

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. I

Excise Appeal No.70485 of 2020

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/98/2020-21 dated 20/07/2020 passed by Commissioner (Appeals) Central Goods & Service Tax, Meerut)

Commissioner of Central Excise &

CGST, Meerut-I

(Mangal Pandey Nagar, Meerut)

.....Appellant

VERSUS

M/s Gulshan Polyols Pvt. Ltd.,

(09th KM, Jansath Road, Muzaffarnagar)

....Respondent

APPEARANCE:

Shri Santosh Kumar, Authorised Representative for the Appellant

Shri Nagendra Krishna, Advocate for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 70814/2024

DATE OF HEARING : 27 August, 2024
DATE OF DECISION : 27 August, 2024

SANJIV SRIVASTAVA:

This appeal filed by revenue is directed against Order-In-Appeal No. MRT/EXCUS/000/APPL-MRT/98/2020-21 dated 20.07.2020, of Commissioner, CGST (Appeals), Meerut . By the impugned order following has been held:

"6. In view of the above discussion and findings, the impugned order is set aside, and the appeal bearing No. 205-CE/APPL-MRT/ MRT/2019 dated 07.02.2020, filed by M/s Gulshan Polyols Limited, 9th KM, Jansath Road, Muzaffarnagar, is allowed with consequential relief."

2.1 The respondent was engaged in the manufacture of Liquid Glucose and Glucose Powder, falling under Chapter Heading No.

1702 of Central Excise Tariff Act, 1985. He was also availing cenvat credit of the duty paid on inputs, input services and capital goods in terms of the provisions of Cenvat Credit Rules, 2004.

2.2 During the manufacturing process, a waste item also emerged which was removed without charging any central excise duty. On the basis of audit, it was alleged that the said waste item, being Animal feed/ Cattle Feed, was classifiable under Chapter Heading No 2308 of CETA on which the applicable central excise duty was NIL, hence it was an exempted goods and, therefore, the appellant was required to reverse an amount @ 6% of sale value of exempted goods in terms of Rule 6 (3) (i) of the CCR. However, the appellant contended that waste emerged during manufacturing of excisable goods, hence it cannot be treated as exempted goods, and thus the provisions of Rule 6 of CCR were not applicable. On this issue, a show cause notice dated 19.11.2015 for the period from April 2014 to December 2014 and subsequently a statement of demand dated 01.02.2016 for the period from January 2015 to June 2015 were issued to the appellant proposing demand and recovery of the amounts under the said Rule 6.

2.3 These notices were adjudicated by Order-in-Original dated 28.02.2017 dropping the demand relying on the Apex Court decision in the case of DSCL Sugar Limited [2015 (322) ELT 769 (SC)]. The demand pertaining to the period from March 2015 onwards was confirmed, citing the amendment made in Rule 6 of the CCR by Notification No. 06/2015-CE (NT) dated 01.03.2015.

2.4 This order was challenged before Commissioner (Appeals) who vide Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/137/2018-19 dated 07.06.2018 allowed the appeal and decided the issue in favour of the appellant.

2.5 In consequence to order dated 07.06.2018, after getting the refund of amounts reversed for the period up to June 2015, and applicable interest thereon, the respondent asked for the refund of the amounts of Rs. 56,77,204/- [Rs. 56,23,479/-

(amount reversed attributed to cenvat credit) and Rs. 53,725/- (deposited as interest thereon)], along with interest, for the subsequent period i.e. July 2015 to June 2017.

2.6 The adjudicating authority vide Order-in-Original No. 07/AC/MZN-II/Refund/2019 dated 29.11.2019 rejected the refund claim citing limitation as provided under Section 11B of the Central Excise Act, 1944.

2.7 Aggrieved respondent filed the appeal before the Commissioner Appeal which has been allowed as per the impugned order.

2.8 Aggrieved revenue has filed this appeal on following grounds:

- The appellate authority in the instant case has held that the provisions of section 11B will not come into play as the amount reversed by the respondent is not excise duty. He also held that the amount reversed by the respondent has to be treated as under protest as the dispute is of continuous nature. His finding is that the amount reversed by the respondent is deposit with the department and hence, it needs to be refunded alongwith interest.
- The findings of Ld. Commissioner (Appeals) are erroneous as the respondent used rice which is classifiable under Chapter 10 as cereals. They manufactured glucose powder, malto dextrin powder, dextrose mono hydrate classifiable under chapter 17, uncoated calcium carbonate under chapter 28, coated calcium under chapter 38 and residue of rice under chapter 23. The process of manufacture of these products clearly amount to manufacture as defined under section 2(f) of the CEA 1944. The emergence of residue of rice is also an outcome of this process. There is change in the character of finished goods i.e. residue of rice from initial raw material Therefore, the finding of Commissioner (Appeal) in his earlier OIA MRT/EXCUS/00/APPL-MRT/137/2018-19 dated 07.06.2018 (on the basis of which refund for the period upto june 2015

was sanctioned to the respondent) is erroneous. Reliance is placed Delhi cloth & General Mills. [1977 (1) E.L.T. 199 (S.C.)]

- Respondent had declared "residue/emerged waste of rice" in their monthly excise returns (ER-1) which is a return of excisable goods and availment of Cenvat Credit. The respondent have never disputed this fact that the product in question is not excisable.'
- Commissioner (Appeals) findings that the dispute is of Continuous nature, it is contended that the respondent have suo moto reversed an amount at Sr. No. 5 of ER-1 return which details Cenvat Credit taken and utilized. ER-1 return for the month of August 2015 is relied upon which shows clearance of residue/ emerged waste of rice falling under chapter sub-heading 23024000, valued at Rs 9708500 against which the respondent have reversed an amount of Rs. 124350 and Rs. 12876. At the end of their return, they have put a remark "An amount of Rs 124350/- has been debited towards common inputs used for waste emerged and amount of Rs 12876/- has been debited towards common input services used for waste emerged". The above remark clearly establishes that above reversal by the respondent was suo moto, otherwise they would have clearly mentioned under protest.
- Refund of any amount is governed by Section 11B of C.E.A. 1944 and therefore refund application filed by the respondent, would certainly be examined in the light of the provisions of Section 11B. The respondent have filed the instant refund claim with the jurisdictional Assistant Commissioner vide their letter dated 20.05.2019 which relate to the period from July 2015 to June 2017. Therefore, it was correctly rejected by the Adjudicating Authority as time barred. It is contended that the amount reversed by the respondent is not a deposit with the Government and is in discharge of legal obligation casted upon them under rule 6 of the CCR, 2004.

- Refund of any amount under C.E.A,1944 needs to be subjected to unjust enrichment except in the category of refunds mentioned in Section 11B The instant refund claim filed by the respondent does not fall in those categories and therefore, the subject refund claim ought to be subjected to scrutiny from unjust enrichment points.

3.1 We have heard Shri Santosh Kumar Authorized representative for the revenue and Shri Nagendra Krishna, Advocate for the respondent.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"5. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I find that the appellant was issued the show cause notices/ statement of demand for the past period and had reversed/ deposited the amounts in terms of Rule 6(3) of the CCR, for the period from July 2015 to June 2017 representing the amount of 6% of the value of clearances of Animal Feed/Cattle Feed He has contended that the department had not issued any show cause notice for the demand for the said period and the amounts were deposited as the department had issued regular demands on the issue in question. I find that this issue was decided vide OIA dated 07.06.2018, wherein it was inter-alia held that "there is no manufacture involved in the emergence of Animal Feed/ Cattle Feed and therefore, Rule 6 of the CCR is not applicable", and after getting the consequential refund of amounts reversed for the period up to June 2015, the appellant had asked for the refund of the amounts reversed/ deposited from July 2015 onwards which he was not required to reverse under the provisions of the Rule 6 (3) of the CCR. Further the amounts deposited by the appellant were not covered by any order of appropriation or a show cause notice covering the demand for the said

period, therefore the amounts so deposited by the appellant remained a deposit and the retention of the same by the department was without the authority of law. The provisions of Section 11B of the CEA were not applicable to the refund of any such deposit as it had never attained the character of duty. The adjudicating authority was, therefore, in serious error in rejecting the refund citing limitation of time as provided under the said Section 11B. His findings that the amounts were deposited voluntarily without protest as neither the appellant had lodged any protest through letter nor the word 'under protest' was mentioned in ER-1s were not sustainable as the amounts were deposited during the pendency of the ongoing litigation between the appellant and the department and the appellant had reversed/ deposited the said amounts as show cause notices were issued to him for the preceding periods and the appellant had filed appeals against the demands confirmed. It was, therefore, evident that the amounts reversed/ deposited by the appellant in terms of Rule 6(3) of CCR were not the payment of excise duty, but merely revenue deposits which, under the circumstances, were deemed to be under protest. The Hon'ble CESTAT, Allahabad in an identical case of Triveni Engineering & Industries Limited Versus Commissioner. C. Ex & S Tax Lucknow [2018 (363) E.L.T. 331 (Tri. - Allahabad)], covering the issue, has inter-alia observed as "Refund - Limitation - Bagasse being not a dutiable item and not a manufactured item, as held by Supreme Court, reversal of duty under the provision of Rule 6(3) of Cenvat Credit Rules, 2004 not required - Amount reversed by appellant under Rule 6(3) ibid in the nature of revenue deposit - Moreover, such amount being reversibly deposited under protest, no limitation applies - Refund admissible - Section 11BB of Central Excise Act, 1944." Further, the Hon'ble CESTAT, Mumbai in an identical case of CCE, Nasik Versus M/s Nasik SSK Limited [2017 (358) ELT 664 (Tribunal-

Mumbai)]], covering the issue, has also inter-alia observed as "4. ... that this is a case of refund of an amount equal to 5%/6% paid/reversed by the respondents in terms of Rule 6(3) of Cenvat Credit Rules, 2004. There is no dispute that this amount does not represent excise duty. If this amount is not liable to be reversed, the same can be allowed as re-credit similarly in the manner as the cenvat credit is allowed at the time of receipt of input/input service. Since the amount is not under the head of excise duty, the refund thereof does not fall under the term of Section 11B. Accordingly, limitation provided under Section 11B shall not be applicable in the present case where the respondent sought refund of an amount reversed in terms of Rule 6(3) of Cenvat Credit Rules, 2004.

5.1. Regarding the observations of the adjudicating authority that neither the appellant had lodged any protest through letter nor the word 'under protest' was mentioned in ER-1s, the appellant has contended that the dispute was continuous in nature and the department was well aware about the issue. The Hon'ble High Court of Punjab and Haryana in case of CCE, Chandigarh Versus IND Swift Lands Limited [2017 (6) GSTL 21 (P&H)], on the issue of not mentioning the word 'under protest', has inter-alia observed as "Refund - Limitation - Protest on duty payment - It is not necessary that it be accompanied by words 'under protest' - If conduct indicates that payment was not voluntary and out of compulsion, it is under protest within meaning of second proviso to Section 11B(1) of Central Excise Act, 1944".

The appellant was, therefore, entitled to refund of the amounts deposited by him which has been wrongly rejected vide impugned order

5.2 Regarding payment of interest on the amounts deposited by the appellant I find that the appellant had suo moto deposited the said amounts for the period July 2015

onwards given the fact that the department had issued the demand notices and confirmed the demands up to June 2015 against which the appellant had filed the appeals which were subsequently allowed with consequential relief. vides OIA dated 07.06.2018. Under the circumstances and given the fact that there was neither any show cause notice demanding the said amounts nor was there any order appropriating the same the appellant was also entitled to interest after three months from the date on which the application for the refund of the said amounts was presented to the adjudicating authority."

4.3 The issue of reversal of CENVAT Credit under Rule 6 (3) by the respondent has been decided by the order in appeal for the period upto June 2015 has been decided by the order in appeal No 07.06.2018. The respondent has been granted refund for the amount so reversed by order in original dated 05.02.2019. Said order granting refund is not in dispute.

4.4 In the order in original dated 28.02.2017, by which the adjudicating authority has confirmed the demand of Rs 24,46,890/- along with interest and equivalent penalty, while recording the defence submission he has specifically recorded in

- Para A.5, *"However, later on, the Noticee, despite not agreeing inprinciple, communicated through e mail dated 08.02.2015 that they have reversed an amount of Rs 10,27,309 vide CENVAT Account Entry No 716 dated 23.01.2015 with respect to period covered under SCN dated 19.11.15."*
- Para A.7, *"The amount for the period January 2015 to June 2015 was also reversed for the value of Rs 59304148 [the amount was taken short by Rs 19,02548 in relevant ER-1 Returns for which rectification request was filed on 09.02.2016. However an amount of Rs. 5,85,250/- has been debited during the period January to June 2015 on actual bais on enhanced amount of Rs 5,93,04,148/-."*

From the above facts recorded in para A.5 and A.7 of the order dated 28.02.2017, it is evident that respondent has debited the amount without agreeing to the contents of the show cause notice dated 19.11.2015 and 01.02.2016, thus these amounts were being debited under protest.

4.5 Commissioner (Appeal) has in order dated 07.06.2018 at para 5 recorded as follow:

"5. The appellant has debited an amount of Rs. 7,49,014/- vide entry dated 06.04.2017 of cenvat credit register, towards statutory pre-deposit in compliance of Section 35 F of the Central Excise Act, 1944."

4.6 While allowing the refund of this amount, vide order in original No 31/AC/MZN-II/Ref/2018-19 dated 05.02.019, Assistant Commissioner has specifically observed as follows:

"10. The party has now filed refund claim for the amount of Rs 28,74,094 (Rs 24,46,890/- amount and Rs. 4,27,204/- interest). Since the appeal has been allowed, the party is entitled to refund of the same. The range Officer has verified and found that the amount was in fact debited by the party. The Range Officer also verified that no restrain free arrear is pending against the party.

11. In view of the above, I find that the refund is admissible to the party. Moreover, the claim is not hit by bar of limitation under the provisions of Section 11 B of the Central Excise Act, 1944."

4.7 From the above paras reproduced from the earlier orders it is evident that revenue has treated the debits made by the respondent prior to adjudication as debits made under protest and for the same reason have held that they will not be hit by bar of limitation as per Section 11B. The fact of protest is also evident from the e-mail dated 08.02.2015 (referred in order dated 28.02.2017).

4.8 Respondent continued to reverse the amount required even for the period after June 2015 on the same issue. These

amounts have to be considered to be reversed under protest as per the e-mail dated 08.02.2015. Once they have filed the protest they need not file the protest again and again.

4.9 In case of CISCO Systems (India) Pvt. Ltd. [2023 (384) ELT 175 (Del)] Hon'ble Delhi High Court has observed as follows:

"11.In the aforesaid context, the only issue to be addressed is whether filing of an appeal against the Order-in-Original dated 25/26-8-2004 while at the same time paying the duty on the enhanced value, would amount to paying the same under protest.

12.The respondent claims that it was obvious that the additional duty was paid under protest as the respondent had appealed the Order-in-Original dated 25/26-8-2004 enhancing the declared value of the goods resulting in the increase in custom duty. The Revenue contends that since no formal protest had been lodged while paying the duty, the benefit of second proviso to Section 27(1) of the Customs Act is not available to the respondent.

13.It is difficult for this Court to accept that the payment of custom duty imposed pursuant to an order while appealing the same can be construed as payment of duty without protest. The very act of filing an appeal against an order imposing customs duty is a protest against the duty as assessed. The entire purpose of such an appeal is to seek reduction of the levy. It is, thus, obvious that the assessee does not accept the said levy and, payment of the same would necessarily have to be construed as payment under protest.

14.The Learned Tribunal had relied on the Constitution Bench decision of the Supreme Court in the case of Mafatlal Industries Ltd. v. Union of India (supra) and referred to the following passage from the said decision :

"83. It is then pointed out by the learned Counsel for the petitioners-appellants that if the above interpretation is

placed upon amended Section 118, a curious consequence will follow. It is submitted that a claim for refund has to be filed within six months from the relevant date according to Section 11B and the expression "relevant date" has been defined in clause (B) of the Explanation appended to sub-section (1) of Section 11B to mean the date of payment of duty in cases other than those falling under Clauses (a), (b), (c), (d) and (e) of the said Explanation. It is submitted that Clauses (a) to (e) deal with certain specific situations whereas the one applicable in most cases is the date of payment. It is submitted that the appellate/revision proceedings, or for that matter proceedings in High Court/Supreme Court, take a number of years and by the time the claimant succeeds and asks for refund, his claim will be barred; it will be thrown out on the ground that it has not been filed within six months from the date of payment of duty. We think that the entire edifice of this argument is erected upon an incomplete reading of Section 11B. The second proviso to Section 11B (as amended in 1991) expressly provides that "the limitation of six months shall not apply where any duty has been paid under protest". Now, where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. If one reads the second proviso to sub-section (1) of Section 118 along with the definition of "relevant date", there is no room for any apprehension of the kind expressed by the learned Counsel."

(Emphasis Supplied)

15. In view of the authoritative decision of the Supreme Court in Mafatlal Industries Ltd. v. Union of India (supra), the question whether payment of duty while appealing its

imposition, is required to be construed as payment under protest, is no longer res integra. Although the said decision was rendered in the context of Section 11B of the Central Excise Act, 1944, the second proviso to Section 11B of the Central Excise Act, 1944 is pari material to second proviso of Section 27(1) of the Customs Act."

SLP filed by the revenue against this order of Hon'ble Delhi High Court has been dismissed as reported at [2024 (387) E.L.T. 517 (S.C.)]

4.10 Further in case of Mafatlal, referred in order of Hon'ble Delhi High Court following has been observed:

"85.*The rule no doubt requires the assessee to mention the "grounds for payment of the duty under protest" but it does not empower the proper officer, to whom the letter of protest is given, to sit in judgment over the grounds. The assessee need not particularise the grounds of protest. It is open to him to say that according to him, the duty is not exigible according to law. All that the proper officer is empowered to do is to acknowledge the letter of protest when delivered to him - and that acknowledgement shall be the proof that the duty has been paid under protest. A reading of the rule shows that the procedure prescribed therein is evolved only with a view to keep a record of the payment of duty under protest. It is meant to obviate any dispute whether the payment is made under protest or not. Any person paying the duty under protest has to follow the procedure prescribed by the Rule and once he does so, it shall be taken that he has paid the duty under protest. The period of limitation of six months will then have no application to him.*

86.*We may clarify at this stage that when the duty is paid under the orders of Court (whether by way of an order granting stay, suspension, injunction or otherwise) pending an appeal/reference/writ petition, it will certainly be a payment under protest; in such a case, it is obvious, it*

would not be necessary to lodge the protest as provided by Rule 233B.

96. *It would be evident from the above discussion that the claims for refund under the said two enactments constitute an independent regimen. Every decision favourable to an assessee/manufacturer, whether on the question of classification, valuation or any other issue, does not automatically entail refund. Section 11B of the Central Excises and Salt Act and Section 27 of the Contract Act, whether before or after 1991 amendment - as interpreted by us herein - make every refund claim subject to proof of not passing-on the burden of duty to others. Even if a suit is filed, the very same condition operates. Similarly, the High Court while examining its jurisdiction under Article 226 - and this Court while acting under Article 32 - would insist upon the said condition being satisfied before ordering refund. Unless the claimant for refund establishes that he has not passed on the burden of duty to another, he would not be entitled to refund, whatever be the proceedings and whichever be the forum. Section 11B/Section 27 are constitutionally valid, as explained by us hereinbefore. They have to be applied and followed implicitly wherever they are applicable."*

4.11 However there is no parallel provision to Rule 233B of Central Excise Rule, 1944 in Central Excise Rules, 2002. Thus the e-mail dated 08.02.2015 needs to be construed to be sufficient evidence that respondent was reversing these amounts under protest.

4.12 Thus as we hold that respondent was reversing the amounts required to be reversed under protest the refund claim could not have been hit by limitation.

4.13 From para 96 of the decision in case of Mafatlal Industries, it is evident that all claims of refund under Central Excise Act, 1944/ Customs Act, 1962 are to be dealt as per the provisions of Section 11B/ Section 27 and could have been allowed only if it

can be shown that they satisfy the requirements of that section. In the present case the respondent has claimed the refund of CENVAT Credit reversed by them in terms of Rule 6 (3) of the CENVAT Credit Rules. We find as per provisions of Section 11B (2) refund of CENVAT Credit is not hit by the bar of unjust enrichment. The provisions of said section is reproduced below:

"11B. Claim for refund of duty and interest, if any, paid on such duty

(1)

(2) If, on receipt of any such application, the Assistant or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a)

(b)

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d)"

Similar view has been expressed by the Ahmedabad Bench in case of Amity Thermosets Pvt. Ltd [2017 (348) E.L.T. 112 (Tri. - Ahmd.)]. In the case of Opel Alloys Pvt. Ltd. [2010 (249) E.L.T. 408 (Tri. - Del.)] Delhi Bench has observed as follows:

3.2 Though the amount of Rs. 8,00,000/- had been paid by the way of debit in the Cenvat credit account prior to the issue of show cause notice, on adjudication of this matter, this amount has been appropriated towards the duty demand. The refund claim has arisen when the Commissioner's order was set aside by the Tribunal vide final order dated 28-10-04. The Tribunal in the case of *Surbhi Enterprise v. CCE, Ahmedabad (supra)* has held that when the duty paid during investigation has been contested throughout from the original stage, its payment has to be treated as under protest. Same view has been taken by the Tribunal in the case of *G.S. Radiators Ltd. v. CCE, Ludhiana* reported in 2005 (179) E.L.T. 222 (Tri.-Del.) and *Laxmi Board & Paper Mills Ltd. v. CCE, Mumbai* reported in 2007 (208) E.L.T. 384 (Tri.-Mumbai). Hon'ble Supreme Court, in Para 83 of its judgment in case of *Mafatlal Industries Ltd. v. UOI* reported in 1997 (89) E.L.T. - 247 (S.C.) has observed that - "when a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest". Relying on these observations of Hon'ble Supreme Court, the Tribunal in the cases of *CC (Prev.), Jamnagar v. Continental Petroleums Ltd.*, reported in 2009 (234) E.L.T. 333 (Tri.-Ahmd.) and *CCE, Aurangabad v. Klasspak Pvt. Ltd.* reported in 2005 (179) E.L.T. 365 (Tri.-Mumbai), has held that when matter is under litigation, payment of duty made is deemed to be payment under protest, even though there is no express mention of payment having been made under protest. Thus in this case, the debit of the disputed amount on 4-1-05 in RG 23A Pt. II account has to be treated as having been made under protest. Hon'ble Supreme Court in case of *Dena Snuff (P) Ltd. v. CCE, Chandigarh* reported in 2003 (157) E.L.T. 500 (S.C.) has held that when the duty is paid under protest, the period of limitation would start to run from the date of final decision in the assessee's own case. Since in this case, the appeal was decided by the

Tribunal in favour of the Appellant, on 28-10-04, the limitation period for filing refund application under Section 11B has to be counted from 28-10-04 and since the refund application has been made on 10-11-04, the same is within time. Since the refund claim is of Cenvat credit debited on 4-1-05 in RG 23A Pt. II account, in view of clause (c) of 1st proviso to Section 11B(2) of principles of unjust enrichment will not be applicable.

4.14 In view of the discussions as above we hold that the claim of refund was to be considered as per Section 11B of the Central Excise Act, 1944 as contended by the revenue in their appeal, we find no merit in the appeal whereby refund allowed alongwith the interest as per section 11BB of the Central Excise Act, 1944 has been challenged.

5.1 Appeal filed by the revenue is dismissed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)