

(2024) 11 CESTAT CK 0015

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Service Tax Appeal No. 51635 of 2022

M/s. India Trade promotion
Organization

APPELLANT

Vs

Commissioner of Central Excise
& CGST ♦ Delhi South

RESPONDENT

Date of Decision: Nov. 14, 2024

Acts Referred:

- Finance Act, 1994 - Section 77, 78
- Central Excise Act, 1944 - Section 11AA, 11B, 11B(2), 11BB, 11D, 11DD, 35F, 35FF
- Customs Act, 1962 - Section 27, 129E, 129EE
- Constitution of India, 1950 - Articles 141, 300A

Hon'ble Judges: Dr. Rachna Gupta, Member (J); Hemambika R. Priya, Member (T)

Bench: Division Bench

Advocate: P.K. Sahu, S.K. Meena

Final Decision: Allowed

Judgement

Dr. Rachna Gupta, J

1. Present appeal has been filed to assail the order passed by commissioner (Appeals) bearing Order-in-Appeal No. 46/2021-22 dated 31.03.2022 vide

which the appellant is denied eligible for interest on the amount refunded. The facts in brief, relevant for the present adjudication are as follows:

1.1 Initially, a Show Cause Notice bearing No. 145/2011-12 dated 29.03.2012 was served upon the appeal proposing demand of service tax on the

amount received as grant, from Ministry of Information and Broadcasting, to the appellant for providing "Business Exhibition Services" during the

period 2006-07 to 2010"11. The said proposal was confirmed vide adjudication Order No. 01/ 2014"15 dated 22.01. 2015 and the demand for an

amount of ₹ 4,10,40,683/- along with the applicable interest and the penalty under section 77 and 78 of the finance act,1994 was confirmed against the

appearance. An appeal against the said order was filed before this Tribunal which was decided vide final order number 53031/ 2018 "CU dated

13.09. 2018 in favor of the assessee-appellant. The department filed an appeal against the said order before Hon"ble Supreme Court. Vide order

dated 19.02.2021, Hon"ble Supreme Court has refused to interfere in the matter and dismissed the civil appeal of the department. Pursuant to the

said order, the appellant filed a refund claim of Rs.8 ,81,20,922/-on 10. 01.2019 submitting that the said amount was paid under protest. The refund of

said amount has been sanctioned vide order in original number 08/ 2021"22 dated 29.09. 2021 however, it is held as follows:

"I find that the party is not eligible for the interest on refund amount claimed as party"s refund claim is sanctioned well within time

after submission of all requisite documents by the party and section 11BB of Central Excise Act, 1944 with respect to interest in the case of

instant refund claim is not applicable in the instant case."

1.2 The appeal against the said order has been dismissed vide Order-in-Appeal dated 31.03.2022, as mentioned above. Being aggrieved, the appellant

is before this Tribunal.

2. We have heard Siri P. K. Sahu, learned Advocate for the appellant and Sri S. K. Meena, learned Authorized Representative for the department.

3. Ld. Counsel for appellant submitted that the commissioner (Appeals) was of the opinion that refund could not be granted as long as the revenue has

filed an appeal and the matter was not decided by Hon"ble Supreme Court. Even after Hon"ble Supreme Court has decided not to interfere

with the order of the tribunal, the adjudicating authorities below are of the view that refund could be granted till the a copy of Hon"ble Supreme

Court order is received. However, both have ignored CBEC Master circular No. 1053/2/ 2017 "CX dated 10.03.2017. Learned Counsel has relied

upon the decision of this Tribunal in the case of Parle Agro Pvt. Ltd vs Commissioner, CGST, Noida, reported as 2022 (380) ELT 219 (Tri. All.).

Decision of Honâ€™ble High Court of Allahabad in the case of Pace Marketing Specialities Vs Commissioner, 2011 (274) ELT 13 (All) and in case

of Ebiz .com Pvt. Ltd. Vs Commissioner, 2017 (49) STR 389 (All) have been relied upon to impress that appellant is entitled for interest at the rate of

12%. With these submissions the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions learned Authorized Representative for department has mentioned that the appellant had deposited the entire

demand after the demand was confirmed by the commissioner and then filed the present appeal before this Tribunal. Both the authorities have

acknowledged the fact that the amount paid by the appellant is the amount of pre-deposit. Hence, the grant of interest would be governed by section

35FF of Central Excise Act, 1944. Decision in the case of Ranbaxy Laboratories vs Union of India reported in 2011 (273) ELT 3 (SC). With these

submissions the appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, we observe and hold as follows:

5.1 The order of Commissioner (Appeals) has been challenged on the ground that the appellants were entitled to be paid interest at the rate of 12%

per annum on the total amount of the refund from the date of its deposit till the date of its actual payment. To adjudicate the same foremost we need

to look into the relevant provisions which entitle assessee for the interest to be paid on the amount deposited by them which specifically can be called

as revenue deposits.

5.2 We observe:

(a) Section 11AA deals with the interest on delayed payment of duty. It provides that the person who is liable to pay duty, shall, in addition to the duty,

be liable to pay interest at the rate specified in sub-section (2) of the said section, wherein the interest rate has been specified to be not below 10%

and not exceeding 36% per annum as the Central Government, by notification in the Official Gazette fix.

(b) Section 11BB of Central Excise Act deals with the interest on delayed refunds under Section 11B (2). We observe that Section 11BB of the

Central Excise Act states that if any duty orderd to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application then the applicant shall be entitled to interest after the expiry of three months from the date of receipt of the application at such rate not below 5% and not exceeding 30% as may be notified by the Central Government in the Official Gazette.

(c) Perusal of Section 11DD provides that where an amount has been collected in excess of duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest at such rate not below 10% and not exceeding 36% per annum as is for the time being fixed by the Central Excise, by notification in the Official Gazette.

(d) Section 35FF of Central Excise Act also talks about the interest on delayed refund of amount deposited under Section 35F. According to this section where the amount deposited under Section 35F i.e. the amount of pre-deposit is required to be refunded consequent to the order of appellate authority, there shall be paid to the appellant interest at such rate, not below 5% and not exceeding 36% per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount.

5.3 We have also perused the CBEC circular dated 10.03.2017 wherein it is clearly instructed that the adjudicating authorities not to withhold refund on the ground that an appeal has been filed unless stay has been granted by the appellate authority Central Board of Excise & Customs (CBEC) has stated that, where the appeal is decided in favor of the assessee, the amount of tax deposited is not to be governed by Section 11B of the Central Excise Act, 1944. It has instructed that refund should be paid to the appellant within 15 days of the receipt of his letter, seeking refund, whether or not an appeal against the order is contemplated by the department. CBEC has also clearly instructed that interest should be paid from the date of payment of tax to the date of refund. Apparently and admittedly the appellant became entitled for refund of the amount pursuant to the order of this Tribunal setting aside the duty demand against the appellant. The refund was sanctioned in lieu thereof.

5.4 These observations when seen in the light of above quoted legal provisions, it is clear that Section 11B/11BB of Central Excise Act is not

applicable to the given set of circumstances. We draw our support from the decision of this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs.

Commissioner, GST, reported as 2021-TIOL-306-CESTAT-ALL, wherein following findings have been endorsed:

“30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant

was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been

clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

31. Section 11D of the Excise Act deals with duties of excise collected from the buyer to be deposited with Central Government. It provides

that every person who is liable to pay duty and has collected any amount in excess of the duty assessed from the buyer of such goods in any

manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

32. Section 11DD of the Excise Act deals with interest on the amount collected in excess of the duty. It provides that where an amount has

been collected in excess of the duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the

amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirty six per cent per annum, as is for the time

being fixed by the Central Government, by notification in the Official Gazette.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate interest has not been prescribed, when

revenue deposit is required to be refunded.”

The Tribunal in the said case had allowed the interest on the refund amount from the date of deposit till the date of payment thereof.

5.5 We further observe that Hon^{ble} Supreme Court also in the case of Commissioner of Customs (Import), Raigad vs M/s. Finacord Chemicals

(P) Ltd. in Civil Appeal no. 1633-1638 of 2004 as decided on 08.04.2015 reported as 2015 (319) E.L.T. 616 (S.C.) while discussing the liability of the

department to pay the interest has referred to Departments' own circular dated 02.01.2002 wherein the Board clarified that the matters of refund

other than the amount of duty would not be covered under the provisions of Section 11B of Customs Act or Section 35FF of Central Excise Act. It

was held by the Hon'ble Apex Court that in such cases of refund even the concept of unjust enrichment is not applicable. Learned Apex Court has

relied upon its decision in SLP titled as Union of India vs Suvidhe Ltd. in which decision of Bombay High Court in Suvidhe Ltd. vs Union of India

reported as 1996 (82) ELT 177 has been upheld. The Bombay High Court has observed that in case of deposits which were not in the form of duty,

provisions of 11B of Customs Act will have no applicability. The deposits made under Section 35FF since is not the payment of duty, Section 11B will

not be applicable.

5.6 Another circular of department bearing No. 802/35/2004 CX dated 08.12.2004 was also being considered by the Apex Court in the above

mentioned judgment dated 08.04 2015. In that circular the Board emphasised that the amounts other than the amount of duty if deposited it should be

refunded immediately as non-returning of deposits attract interest that has been granted by the Courts in number of cases. One similar case of Hon'ble

Apex Court is the decision of Sandvik Asia Ltd. reported as 2006 (196) ELT 257 (SC) wherein it was held that the amount deposited under Section

35FF of Central Excise Act as far as the payment of interest is concerned shall be applicable only in the cases for such deposits as have been made

under Section 35F of the Act. As already observed in the present case, the amount in question is neither the amount of duty nor is the amount of pre

deposit, the amount in question is merely a deposit with the Revenue which the Revenue had no authority to retain as the appellant was the owner

thereof. The following para of the above circular are quoted in this decision.

¶5. Refund of pre-deposit:

5.1 Where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the

interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act,

1944 or Section 129EE of the Customs Act, 1962.

5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.

5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra.

7. Procedure for refund:

7.1 A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self attested Xerox copy of the order in appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with

interest at the rate specified.

7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 should be

maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made

in case of favourable order from the Appellate Authority.â€

5.7 As per the Article 300A of Constitution of India also, no person shall be deprived of his property, save by authority of law. They cannot be

deprived of the same and is entitled for benefits arising out of said property. Hence interest accrued on the amount in question during the period it

remained deposited with the department is the property of the owner of the amount i.e. the appellant herein. We draw our support from the decision of

Hon'ble High Court of Allahabad in the case of RHL Profiles Ltd. Vs. Commissioner of Customs, Ex. and Service Tax, Kanpur reported as 2017

(352) ELT 349 (All) has held that once the confiscation has been set aside, confiscation of seized currency has been set aside and the fact is that the

Department has earned interest during the period the currency was retained by it, it was held that payment of interest could not be denied merely for

the reason that there is no express statutory provision. Bombay High Court also in the case of Union of India Vs. M P Desai reported as 2019 (366)

ELT 251 (Bom) has held that amount seized in cash by the authorities is to be refunded along with the interest. Though in this case the rate of interest

was held to be simple at the rate of 8%. However, there already has been decisions of Kerala High Court in the case of Sony Pictures Networks

India Pvt. Ltd. Vs. UOI reported as 2017 (353) ELT 179 (Ker) wherein the decision of Hon'ble Apex Court in the case of Kuil Fireworks Inds. Vs.

Collector reported as 1997 (95) ELT 3 (SC) is relied and it was held that rate of interest while refunding the amounts has to be 12% of the amount

refunded.

5.8 We also draw our support from the decision of Honâ€™ble Apex Court in the case of Sandvik Asia Ltd. which is now the law of land in terms of

Article 141 of the Constitution of India. The Honâ€™ble Apex Court, in the said case, has observed as follows:

45. 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 appellant'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 that 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 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. RamanathaAiyar'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; some thing 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.

The Hon'™ble Apex Court thus held that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund.

5.9 Following the said law of land, we hold that the appellants are entitled to claim the interest on the amount as has been refunded in their favour that

too to be paid from the date of payment of initial amount till the date of its refund.

5.10 The above entire discussion makes it clear that the amount in question was an amount in the form of pre-deposit. Hence, it is the refund in terms

of Section 35FF. However, the interest on sanctioned amount of refund has been denied on the ground that refund has been sanctioned within three

months from the date of communication of the order of appellate authority in terms of the pre amended Section 35FF of Central Excise Act, 1944. We

observe that Section 35FF stands amended w.e.f. 06.08.2014 read as follows:

Section 35FF. Interest on delayed refund of amount deposited under Section 35F.-

“Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate

authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum

as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of

the amount till, the date of refund of such amount.

Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be

governed by the provisions of Section 35FF as it stood before the commencement of the said Act.

The bare perusal makes it clear that the proviso is applicable to such amounts which were deposited under Section 35F.

6. From the entire above discussion, it is clear that the amount in question was not deposited under Section 35F, however is akin to predeposit for the

reasons as discussed above. It is clear that Section 11B and 11BB of Central Excise Act will not be applicable to the amount in question, the denial of

the interest on the appellant’s amount is held to be unjustified. Resultantly, we hold that the said proviso is not applicable to the given set of

circumstances. We therefore hold that the findings are liable to be set aside. Section 35FF itself prescribes the rate of interest in the range of 5% to

36% when these provisions is read in the light of the above provisions and the decisions with respect to the rate of interest. However, we observe that

the Central Government vide Notification No. 12/2023-Central Tax (Rate) dated 19.10.2023 has fixed the rate of interest @ 6%. Resultantly, we hold

appellant to be entitled for getting interest on the amount of refund from the date of payment till the date of its disbursement, however at the rate of

6%. Hence, we hereby set aside the order under challenge. Consequent thereto, the appeal is hereby allowed.

[Order pronounced in the open court on 14.11.2024]