CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 796 of 2012

[Arising out of OIA-SRP/92/DMN/VALSAD/2012-13 dated 21/08/2012 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN]

Trent Ltd **.....Appellant**
(Formerly Lakme Ltd.) Trent House, G-Block,
Plot No. C-60, Besides Citi Bank,
Bandra Kurla Complex, Bandra (E),
Mumbai, Maharashtra.

VERSUS

C.C.E. & S.T.-Daman **.....Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
None for the Appellant
Shri. G. Kirupanandan, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO.A / 11781 /2022

DATE OF HEARING:24.11.2022
DATE OF DECISION:24.11.2022

RAMESH NAIR

The issue involved in the present case is that in respect of the pre deposit whether the appellant is entitled for the interest after 3 months from the date of order of the Tribunal, whereby the refund is arising or after 3 months of the Supreme Court decision rejecting the appeal of the revenue.

2. When the matter was called out, none appeared for the appellant.

3. Shri G. kirupanandan, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that issue attained finality only after the Supreme Court judgment. Therefore, the appellant is entitled for the refund only after the Supreme Court judgment, as the interest is applicable after 3 months from the date of Supreme Court judgment.

4. I have carefully considered the submission made by Learned AR and perused the records. There is no dispute in the fact that the refund is in respect of pre deposit made as per the order of the Tribunal. Subsequently, the appeal, in relation to which the pre-deposit was made, has been allowed in favour of the appellant. Though the revenue has challenged the Tribunal order before the Supreme Court, but no stay was obtained. In this position, the appellant became entitled for the refund within 3 months from the date of the Tribunal order and in case the refund is not granted, the appellant is entitled for the interest after expiry of 3 months from the date of the Tribunal order, which is mandatory in Section 35FF, which reads as under:

> *"**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."*

As per the plain reading of the above Section 35FF, since there was no stay from the higher Court, the appellant was entitled for the refund within a period of 3 months and also entitled for the interest after the expiry of 3 months from the date of Tribunal order. In this case the Tribunal order was passed on 17.12.2008. Therefore, the appellant is entitled for the interest on the refund from 17.03.2009 till the refund was sanctioned and granted.

5. Accordingly, I set aside the impugned order and allow the appeal in the above terms.

(Dictated & Pronounced in the open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

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