IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/815/2008-EX[SM]

(Arising out of Order-in-Appeal No.19-CE/APPL/KNP/08 dated 29.01.2008 passed by Commissioner(Appeals), Customs & Central Excise, Kanpur.)

M/s. LML Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

RESPONDENT (S)

APPEARANCE

NONE for the Appellant (s)
Shri Gyanendra Kumar Tripathi, AC(A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)

DATE OF HEARING_: 10.07.2018
DATE OF DECISION : 24.08.2018

FINAL ORDER NO.72048/2018

Per Mrs.Archana Wadhwa :

The appellants have filed written submissions which I have gone thorugh.

2. After hearing the ld.A.R. I find that the appellant was engaged in manufacture of two wheelers and parts thereof, which were exported by them during the period 01.04.2005 to 31.03.2006. For the said period he accumulated Cenvat Credit of Rs.3,09,38,664/-. The refund of the same was claimed by the appellant in terms of Rule 5 of Cenvat Credit Rules by way of an application filed on 17.04.2006.

3. The said refund claim was rejected by the Assistant Commissioner vide his Order-in-Original, on the ground that the Cenvat Credit accumulated could not be identified and co-related on one to one basis with finished goods exported. The said order of the original adjudicating authority was challenged by the appellant before Commissioner(Appeals), who vide his Order-in-Appeal dated 31.05.2007 set aside the same and allowed the appeal. The said order of Commissioner(Appeals) was challenged by the Revenue before the Tribunal and vide its final Order No.71318/2017 dated 10.10.2017 the Revenue's appeal was rejected.

4. Consequent to the above developments, the appellants again approached their Assistant Commissioner vide their letter dated 07.06.2007 for refund of the said accumulated credit. The same was given to the appellant by way of a cheque dated 10.09.2007 for an amount of Rs.2.15 Crores (approx.) and the balance amount was held as utilized by the appellant towards payment of duty.

5. Subsequently the appellant filed an application on 11.09.2007 for grant of refund from the date of original filing of the refund claim i.e. 17.04.2006 (after a period of three months). The said claim of interest stands rejected by the Assistant Commissioner, who by considering the date of the order of Commissioner(Appeals) as the relevant date granted interest of only 3(three) days and rejected the balance claim. The Commissioner(Appeals) also, vide his impugned order, upheld the order of the original adjudicating authority and hence the present appeal.

6. The only dispute in the appeal is to decide the relevant date for the purpose of interest. Admittedly the application was filed by the appellant on 17.04.2006 for claim of their refund, which was rejected by the original adjudicating authority, but allowed by Commissioner(Appeals) vide his order dated 31.05.2007 and in compliance to the said order of Commissioner(Appeals) the cheque for refund was handed over to the appellant on 10.09.2006. Inasmuch as the said refund was granted after a period of 3(three) months, by considering the date of the order of Commissioner(Appeals) as the relevant date, the interest amount was given only for the delayed period of 3(three) days. On the other hand the appellant's claim is that the date of original filing of refund claim should be considered as the relevant date and interest should be granted from the period after expiry of 3(three) months from the date of filing of the refund claim.

7. There is no dispute on the facts. The larger Bench of the Tribunal in the case of Jayanta Glass Ltd. v. Commissioner of Central Excise, Kolkata [2004 (165) ELT 516 (Tri.-LB)] has held that where the refund claim is originally rejected, but allowed in favour of the assessee by the higher appellate authorities, the relevant date for the purpose of grant of refund would relate back to the date of filing of application. As such t the refund claim having been admittedly filed on 17.04.2006, the relevant date has to be considered as 17.04.2006 and not the date of order of the Commissioner(Appeals) vide which the order of the original adjudicating authority was set aside and the appeal was allowed. Accordingly I hold in favour of the assessee and direct the original

adjudicating authority to calculate the interest amount accordingly. For such quantification the matter is being remitted to the original adjudicating authority and appeal is allowed in above terms.

(Pronounced in the open Court on 24.08.2018.)

SD/

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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