CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD
REGIONAL BENCH

Excise Appeal No.70608 of 2024

(Arising out of Order-in-Appeal No. 297-CE/APPL/LKO/2024 dated 03.05.2024passed by the Commissioner of Customs, Central Excise &CGST, Lucknow)

Commissioner of CE & CGST, Lucknow **Appellant**
Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow

Vs.

Durga Trading Co. **Respondent**
127/128, Harchandpur,
Garhikanaura, Talkatora,
Lucknow, U.P.

Appearance:

Shri Santosh Kumar, Authorised Representative, for the Appellant
Shri Vineet Kumar Singh, Advocate, for the Respondent

CORAM:

HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing:03.12.2024
Date of Decision: 25.02.2025

FINAL ORDER No. – 70091/2025

PER: ANIL G. SHAKKARWAR

Respondent is manufacturer of Pan Masala classifiable under Tariff Item No. 21069020 of First Schedule to Central Excise Tariff Act, 1985. During investigation carried out against the respondent by Revenue, respondent had deposited an amount of Rs.3,52,00,000/- during the period from 15.06.2017 to 18.12.2017. The said investigation led to issue of show cause notice dated 24.09.2018 wherein there was a proposal to appropriate the said deposit. The said show cause notice dated 24.09.2018 was adjudicated through order-in-original No. 01.06.2022 wherein the demand was dropped. As a consequence, the respondent filed on 23.08.2022 an application for refund of Rs.3.52 crores deposited during investigation and requested to pay the interest @ 12% from the date of deposit till the date of payment of refund. The said refund application was allowed through order-in-original dated 11.12.2023. Through the order dated 11.12.2023, refund of Rs.3.52 crores was allowed along with interest of Rs.21,12,000/-. Respondent preferred appeal against the order-in-original 11.12.2023 before Commissioner (Appeals) praying that interest @ 12% was not allowed to them through the original order and requested for allowing interest @ 12% per annum. The said appeal was decided though the impugned order-in-appeal dated 03.05.2024. Learned Commissioner (Appeals) has relied on final order passed by this Tribunal in the case of Parle Agro Pvt. Ltd. vs. Commissioner, CGST, Noida reported at 2022 (380) ELT 219 (Tri.-All.) and held that the respondent was entitled for interest @ 12% involved on already sanctioned refund amount of Rs.3.52 crores and remanded the matter to the original authority for recalculating the interest to be paid @ 12% per annum after taking into consideration interest already allowed andto pay the balance. Aggrieved by the said order, Revenue is before this Tribunal.

2. Heard the learned AR for Revenue. Learned AR for Revenue has argued that the amount deposited during investigation was pre-deposit. Therefore, the interest under Section 35FF of Central Excise Act, 1944 is not applicable and the provisions of Section 11BB of Central Excise Act are applicable in the present case.

3. Heard the learned counsel for the respondent. Learned counsel for the respondent has submitted that the amount that was deposited was revenue deposit and it was not a refund of duty deposited on assessment and, therefore, the provisions of Section 11BB of Central Excise Act, 1944 are not applicable. He has further submitted that the Tribunal has relied on a ruling by Hon'ble Supreme Court in the case of Sandvik Asia Ltd. reported at 2006 (196) ELT 257 (SC) and the ruling by Hon'ble Allahabad High Court in the case of Pace Marketing Specialities reported at 2011 (274) ELT 13 (All.) and ebiz.com Suvidhe Ltd. reported at 2017 (49) STR 389 (All.) and held that the amounts deposited

during investigation are eligible for refund with interest @ 12% per annum.

4. We have carefully gone through the records of the case and submissions made. We find that learned Commissioner (Appeals) has relied on the decision of this Tribunal in the case of Parle Agro Pvt. Ltd. (supra) and allowed interest @ 12% per annum on the amount that it was deposited during investigation. From para 39 of the said final order in the case of Parle Agro Pvt. Ltd., we note that Hon'ble Allahabad High Court in the case of Pace Marketing Specialities and ebiz.com Pvt. Ltd. had made reference to the decision of Hon'ble Supreme Court in the case of Sandvik Asia Ltd. (supra) and granted interest @ 12% per annum in the matters relating to refund of amount deposited during investigation and relying on such rulings by Hon'ble Allahabad High Court, this Tribunal has come to a conclusion that the amount deposited during investigation is eligible for interest @ 12% per annum in the final order in the case of Parle Agro Pvt. Ltd. (supra). We, therefore, do not find any infirmity in the order passed by learned Commissioner (Appeals).

5. Therefore, we do not interfere with the impugned order-in-appeal and dismiss the appeal filed by Revenue.

(Order pronounced in the open court on 25.02.2025)

(P.K. Choudhary)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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