DOLLAR



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Sl. No.	Description of CG	Qty	Unit	CIF (in Rs)	CIF (in FC)	
	FITTINGS- QTN6144/9.10.98					
7.	SPL EFFECT LIGHTS- 1511798.	23	Number	Rs.11,84,925	27,750	US DOLLARS
8.	LUMASCAPE FITTINGS- QSEA171S1/22.1.98	05	Number	Rs.20,923	490(not legible)	US DOLLARS
9.	YANMA SHENET (not legible) FITTINGS- 1544MAYS/18.9.98.	59	Number	Rs.1,05,738	3,56,02 0	JAPANESE VEM

Date : 16/12/98

FOREIGN TRADE DEVELOPMENT OFFICER
for JOINT DIRECTOR GENERAL OF FOREIGN TRADE

6.At the time of import, the Appellant was denied the benefit of concessional duty, the authorities opining, contrary to the terms of the licence, that the goods imported did not constitute capital goods. Hence, the petitioner was constrained to remit the duty in full, though under protest. An order-in-original came to be passed on 08.07.1999, wherein the authority took the view that notwithstanding the classification of the goods under the EPCG license, the appellant was not entitled to the concessional rate, referring, inter alia, to Notification Nos.122/93, 28/97 & 29/97.

7. The above order was confirmed in first appeal by order dated



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22.07.1999, as against which the Appellant approached the CESTAT. The CESTAT, vide order dated 22.01.2004, remanded the matter to the file of the original authority for re-consideration in the light of Customs Circular No.62/2002, dated 26.09.2002, issued by the Central Board of Excise & Customs, New Delhi (in short 'CBEC') that made reference to imports by a five star hotel.

8. On 15.12.2015, the Appellant had made an application on for refund of the duty remitted under protest, claiming interest thereupon from the date of remittance. The refund came to be granted on 20.07.2018. The matter was taken up for proceedings denovo post remand by the Tribunal, and, on 02.08.2004, the authority reiterated the conclusion under original order dated 08.07.1999 finding that the 2000 Circular did not come to the rescue of the Appellant.

9. In appeal for the second time before the Commissioner (Appeals), the Appellant was unsuccessful as its appeal was rejected on 22.03.2005 as against which it further appealed to the CESTAT, which finally, allowed the appeal. The CESTAT noted that Circular dated 26.09.2002 stipulated that imports by members of the Hotel Association



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should be extended benefit of concessional duty particularly when the same had been extended by the DGFT and DG (Tourism).

10. Circular dated 26.09.2002 is extracted below:

‘

2. MOC&I/DGFT, DG (Tourism), various Hotel Associations and other individuals have, however, been representing to this Ministry for quite some time that service providers in the hotel sector actually need the aforesaid consumer items as well for rendering service and earning foreign exchange for the purpose of fulfilling export obligation under EPCG Scheme. Hence, it is not proper to restrict import of aforesaid consumer items to such service providers. It has also been contended that in the case of service providers, the situation is slightly different because, whereas a manufacturer exporter fulfills his export obligation under EPCG Scheme by exporting resultant product manufactured out of imported capital goods, the service provider earns foreign exchange by rendering service through capital goods/equipments imported under EPCG Schemes and fulfills his export obligation. The aforesaid rider specified in 39/2000 has also created a piquant situation in as much as in many cases DGFT authorities have issued EPCG licences to service providers permitting import of these consumer items but Customs have refused to extend EPCG benefits.

3. The issue has been re-examined in Board and it has been decided that service providers who actually require consumer items like carpets, crockery, marble, chandeliers etc. shall be allowed EPCG benefit. Chairman, CBEC has ordered that the rider appearing



in DOR Circular No. 39/2000-Cus. may, therefore, be deemed to be deleted. Import of these consumer items should also be allowed wherever DGFT authorities have issued EPCG Licences for these items and the same is valid to cover imported goods.'

11. The CESTAT also noted its order in the case of *Appu Hotel Ltd., Vs. Commissioner of Customs Chennai* – (2008 (226) ELT 385), wherein the Bench had allowed the benefit of Notification Nos.28/97 and 29/97 in respect of import of lighting equipments by hotels. That order of the Tribunal had been confirmed by the Supreme Court in *Commissioner Vs. Appu Hotel Ltd.* - ((2010) 256 ELT A92). Applying the ratio of that decision, the appeal came to be allowed on 20.07.2018 with consequential relief.

12.The discussion in the order of the Tribunal in the case of *Appu Hotels* is as follows:

'This appeal filed by the assessee is against denial of the benefit of Customs Notifications No. 28/97 and No. 29/97 both dated 1-4-1997 (EPCG scheme) by the lower authorities in respect of 'chandeliers and light fittings' imported by the assessee. After examining the records and hearing both sides, we note that, admittedly, the above items were covered by the EPCG licences whereunder they were imported. The denial of the benefit is on the ground that the items are not covered by the definition of "capital goods" given in the Notifications. We find that, under the above Notifications, service providers such as hoteliers like the appellants were eligible to import capital



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goods at concessional rate of duty under the EPCG scheme. In respect of Notification No. 28/97, "capital goods" means any plant, machinery, equipment and accessories required for

(a).....

(b).....

(c) rendering services (vide Explanation to the Notification)

In respect of the other Notification, "capital goods" means any plant, machinery, equipment and accessories required for -

(a).....

(b).....

(c) in the case of hotel industry and tourism industry, plant, machinery, equipment and accessories required for rendering services, specified in Annexure-I.

This annexure contains a long list of items required by hotel and tourism industries. The case of the lower authorities is that 'chandeliers and light fittings' do not figure in the list and hence would not qualify for the benefit of the Notification as capital goods. However, we find that 'lighting equipments' figure in the list of capital goods in Annexure-I to Notification No. 29/97-Cus. It cannot be gainsaid that chandeliers and light fittings are required by a hotel industry for rendering services. On these facts, there is no justification in denying the benefit of Notification No. 29/97-Cus. to the assessee, who undisputedly satisfied other conditions of the EPCG scheme. As regards their claim for the benefit of Notification No. 28/97-Cus., we must hold the same view inasmuch as chandeliers and light fittings are equipments/accessories required by a hotel industry for rendering services vide Explanation to the Notification. Again, the Revenue has no case that assessee did not fulfil other obligations under the EPCG scheme.

2. In the result, the impugned order is set aside and this appeal is allowed.'

13. While the CESTAT had allowed the appeal, the specific ground

relating to interest from date of remittance on compensatory basis had



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not been dealt with. The first appellate authority had himself granted interest as per Section 27A of the Act and when the Appellant moved a miscellaneous petition before the CESTAT seeking adjudication of the ground relating to compensatory interest, the Tribunal rejected the same on 17.01.2019.

14. While thus it is correct that the Tribunal has omitted to consider to consider the ground relating to payment of compensatory interest, having regard to the fact that the import is of the year 1999, and that we are now in 2025, we do not propose to remit the matter to the Tribunal for adjudication of that ground. We have thus proceeded to hear and decide the matter on merits and in view of this decision, the first substantial question of law is no more relevant.

15. Mr.Rajnish Pathiyil has supported the impugned orders of the Tribunal submitting that the Customs Act does not provide for the grant of interest on interest. The appellant in the present case has filed an application for refund on 16.12.2015 and the refund was granted on 20.07.2018. The provisions of Section 27A provide for statutory interest/interest on delayed refunds, in cases where the refund has not



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been granted within a period of 90 days from date of refund application.

This component of interest has been granted.

16. The statutory scheme supports the grant of interest only in cases where refund is delayed beyond a period of 90 days from date of application, and the Appellant is admittedly in receipt of such statutory interest. Thus, the Appellant can derive no further benefit of interest from the statute itself. The present claim however, is for compensation over and above statutory interest.

17. The question that would thus arise is whether commercial principles can be called in aid, and in this regard, useful reference may be made to the judgments of the Supreme Court in the case of *Sandvik Asia Ltd Vs. Commissioner of Income Tax – I, Pune* [2006 (196) ELT 257 (SC)] and *Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals* [2013 (296) ELT 433 (S.C.)]. Both the aforesaid matters arise in the context of the Income Tax Act, 1961.

18. In the case of *Sandvik Asia Ltd.*, there had been a delay in the grant of refund to that assessee, running to around 18 years. The Bench was of the view that there was no justification for the aforesaid delay, and



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hence awarded compensation. The judgment in *Sandvik Asia Ltd* had come to be interpreted by Benches to say that the Court had permitted the grant of interest on interest, and a doubt was expressed on the correctness or otherwise of that judgment.

19. The question ultimately came to be answered by the Supreme Court in *Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals* where the Bench clarifies that '*it is only that interest provided for under the statute which may be claimed by the assessee from the revenue and no other interest on such statutory interest*'.

20. Both the Customs and the Income Tax Acts provide for the grant of interest in cases where refunds have become due to the assessee. The Supreme Court, in *Gujarat Fluoro Chemicals*, settles the proposition that the statute cannot be pressed into service to grant interest on interest if there are no enabling provisions. However, and as a measure of equity, the Court has also observed the assessee should be properly and adequately compensated if the demand raised is seen to be unconscionable or there is an unreasonable delay in the grant of refunds.

21. We test the claim of the present Appellant in the above context.



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The consistent stand of the Appellant is that it is entitled for concessional rate of duty as the goods imported constitute Capital Goods as per its assessment, supported by the licence issued by the DGFT. This has however been negated by the Departmental authorities, and the question that thus arises is as to whether the Assessing authorities under the Act may adopt a stand diametrically opposed to that taken by the DGFT.

22. The identical question arose before the Supreme Court in *Titan Medical Systems Pvt.Ltd. Vs. Collector of Customs, New Delhi* [2003 (151) ELT 254 (SC)] as to whether, once an advance license had been issued by the licensing authority, it is proper for the Customs Department to eschew the same on the premise that the license has been obtained on a misrepresentation of facts.

23. The Court noted that any misrepresentation of facts would have resulted in withdrawal/cancellation of the license. Since that had not transpired, the Court held that the Customs authorities had erred in proceedings to take a stand opposed to the stand of the DGFT and DG (Tourism).

24. We feel that the case of the present appellant stands on a better



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footing than the case of *Titan Medical Systems Pvt.Ltd.* (supra). The licencing authority, when considering the grant of license, has accepted the factual position in regard to the classification of lightings, fixtures and fittings, technical light fitting, special effects light and luma goods as 'capital goods'. This is in 1999. It is an admitted position that the license had not been withdrawn or reversed by the authority.

25. In order to obviate instances where officers of the Customs Department take stands at variance with the DGFT, the CBEC has issued a Circular in 2002 (26.09.2022) making it clear that such divergent views should not be taken and that when duty reduction or exemption had been granted by the DGFT or DG(Tourism), the Customs Department will align with such stand. The aforesaid Circular of the Board is binding upon the officers of all Commissionerates of the Department.

26. In such an event, it is not open to the Customs Department to dispute classification of the goods imported and the view taken by the Department is diametrically opposed to the licence and the 2002 Circular. Moreover, this position has also been settled judicially as early as in 2003 by virtue of the Judgement in the case of *Titan Medical Systems Pvt*



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Ltd., and thereafter again in 2010 in *Appu Hotels* case.

27. Notwithstanding the aforesaid, the Department has pursued the litigation over two rounds, that have culminated in the present appeals. We are of the categorical view that the denial of concessional rate of Duty by the Department is misconceived and contrary to the both the Circular as well as the judgements.

28. There is no justification in the Department having made the Appellant litigate the issue needlessly despite the CBEC having categorically confirmed as early as in 2002 that the Customs Department must align with the stand of the DGFT and DG (Tourism) in matters of imports by hotels. The licence where the imports have been classified as 'capital goods' has not been revoked or withdrawn and it is nobody's case that the licence has been obtained on a wrongful or fraudulent basis.

29. In the aforesaid circumstances, what constitutes 'capital goods' to the licencing authority cannot be otherwise for the Customs Department. Thus, and in light of this discussion, we conclude that the long drawn litigation from 1999 till now, 2025, was misconceived and needless and the Appellant is entitled to compensation for having been



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put through it all.

30. In the light of the detailed discussion as above, we answer the second substantial question of law in favour of the appellant and adverse to the Revenue. Consequence be given to this order within a period of eight (8) weeks from date of uploading thereof upon the website of this Court. In the result, the Civil Miscellaneous Appeals are allowed. No costs.

[A.S.M., J] [N.S., J]
03.06.2025

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Index:Yes/No

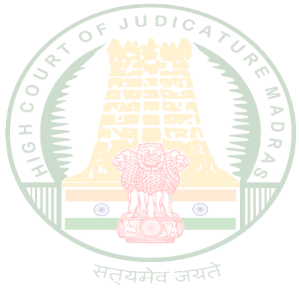
Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Commissioner of Customs,
Chennai – II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs (Refunds),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.



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DR. ANITA SUMANTH,J.
and
N. SENTHILKUMAR.,J

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