

(2020) 12 CESTAT CK 0001

Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Case No: Excise Appeal No. 50171, 50172, 50173 Of 2019

M/s Hitesh Industries
And Ors.

APPELLANT

Vs

Commissioner,
Central Goods And
Service Tax And Ors.

RESPONDENT

Date of Decision: Dec. 7, 2020

Acts Referred:

- Central Excise Act, 1944 - Section 2(f), 11BB, 35F, 35FF
- Income Tax Act, 1961 - Section 2(29BA), 35C, 214, 243, 244
- Constitution of India, 1950 - Article, 141

Hon'ble Judges: Anil Choudhary, J

Bench: Single Bench

Advocate: Bipin Garg, Tamanna Alam

Final Decision: Allowed

Judgement

Appeal No.

& Name of

the party", "Amount

deposited

(Rs.)", "Show cause

notice dated", O.I.O. dated, "CESTAT

F.O. date on

merits", "Refund

given vide

O.I.O dated","O.I.A.

(denying

interest)

E/50171/19

Hitesh

Industries","7,00,000

(during inv.)",12.02.07,"02.12.10

14,87,904/-",02.02.18,26.06.18,28.11.18

E/50173/19

Deco

Industries","35,00,000

(during inv.)",12.02.07,"02.12.10

1,96,40,040/-",02.02.18,26.06.18,28.11.18

E/50172/19

Vikas Cable

Company","10,00,000

June, 2006",12.02.07,"02.12.10

35,97,232/-",02.02.18,26.06.18,28.11.18

communication of the order, and thus no refund is allowable in the facts and circumstances of this case. Reliance is placed by the learned AR on",,,,,,

ruling of the Apex Court in the case of CCE, Hyderabad vs. ITC Ltd., -2005 (179) ELT 15 (SC).",,,,,,

10. Having considered the rival contentions, I find that similar issue arose before this Tribunal in the case of Fujikawa Power & Anr. vs. CCE &ST," ,,,,,,

Chandigarh-I, vide final order No. 61041-61042/2019 dated 26.11.2019, whereby a coordinate Bench of this Tribunal have held as follows:-",,,,,,

¶11. The contention of the Ld.AR is that in terms of Section 35FF of the Central Excise Act, 1944, the interest on delayed refund is to be",,,,,,

paid after 3 months from the date of communication of the order. When specific statute has been made, therefore, the decision in the case of",,,,,,

Sandvik Asia Limited (supra) is not applicable to the facts of this case on the ground that the said decision has been delivered by the,,,,,,

Honâ€™ble Apex Court in the context of Income Tax Act whereas we are dealing with Central Excise Act provisions. I find that whether the,,,,,,

provisions of Income Tax Act and the provisions of Central Excise Act are pari materia or not. The same has been examined by this Tribunal,,,,,,

in the case of Donar Foods reported in 2017 (346) ELT 612(Tri.- Chan.) wherein this Tribunal observed as under:-,,,,,,

â€œ27. We have seen both decisions referred before us. The decision in the case of M/s. Cynamid India Ltd. (SC) is with regard to the,,,,,,

Income Tax Act and as per Section 2(29BA) of the Income-tax Act, 1961 the term â€œmanufactureâ€ with its grammatical variation means a" ,,,,,,

change in non-living physical object or article â€" ,,,,,,

(a) resulting in transformation of object or article or things into a new and distinct object or article or having a distinct name, character" ,,,,,,

and use; or ,,,,,,

(b) bringing into existence of a new distinct object or article or thing with different chemical composition or integral structure. ,,,,,,

28. On going through the above definition of the manufacture, the test laid down by the Apex Court in the case of Delhi Cloth and General" ,,,,,,

Mills Co. Ltd. (supra) support the definition that a new and different article must emerge having a distinct name, character and use." ,,,,,,

Therefore, the definition of manufacture as Section 2(f) of the Central Excise Act, 1944 is pari materia to definition of manufacture in" ,,,,,,

Income-tax Act as per Section 2(29BA) of the Income-tax Act, 1961." ,,,,,,

29. Therefore, the decision in the case of M/s. Cynamid India Ltd. is applicable to the facts of this case wherein the Apex Court has" ,,,,,,

observed as under: ,,,,,,

5. The High Court has answered the question in favour of the assessee and against the Revenue. Having referred to the definition of ,,,,,,

â€œagricultural product" in Blackâ€™s Law Dictionary, the High Court has held that the operation of de-husking paddy is not an" ,,,,,,

industrial or manufacturing operation as commonly understood; it is essentially an agricultural operation and such changes as are brought ,,,,,,

about in the product are an outcome of agricultural operation. Both rice and husk remain in their natural form as a result of dehusking and,,,,,,

are covered by the term "agricultural product",,,,,,

6. The High Court has also formed an opinion that Section 35C of the Income-tax Act, 1961, was designed to encourage development of",,,,,,

agriculture and, therefore, gave a weighted deduction in respect of expenditure incurred in providing to the agriculturists services and",,,,,,

facilities specified therein. The term "agricultural product" or "product of agriculture" is required to be construed liberally so as to,,,,,,

include not merely the primary product as it actually grows, but also a product which undergoes a simple operation so as to make it more",,,,,,

saleable or more usable. The rice and the husk though separated remain as they were produced and hence continued to be "agricultural",,,,,,

product" or "product of agriculture",,,,,,

30. As the Hon^{ble} Apex Court has held that conversion of paddy into rice is not a distinct operation and the rice and husk remain in,,,,,,

their natural form as a result of dehusking and are covered by the term "agricultural product",,,,,,

31. Therefore, we hold that the test of manufacture has been failed as the goods are not manufactured goods as per Section 2(f) of Central",,,,,,

Excise Act, accordingly, the question of excisability does not arise. Therefore, the Issue No. 1 is answered in favour of the appellants.",,,,,,

The said decision of this Tribunal has been affirmed by the Hon^{ble} Apex Court reported 2017 (354) ELT A-57(SC) wherein "It was also held,,,,,,

that the definition of "manufacture" under Section 2(f) of the Central Excise Act, 1944 is pari materia to the definition provided under Section",,,,,,

2(29BA) of the Income-tax Act, 1961.",,,,,,

Therefore, I find no force in the arguments advanced by the Ld.AR that the decision of Income Tax Act is not applicable to the Central Excise Act",,,,,,

whereas the provisions of both Acts are pari materia. Therefore, the argument advanced by the Ld.AR is turned down and not acceptable.",,,,,,

12. He further made reliance on the decision of Hon^{ble} Apex Court in the case of ITC Ltd.(supra),,,,,,

13. I have gone through the case laws relied upon by the Ld.AR. In the case of ITC Ltd.(supra), the decision of Honâ€™ble Apex Court has been" ,,,,,,

delivered on 02.12.2004 whereas the decision in the case of Sandvik Asia Limited (supra) delivered on 27.1.2006. Therefore, the latest decision of the" ,,,,,,

Honâ€™ble Apex Court is having persuasive value. In all the other cases, (referred to by Ld. AR) have not considered the decision in the case of" ,,,,,,

Sandvik Asia Limited (supra).,,,,,

14. I have gone through the decision in the case of Sandvik Asia Limited (supra), wherein the section 243 dealt with situation of interest on delayed" ,,,,,,

refund. ,,,,,,

15. For better appreciation, section 243 of the Income Tax Act, 1961 reproduced as under:-" ,,,,,,

âœ243. Interest on delayed refunds- (1) if the Income tax officer does not grant refund- ,,,,,,

(a) In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months" ,,,,,,

from the end of the month in which the total income is determined under this Act, and" ,,,,,,

(b) In any other case, within three months from the end of the month in which the claim for refund is made under this Chapter," ,,,,,,

the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date, ,,,,,,

immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund. ,,,,,,

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the" ,,,,,,

period of the delay attributable to him shall be excluded from the period for which interest is payable.âœ ,,,,,,

16. Section 35FF of the Central Excise Act, 1944 deals with the situation in hand, the same is extracted below:-" ,,,,,,

âœSection 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F- Where an amount deposited by the ,,,,,,

appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the ,,,,,,

appellate authority) under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority" ,,,,,,

and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the" ,,,,,,

operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the" ,,,,,,

rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the" ,,,,,,

date of refund of such amount.â€",,,,,,

17. On-going through the provisions of both Income Tax Act, 1961 and Central Excise Act, 1944, the interest on delayed refund is payable after expiry" ,,,,,,

of 3 months from the date of granting refund or from the date of communication of order of the appellate authority, which are pari-materia. Therefore," ,,,,,,

the decision of Honâ€™ble Apex Court in the case of Sandvik Asia Ltd. (supra) is law of land, in terms of Article 141 of the Constitution of India" ,,,,,,

which is to be followed by me, wherein the Honâ€™ble Apex has observed as under:-" ,,,,,,

â€œ45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to ,,,,,,

interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the" ,,,,,,

appellantâ€™s money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid ,,,,,,

only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of ,,,,,,

refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the ,,,,,,

respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to ,,,,,,

compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the" ,,,,,,

Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are ,,,,,,

entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first" ,,,,,,

adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay, ,,,,,,

interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds, ,,,,,,

without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing, ,,,,,,

great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax, ,,,,,,

Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to them as has happened in the, ,,,,,,

instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an" ,,,,,,

amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for, ,,,,,,

periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, " ,,,,,,

seriously affected the administration of justice and the rule of law. ,,,,,,

COMPENSATION: ,,,,,,

46. The word "Compensation" has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as, ,,,,,,

follows: ,,,,,,

An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss" ,,,,,,

or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his" ,,,,,,

injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent in, ,,,,,,

value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money, ,,,,,,

which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received" ,,,,,,

recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of,,,,,,

time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused" ,,,,,,

by a breach of contract or duty; remuneration or wages given to an employee or officer.""" ,,,,,,

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and,,,,,,

on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to" ,,,,,,

govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the" ,,,,,,

compensation.,,,,,,

48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case,,,,,,

at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally," ,,,,,,

even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the,,,,,,

Honâ€™ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and,,,,,,

adamant attitude the Department has to suffer financially.,,,,,,

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate" ,,,,,,

specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible" ,,,,,,

for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the" ,,,,,,

date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel" ,,,,,,

for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was" ,,,,,,

refunded.,,,,,,

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the",,,,,,

matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded to",,,,,,

Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall",,,,,,

pay the penal interest @ 15% p.a. for the above said period.â€",,,,,,

18. As the Honâ€™ble Apex Court has answered the issue holding that the assessee is entitled to claim interest from the date of payment of initial",,,,,,

amount till the date of its refund. Therefore, I hold that the appellants are entitled to claim the interest on delayed refund from the date of deposit till its",,,,,,

realization. 19. Further, the interest on the refund shall be payable @ 12% per annum as held by Honâ€™ble Kerala High Court in the case of Sony",,,,,,

Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.) wherein it has held as under:-",,,,,,

â€œ14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed",,,,,,

above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any",,,,,,

judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered",,,,,,

opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.) the",,,,,,

pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta",,,,,,

High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.,)wherein the peremptory",,,,,,

directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the",,,,,,

High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the",,,,,,

delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court",,,,,,

in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any" ,,,,,,

statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was ,,,,,,

brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of" ,,,,,,

Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is ,,,,,,

liable to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum. ,,,,,,

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the" ,,,,,,

petitioner at 12% from the date of expiry of three months from 18-11-2002, to the amount of refund already made, within a month from the" ,,,,,,

date of receipt of a copy of this judgment, after adjusting any interest paid.â€" ,,,,,,

20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri. Ahmd.), wherein this Tribunal" ,,,,,,

observed as under:- ,,,,,,

â€œ5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in" ,,,,,,

November 2004, as per the directions of the department. In September 2004, the Honâ€™ble Gujarat High Court had dismissed the SCA" ,,,,,,

filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in ,,,,,,

September 2004 and SLP was filed in the Honâ€™ble Supreme Court in October 2004. In July 2005, the Honâ€™ble Supreme Court" ,,,,,,

ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and" ,,,,,,

decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not" ,,,,,,

attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending." ,,,,,,

There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions ,,,,,,

have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate,",,,,,

interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be" ,,,,,,

allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment" ,,,,,,

to the appellants.â€",,,,,,

21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are pari-materia. Therefore, following the" ,,,,,,

decision of Honâ€™ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt. Ltd. (supra) I hold that the,,,,,

appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum. 11. Agreeing with the,,,,,

findings of the Coordinate Bench in the case of Fujikawa Power & Anr. (supra), I allow the appeals and set aside the impugned order so far interest" ,,,,,,

have been disallowed. The adjudicating authority is directed to grant interest from the date of deposit till the date of grant of refund @12% per annum.,,,,,,

Such interest on refund should be granted within a period of sixty (60) days from the date of receipt of service or a copy of this order.,,,,,,

(Pronounced on 07.12.2020).,,,,,