

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60268 of 2022**

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-88-2022-23 dated 20.07.2022 passed by the Commissioner (Appeals), Chandigarh]

**Impressive Management Solutions Pvt. ....Appellant  
Ltd.**

SCO No. 86, Top Floor, Sector 44-C, Chandigarh

*VERSUS*

**C.G. & S.T., Chandigarh .....Respondent**

Central Revenue Building, Plot No. 19 Sector-17-C,  
Chandigarh

**APPEARANCE:**

Present for the Appellant: Shri Vikrant Kackria, Advocate

Present for the Respondent: Shri Rajeev Gupta and Shri Amandeep Kumar,  
Authorized Representative

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60090 /2023**

DATE OF HEARING: 21.01.2023

DATE OF DECISION:06.04 .2023

**PER S. S. GARG**

The present appeal is directed against the impugned order dated 22.07.2022 passed by the Commissioner Appeal whereby the appeal of the appellant was rejected by holding that the appellant is not entitled for interest on the refund amount.

2. The brief facts of the present case are that the appellants are engaged in providing services namely recovery agents services and

are registered with the Service Tax Department, the appellants were under a bonafide belief that the recovery agents services were not liable to discharge service tax as the same was liable to tax on reverse charge basis. Further, the understanding of the appellant was confirmed by the companies as they were not paying the service tax to the appellant. The department undertook an enquiry on the basis of Form 26AS of the appellant and came to the conclusion that the appellant had short paid certain amount to service tax. In response to the letter of the department, the appellant categorically informed the department that they were under the impression that since entire amount recovered by them was inclusive of service tax and the service tax liability was being discharged by the telecom companies on the entire amount. Hence, they were not discharging the service tax liability. Subsequently, the department issued a show cause notice proposing to demand service tax amounting to Rs. 49,94,022/- for the period 2010-2011 to 2014-2015 and further proposed penalty on them. After due process the Order-in-Original confirmed the demand of Rs. 49,94,022/- and penalty under section 78 and section 77 was also imposed.

3. Aggrieved by the said order the appellant filed appeal before the Commissioner Appeal, which was dismissed by the commissioner.

4. Thereafter the appellant filed an appeal before the Tribunal against the order confirming the demand of service tax and imposition of penalty. The Hon'ble Tribunal vide final order no. 61134/2019 dated 02.12.2019 allowed the appeal of the appellant by

holding that the extended period of limitation was not invocable and has also set aside the penalty under section 78. In consequence to the order, the appellant requested the department to refund an amount of Rs. 22,81,472/- which was beyond the limitation period. The refund was filed on 18.12.2019 and the same was sanctioned to the appellant vide Order-in-Original dated 15.01.2020. The refund was sanctioned but no interest was given on the refund. Subsequently the department sue moto amended above mentioned order vide order dated 17.02.2020 and held that no refund was payable to the appellant. The appellant filed an appeal against the amendment order before the Commissioner Appeal which was rejected vide Order-in-Appeal dated 20.07.2021. Thereafter, the appellant filed an appeal against the said order of the commissioner appeal before the Hon'ble Tribunal and the Tribunal allowed the appeal vide final order no. 60052/2020 dated 15.03.2022 and held that the rectification order passed by the adjudicating authority was wrong and held that the earlier order sanctioning the refund was proper order and restored the same. There was some clerical error in the said final order of the tribunal and the same was rectified vide miscellaneous final order no. 60014/2022 dated 28.03.2022. Thereafter, the refund of Rs. 22,81,472/- sanctioned vide Order-in-Original dated 08.06.2022 but the interest was not sanctioned. The appellant filed an appeal against the order for non sanctioning of interest but the same was rejected vide Order-in-Appeal dated 22.07.2022, hence the present appeal.

5. Heard the Ld. Counsel appearing for the appellant and the Ld. AR for the department and also perused the materials available on record.

5(a). Ld. Counsel for the appellant submitted that the issue as to from which date the interest is payable in the case of the amount deposited during investigation has already been settled by catena of decisions consistently holding that the assessee is entitled to claim interest on delayed refund from the date of deposit till its realization with 12% interest. In support of his submissions he relied upon the following decision:-

**1) M/s Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida reported as 2022 (380) E.L.T. 2019 (Tri. -All).**

**2) M/s Kesar Enterprises Vs. Commissioner of Central Goods & Service Tax, Noida reported as 2022 (380) E.L.T. 319 (Tri.-All).**

**3) M/s Riba Textiles Ltd. Vs. Commissioner of Central Excise & Service Tax Panchkula Decided vide Final Order No. 60015/2020 dated 07.01.2020.**

**4) M/s Marshal Foundry Works Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Faridabad decided vide Final Order No. 60055-60059/2022 dated 15.03.2022.**

**5) M/s Shahi Exports Ltd. Vs. Commissioner of C.Ex & ST. Gurgaon-I reported as 2022 (58) G.S.T.L. 367 (Tri.-Chen.).**

**6) Pr. Commr. Of CGST, New Delhi Vs. Emmar MGF Construction Pvt. Ltd. Reported as 2021 (51) G.S.T.L. 311 (Tri.-Del).**

**7) M/s Sushitex Exports (India) Ltd. Vs. Union of India reported as 2022 (380) E.L.T. 244 (Bom).**

**8) Dilichand Shreelal Vs. Collector of Central Excise and others reported as 1986 (26) E.L.T. 298 (Cal.).**

**9) Adarsh Metal Corporation Vs. Union of India reported as 1993 (67) E.L.T. 483 (Raj.).**

**10) Shreewood Products Pvt. Ltd. Vs. Commissioner of Central Excise reported as 2016 (44) S.T.R. 592 (P&H).**

**11) Pr. Commr. Of CGST, New Delhi Vs. Emmar MGF Construction Pvt. Ltd. Reported as 2021 (55) G.S.T.L. 311 (Tri. Del.)**

**12) Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex Cus. & CGST Delhi reported as 2021 (378) E.L.T. 293 (Tri. Del.)**

**13) MRF Ltd. Vs. State of Kerala reported as 2020 (36) G.S.T.L. 171 (S.C).**

**14) Vasudha Bommireddy Vs. Assistant Commr. Of S.T. Hyderabad reported as 2020 (35) G.S.T.L. 52 (Telangana).**

**15) Haryana Vanaspati & General Mill Vs. the State of Haryana and another decided 07.08.2015 by the Hon'ble Punjab and Haryana High Court at Chandigarh.**

**16) Shanti Construction Co. Vs. Commissioner of C. Ex. & S.T. Rajkot reported as 2021 (54) G.S.T.L. 164 (Tri. Del.).**

He further submitted that the amount deposited during the course of investigation has always been deemed to be under protest as held in the various judgments namely **CCE Vs. Pricol Limited - 2015 (320) ELT 703 (Mad)**, **CCE Vs. Eveready Industries India Limited -2017 (357) ELT 11(All.)** and **Gujarat Engineering Works Vs. CCE -2013 (292) ELT 547 (Tri.-Ahmd.)**. He further submits that in the case of **CCE, Chennai-II Vs. Ucal Fuel Systems Limited-2014 (306) ELT 26 (Mad.)**, wherein Hon'ble High Court has held that the assessee is entitled for payment of interest from the date of deposit till the date of payment of amount. He further submits that the Division Bench of this Tribunal in the case of **Parle Agro**

***Pvt. Ltd. Vs. Commissioner, CGST, Noida (Supra)*** has allowed the grant of interest at 12% per annum from the date of deposit till the date of payment. The Ld. Counsel further submits that this Tribunal in the case of ***Riba Textiles Ltd. Vide its Final Order No. 60015/2020 dated 07.01.2020*** has held that the appellant is in that case is entitled to claim interest on delayed refund from the date of deposit till its realization and further this Tribunal by relying upon the decision of the Apex Court in the case of ***Sanvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune, 2006 (196) E.L.T. 257 (S.C)*** and ***Sony Pictures India Pvt Ltd. Vs. UOI-2017 (353) ELT 179 (Ker.)*** allowed the interest at the rate of 12% per annum from the date of payment of initial amount till the date of its refund. Ld. Counsel further submits that the Revenue assailed the decision of this Tribunal in the case of Riba Textiles Ltd. (Supra) before the Hon'ble High court of Punjab and Haryana High Court and the Revenue appeal was dismissed by the Hon'ble Punjab and Haryana High Court vide its final order dated 14.03.2022. He further submits that the revenue filed a review application against the judgment dated 14.03.2022 passed by the High Court in Civil appeal no. 8/22 which was also dismissed by the Hon'ble High Court of Punjab and Haryana vide its order dated 23.05.2022. He further submits that this Tribunal is bound to follow the decisions rendered by the jurisdictional High Court of Punjab and Haryana.

On the other hand, Ld. DR submits that the amount paid by the appellant was duty as reflected from the various challans vide which service tax has been paid wherein the appellant has deposited the

service tax under service tax head 0044 which clearly shows that it is not the revenue deposit but the duty deposit. He further submits that in the present case the provisions of Section 35FF of the Central Excise Act, 1945 are applicable and as per the said provisions the appellants are entitled to claim interest on delayed refund if the same is not paid after three months from the date of the order of the appellate authority. He further submits that the decisions relied upon by the appellant in support of his submissions cited (Supra) are not applicable to the present case and are distinguishable. Ld. DR in support of his submissions relied upon the following decisions :-

- 1) Principal Commissioner Central Goods and Service Tax Vs. M/s Parle Agro Private Limited in Central Excise appeal no. 18 of 2021.**
- 2) B E office Automation Products Pvt. Ltd Vs. C.C Delhi and C.C. Ludhiana, in custom appeals 60328,60330,60365 & 60366 of 2019.**
- 3) M/s DLF Home Developers Ltd. Vs. CCE & S.T- Gurgaon-I in Service Tax appeal 60926-60927 of 2019.**
- 4) Union of India Vs. West Coast Paper Mills Ltd. -2004 (164) E.L.T. 375 (S.C).**
- 5) Commissioner of Central Excise & S.T. Rohtak Vs. M/s Som flavor Masala Pvt. Ltd vide order no. 60385/2020.**
- 6) Mafatlal Industries Ltd. Vs. Union of India -1997 (89) E.L.T. 247 (S.C.).**

Ld. DR further submitted that the decision of this Tribunal in the case of **Parley Agro Pvt. Ltd. Vs. Commissioner of Central Excise, Noida -2018 (360) E.L.T. 1005 (Tri.-All.)** has been challenged before the Allahabad High Court vide Central Excise Appeal no. 18/2021 and the appeal has been admitted in the High Court vide order dated 19.01.2022 on substantial question of law.

He further submitted that once the appeal is admitted in the higher court against any order of the lower authority, then the said decision of the lower authority cannot be said to have attained the finality and correctness of the judgment becomes wide open. He further submitted that there are contrary judgments of the Hon'ble Tribunal which denied the grant of interest from the date of deposit in the case of delayed refund of amount deposited during investigation. Ld. DR further submits that the ratio laid down in Reba Textiles is applicable only on pre-deposits and not on amount deposited during investigation which is the issue in the present case. Ld. DR tried to distinguished the judgments of the Hon'ble High Court in the case of Reba textiles largely on the point that the judgment laid down the ratio only on the issue of the pre-deposit and did not touch upon the issue of amount deposited during investigation. He further submits that the judgment of the CESTAT, Division Bench, Allahabad in the case of **Parley Agro Pvt. Ltd. Vs. Commissioner of Central Excise, Noida** dated 25.05.2021 is also not applicable in the present case and is distinguishable on the ground that in the said case the amount was paid with endorsement regarding payment under protest whereas in the present case amount was paid voluntarily and no protest was lodged at any stage of investigation, rather the appellant admitted his liability vide its letter dated 30.03.2015 duly recorded in the show cause notice dated 29.09.2015 and Order-In-Original dated 02.07.2018. He further submitted that amount was paid under proper accounting heads of the Central Tax on three different dates during the period of one

month. He further submits that the rate of interest which is to be paid on the delayed refund should be as per the provisions of law which prescribes 6% interest only.

6. After considering the submissions by both the parties and the perusal of the decisions relied by both the parties I am of the opinion that the only issue involved in the present case relates to non sanctioning of interest on the refund sanctioned by the department and further the rate of interest of delayed refund. This issue has been considered by the Tribunal in various cases and it has been consistently held that the assessee is entitled to claim interest from the date of deposit till the date of payment at the rate of 12%. Further, I find this Tribunal in the case of Reba Textiles Ltd. after considering the various decisions held that the assessee is entitled to claim interest from the date of payment of initial amount till the date of its refund and further the Tribunal relied upon the decision of Kerala High Court as well as the decision of the Ahmadabad Tribunal and thereafter granted the interest of 12% per annum.

Here, It is pertinent to mention Para 19, 20 and 21 of the said judgment which are reproduced below:-

**19.** Further, the interest on the refund shall be payable @ 12% per annum as held by Hon“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:-

*"14. 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."*

**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:-

*"5. 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 Hon"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 Hon“ble Supreme Court in October 2004. In July 2005, the Hon“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.”*

**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 Hon“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 of its refund @ 12% per annum.”

Further, this decision of this Tribunal was upheld by the jurisdictional high Court of Punjab and Haryana vide its decision dated 14.03.2022 whereby the Revenue’s appeal has been dismissed. Thereafter, the review sought by the department was also dismissed vide order dated 23.05.2022.

Here, I would like to mention the decisions of Parley Agro Ltd. Reported at 2022 (380) E.L.T. 219 wherein Identical issue has been considered. In this regard, reference may be made to para 30 ,33, 39,40,41,42 which are reproduced herein below:-

*“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.*

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

*39. In this connection reference can also made to the decisions of the Allahabad High Court in Pace marketing Specialities and Ebiz. Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.*

*40. In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.*

*41. In view of the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notification issued under Section 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12 % per annum seems to be appropriate.*

*42. Thus, for the reason stated above, Excise Appeal no. 70628 of 2019 is allowed and the order dated 28-05-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment. Excise Appeal No. 70674 of 2019 filed by the Principal Commissioner for setting aside the order dated 28.05.2019, passed by the Commissioner (Appeals) is dismissed”.*

The above said decision of the Tribunal has been followed by various benches of this Tribunal in the following cases:-

**1) Kesar Enterprises Vs. Commissioner of CGST, Noida (Tri.-Allahbad)-2022 (380) ELT 319, Delhi.**

**2) Allied Chemical and Pharmaceuticals Pvt. Ltd. Vs. CCE & CGST, Jaipur (Tri.-Delhi)-2022 (382) ELT, Delhi.**

**3) Continental Engines Pvt. Ltd. Vs. Commr. (Appeal),  
C.Ex & CGST, Jaipur-I, (Tri.-Delhi) -2022 (382) ELT  
522 (Delhi).**

Further, I find that the arguments of the Revenue that **Parley Agro Pvt. Ltd. Vs. Commissioner of Central Excise, Noida -2018 (360) E.L.T. 1005 (Tri.-All.)** has been challenged before the Hon'ble Allahabad High Court and the appeal has been admitted will not help the Revenue in any way as no stay has been granted against the said decision. Further, the main thrust of the argument of the Ld. DR that in the present case the duty has been deposited voluntarily and not under protest also does not have any force because consistently it has been held that any amount that is deposited during pendency of the adjudication proceedings or investigation is in the nature of deposit made under protest as held by the Madras High Court in the case of **CCE Vs. Pricol Limited - 2015 (320) ELT 703 (Mad). CCE Vs. Eveready Industries India Limited -2017 (357) ELT 11(All.) and Gujarat Engineering Works Vs. CCE -2013 (292) ELT 547 (Tri.-Ahmd.)**. Further, I find that there are certain contrary decisions relied upon by the Ld. DR but the decision of the Punjab and Haryana High Court in the case of **Commissioner of Central Excise, Panchkula Vs. Ms. Riba Textiles Ltd. Cited** (Supra) upholding the decision of the Tribunal in Riba Textiles is binding on this Tribunal and by following the ratio of the decision of the Punjab and Haryana High Court in the case of Riba Textiles, I am of the considered view that the appellant

is entitled to claim interest on delayed refund from the date of deposit till the date of payment at the rate of 12% per annum.

In result, the impugned order is set aside and the present appeal is allowed.

(Order pronounced in the open court 06.04.2023)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

Kailash