2026:TSHC:9840-DB
[3489]

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WRIT PETITION NO: 34652 OF 2025

Between:

1. Sanjay Agarwal, S/o.Balkishan Agarwal, Age.47 years, 5-9-273, C1, Mayur Kushal Complex, Abids, Hyderabad - 500 001.
2. M/s. PH Jewels, Presently at. 5-9-273, C1, Mayur Kushal Complex, Abids, Hyderabad - 500 001. Sole Proprietary Firm, Rep. by its Proprietrix, Radhika Agarwal, D/o. Ashok Agarwal, Aged about 46 years

...PETITIONERS

AND

1. The Union of India, Rep.by its Secretary, Department of Finance, North Block, New Delhi - 110 001.
2. The Principal Commissioner of Customs, Hyderabad Customs Commissionerate, L.B.Stadium Road, Basheerbagh, Hyderabad - 500 004.
3. The Deputy Commissioner of Customs, Air Cargo Complex, Hyderabad Customs Commissionerate, Shamshabad, Hyderabad - 500 108.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to the Respondent to pay the 2nd Petitioner an interest at the rate of 15 percentage per annum from the date of deposit till the date of actual refund of the amount of Rs. 74,74,533/- and Rs. 2,04,999/- deposited by the 2nd Petitioner through M/s. MMTC Limited by way of TR-6 Challan No.15995 and 15996, dt. 17.01.2017.

Counsel for the Petitioner : SRI SANJAY AGARWAL (Party in person)
Counsel for the Respondent No.1 : SRI N.BHUJANGA RAO,
Dy.Solicitor General Of India
Counsel for the Respondent No.2&3:SRI DOMINIC FERNANDES, Sr.SC FOR CBIC
The Court made the following: ORDER

2026:TSHC:9840-DB

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

W.P.No.34652 of 2025

Dt. 26.03.2026

Between:

Sanjay Agarwal and another

.... Petitioners

and

The Union of India Rep. by its Secretary
and two others.

...Respondent

O R D E R: *(Per the **Hon'ble Sri Justice Suddala Chalapathi Rao**)*

1. The present Writ Petition has been filed to issue Writ of Mandamus or any other appropriate writ directing the respondents to pay the 2nd petitioner interest @ 15% p.a., from the date of deposit till the date of actual refund of the amount of Rs.74,74,533/- and Rs.2,04,999/- deposited by the 2nd petitioner through M/s MMTC Ltd., by way of TR-6 challan Nos.15995 and 15996, dt.17.01.2017.

2. The brief facts of the case are that the petitioner is engaged in the business of gold and gold jewellery and dealing with export of gold

ornaments and also sales locally. The petitioner alleged to have purchased gold bullion on payment of cost of bullion gold and that M/s MMTC Ltd., is the nominated authorized agency appointed by the Reserve Bank of India for importing gold from abroad, duty free, and to sell the same to local jewellery manufacturers for the purpose of preparing ornaments and exporting the same.

3. It is also stated that such imported bullion gold, which is duty free, will be purchased by local ornaments makers by depositing 125% of the duty towards security deposit after paying actual cost of the bullion gold and it is stated that on the threat of the officials of the DRI that they would seize entire stock of the gold, the officials of the DRI made the 2nd petitioner to sign a letter dt.06.01.2017 addressed to MMTC, thereby forcing the 2nd petitioner to pay an amount of Rs.73,52,953/- towards customs duty and interest thereon of Rs.3,26,547/- as against the alleged diversion of 25 kgs of gold sourced from M/s MMTC Ltd. Further, it is stated that a letter dt.07.01.2017 was addressed by the petitioner to M/s MMTC Ltd., requesting not to deposit any amounts towards alleged customs duty as the DRI was trying to implicate the 2nd petitioner in false cases.

4. Further, it is contended that the said amount of Rs.74,74,533/- and Rs.2,04,999/- was made on 17.01.2017 by M/s MMTC Ltd., by way of TR-6 Challan No.15995 and 15996, dt.17.01.2017, respectively, ignoring the letter addressed by the 2nd petitioner to M/s MMTC. It is stated that the same was also admitted by the MMTC in their reply submitted to the adjudicating authority and thereafter, the DRI issued show-cause notice, dt.31.10.2017, indicting M/s MMTC Ltd. in the matter of alleged diversion of 25 kgs of duty free gold purchased without payment of customs duty for selling the same in the local market and exporting the jewellery out of the locally purchased gold. The said amounts deposited by the MMTC was appropriated by the authorities and challenging the order dt.12.02.2020, passed by the 2nd respondent, the petitioner has filed appeals before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal (for short 'the CESTAT'), Hyderabad *vide* customs appeal No.30229 and 30230 of 2021 and that the said appeals were preferred by the petitioner, and MMTC was not party to the said appeal and seeking a direction to the MMTC to join as appellant, a writ petition was filed *vide* W.P.No.15987 of 2023 by the petitioner herein, and the same was dismissed by this Court, against which SLP(C).No.23282 of 2023 was filed, which was disposed of by reserving liberty to the

petitioner to seek permission to avail of the appellate remedy, before the competent Court.

5. Thereafter, the 2nd petitioner filed appeal before the CESTAT and in the said appeal, Miscellaneous Application No.C/MISC/30290/2025 for impleading M/s MMTC Ltd in the appeal was filed, but the same was dismissed, and the appeal was taken up and the 2nd respondent after conducting proper enquiry, allowed the appeal by setting aside the order dt.20.02.2020 passed by the 2nd respondent and also ordered refund of the amount deposited. The relevant portion of the order is extracted hereunder:

> *"19. At this stage we need to decide about the duty and interest which were paid by the MMTC and which were appropriated in the impugned order. Since we have found that no duty needs to be paid and the impugned order needs to be set aside, the duty and interest need to be refunded. Although MMTC paid duty and interest, PH Jewels claims that it had borne the duty and interest. If that be so, PH Jewels can claim refund of the duty and interest from the department under Section 27 of the Act, which permits both persons who paid duty or interest and the persons who have borne the duty or interest, to claim refund. Needless to say that the appellants would also be entitled to the refund of any pre-deposit made as a condition for these appeals".*

6. Drawing a clue from the judgment of the learned CESTAT, the petitioners contend that as the amounts are paid by the petitioners to the MMTC, they are entitled for refund of the said amounts and that though specific requests have been filed before the respondents-authorities, the respondents are not paying the said amounts, as such they are constrained to file the present writ petition before this Court.

7. Heard the 1st petitioner (party-in-person), Sri B.Mukherjee, learned counsel representing the learned Deputy Solicitor General of India, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC for respondent No2, and perused the material on record.

8. It is contended by the 1st petitioner (party-in-person) that though the learned CESTAT has passed orders permitting the 2nd petitioner to claim refund under Section 27 of the Customs Act, 1962, in respect of the amount deposited by M/s MMTC Ltd., towards customs duty liability and the interest thereon, the respondents have not taken any steps for granting the consequential relief to the petitioners.

9. It is further contended that the amounts in question were in fact paid by the petitioners, though the deposit was made through M/s MMTC Ltd., and therefore the petitioners are the persons who are ultimately entitled to receive the refund along with interest. It is

further contended that despite the clear observations made by the learned CESTAT that either the person who paid the duty or the person who has borne the incidence of duty is entitled to seek refund under Section 27 of the Customs Act, the respondents have failed to process and release the amounts due to the petitioners.

10. The 1st petitioner would further submit that the amounts were deposited as early as on 17.01.2017, and ever since then the petitioners have been deprived of the use of their legitimate money. It is thus contended that the continued retention of the said amounts by the department is arbitrary and unjustified, particularly in view of the fact that the impugned demand itself has been set aside by the learned CESTAT.

11. Further, placing reliance on the judgment of the Hon'ble Supreme Court in ***Sandvik Asia Ltd. vs. Commissioner of Income Tax-I, Pune & others***[1], the 1st petitioner submits that when the amounts are wrongfully retained by the authorities for a prolonged period, the assessee is entitled not only to refund but also to interest/compensation for such delay. It is thus contended that the

---

[1] (2006) 2 SCC 508

petitioners are entitled to the amounts deposited and interest thereon from the date of deposit till the date of actual refund.

12. *Per contra,* Sri B. Mukherjee, learned counsel representing the learned Deputy Solicitor General of India appearing for respondent No.1, contended that the present writ petition is not maintainable either on facts or in law. It is further contended that the amounts in question were admittedly deposited by M/s MMTC Ltd., and the said entity is neither the petitioner nor has it been impleaded as a party respondent in the present writ petition, and that in the absence of M/s MMTC Ltd., which is a necessary and proper party to the proceedings, no effective order can be passed by this Court with regard to the claim of refund or payment of interest.

13. It is further contended that the order passed by the learned CESTAT itself indicates that the person who has paid the duty or the person who has borne the duty may claim refund under Section 27 of the Customs Act, 1962, by following the procedure contemplated under the said provision. Therefore, according to the learned counsel, the petitioners have an effective alternative remedy of filing a proper refund application before the competent authority in accordance with law, and without exhausting such statutory remedy, the present writ

petition is not maintainable. Hence, it is prayed that the writ petition is liable to be dismissed.

14. Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC appearing for respondent No.2, also contended that the writ petition is premature and misconceived, as the amounts towards customs duty and interest were deposited through M/s MMTC Ltd., and therefore the said entity is the proper party to seek refund in accordance with Section 27 of the Customs Act, 1962. It is further contended that the order of the learned CESTAT only observed that either the person who paid the duty or the person who has borne the incidence of duty may claim refund by filing an appropriate application before the competent authority and that the learned CESTAT has not issued any direction to the respondents to directly refund the amounts to the petitioners.

15. It is also contended that the petitioners have not placed any material on record to show that a proper refund application in accordance with Section 27 of the Customs Act, 1962 has been filed and considered by the competent authority. In the absence of such statutory compliance, the claim for interest or compensation from the date of deposit till the date of payment cannot be entertained in the

present writ proceedings. It is further submitted that the reliance placed by the petitioners on the judgment of the Hon'ble Supreme Court in ***Sandvik Asia Ltd***'s case (supra), as the said decision arose under different statutory circumstances and does not automatically entitle the petitioners to claim interest in the present case, and therefore, prayed to dismiss the writ petition.

16. We have given earnest consideration to the submissions made on behalf of the parties on either side and perused the material on record.

17. Evidently, from a perusal of the order passed in the appeals by the learned CESTAT, it is event that the amounts towards duty and interest were deposited by M/s MMTC Ltd, and though the said entity is a necessary and proper party in any proceedings seeking refund or interest in respect of the said amount, it has not been impleaded as a party respondent to these proceedings,

18. Even the observations made by the learned CESTAT clearly indicate that the person who has paid the duty or the person who has borne the incidence of such duty may seek refund by invoking the provisions of Section 27 of the Customs Act, 1962, by filing an appropriate application before the competent authority.

19. However, in the present case, the petitioners have chosen not to implead M/s MMTC Ltd., which admittedly made the deposit, as a party respondent, nor have they placed any material before this Court to demonstrate that the statutory procedure contemplated under Section 27 of the Customs Act, 1962 has been duly invoked before the competent authority. Thus, this Court is of the considered view that no effective or enforceable direction can be issued in the present writ proceedings.

20. Another aspect which merits consideration of this Court is that the order of the learned CESTAT was passed on 08.09.2025, and the statute provides a remedy of appeal to this Court within a period of 60 days from the date of receipt of the said order. However, it appears that even before the expiry of the statutory period available for availing the appellate remedy, the present writ petition has been instituted, without exhausting the remedies available under the statute.

21. In view of the above findings, we are of the considered opinion that the instant writ petition is devoid of merits, and it is liable to be dismissed.

22. Accordingly, the Writ Petition is dismissed. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

SD/- M.JAWAHAR REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI SANJAY AGARWAL (Party in person). [OPUC]
2. One CC to SRI N.BHUJANGA RAO, Deputy Solicitor General of India, High Court for the State of Telangana at Hyderabad. [OPUC]
3. One CC to SRI DOMINIC FERNANDES, Senior Standing Counsel for CBIC. [OPUC]
4. Two CD Copies.

BSK

TKS

2026:TSHC:9840-DB

HIGH COURT

DATED:26/03/2026

ORDER

WP.No.34652 of 2025

DISMISSING THE WRIT PETITION
WITHOUT COSTS

6 NT
8/4/26.