

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

**E/70725/2017-EX[DB]**

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/148 & 149/2017-18 dated 21.09.2017 passed by Commissioner, CGST(Appeals), Meerut.)

Commissioner of Central Excise & Service Tax, Ghaziabad  
...APPELLANT(S)

VERSUS

M/s.Balaji Wire Pvt.Ltd.  
RESPONDENT (S)

**APPEARANCE**

Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Appellant (s)  
Shri Rajiv Goyal (Authorized Representative) for the Respondent

**CORAM:**

SHRI ASHOK JINDAL, HON'BLE MEMBER(JUDICIAL)  
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 27.12.2018

FINLA ORDER NO.72936/2018

**Per Ashok Jindal :**

Revenue is in appeal against the impugned order wherein the learned Commissioner(Appeals) allowed the interest to the respondent from the date of deposit till the refund claim is sanctioned.

2. The facts and circumstances of the case are that on 11.04.2005, the Superintendent, Central Excise asked the respondent to deposit differential excise duty of Rs.35,95,092/- for the period October 2004 to February 2005 and Rs.75,25,997/- for the period March 2005 to September 2005. The respondents in response to the Superintendent's letter dated 11.04.2005 replied that their activity does not amount to manufacture in terms of Circular No.19/19/94-CE dated 09.02.1994,

but on persuasion of the department, on 30.09.2005, the respondent debited Rs.40.00 Lakhs under protest in their RG-23A part-II and further debited a sum of Rs.3,25,54,536/- under protest during the period October 2005 to April 2008. Thereafter, a show cause notice dated 27.10.2005 was issued to the appellant to demand duty on their activity of galvanizing for the period October 2004 to September 2005. On 15.03.2007, the demand was confirmed as proposed in the show cause notice. The said order was challenged by the appellant before this Tribunal on 30.07.2007 and vide Stay Order, the respondents were directed to make a pre-deposit of Rs.25,16,618/- in addition to Rs.40.00 Lakhs already deposited. Thereafter on 13.10.2016, the appeal filed by the appellant was allowed by this Tribunal. Thereafter, the respondent filed an application for refund on 18.11.2016. Vide order dated 07.03.2017, the refund claim was sanctioned. The respondent also filed an application for sanctioning of interest on 01.05.2017 from the date of deposit under protest till the date of sanctioning of the refund. The said claim of interest was rejected by the adjudicating authority on 29.06.2017, but on appeal, the learned Commissioner(Appeals) allowed the claim of interest to the respondent vide order dated 21.09.2017. Against the said order the Revenue filed appeal before this Tribunal. Therefore, this appeal is before us.

3. The learned A.R. appearing on behalf of the Revenue submits that the interest is payable for delayed refund after three months from the date of filing of their application for refund and till its realization. In this case the respondent has filed refund claim only on 18.11.2016 and

refund claim has already been sanctioned on respondent on 17.03.2017 therefore at the most the respondent is entitled for claim of interest after three months from the date of filing of the refund claim i.e. 18.11.2016 till 07.03.2017. In that circumstances, the impugned order is to be set aside.

4. On the other hand the respondent supported the impugned order and submits that as the respondent has paid the amount under protest therefore, they are entitled for interest from the date of deposit till its realization.

5. Heard the parties and considered the submissions. We find that the learned Commissioner(Appeals) has examined the issue and observed as under:-

*"5.1 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 adjudicating authority was fully convinced that the appellant is eligible for the interest at appropriate rate as per Notification No.67/2003-CE[NT] dated 12.09.2003. The adjudicating authority has even discussed findings given by various higher appellate authorities, which also were in favour of granting interest from the date of actual deposit to date of actual refund. However, in the last para of both the impugned orders, the adjudicating authority rejected the interest claims of the appellant by stating that since the claim of the appellant was sent for requisite pre-audit to the headquarters and was not cleared by the headquarters. In this regard, I find that it is a settled law that any order passed by the adjudicating authority has to be passed to the satisfaction of the adjudicating authority and not on the directions of any other authority. Accordingly, I hold that impugned order is not sustainable in the eye of the law. Moreover, it is a settled thing that any amount, which was collected without authority of law and is ordered to be refunded is to be refunded with interest. Besides, in the given case,*

*the consequential relief was ordered by the appellate Tribunal, holding that the process of galvanization of black wire carried out by the appellant did not amount to manufacture for which the demands were initially confirmed and the appellant deposited amounts (since returned/refunded) because of the same. Under the circumstances, it was incumbent upon and required of the refund sanctioning authority, who had sanctioned the refunds, to sanction the amounts along with applicable interest. There was no need for the appellant to make separate request for the payment of interest due on the amounts refunded to them in compliance of the Tribunal's order. The impugned order rejecting the payment of interest is bad in law as the same has been issued without any such provision having been there in the statute. The non-payment of interest, despite having been requested by the appellant, and by citing untenable/irrelevant reasons, is akin to adding salt to the injury.*

*5.1 I find that the appellant has further contended that interest should be paid to him at commercial rate. In this regard, I find that Hon'ble Apex Court, in the matter of CIT, Gujrat Vs Gujrat Fluoro Chemicals, as reported in 2017 (51) STR 236, has held as under:-*

*It is only interest provided under statute which can be claimed by assessee from Revenue and no other interest on such statutory interest.*

*Accordingly, as held by Apex Court, the interest to be paid will be provided as per the statute.*

*6. In view of above discussions and findings, the appeals of M/s.Balaji Wires (P) Ltd., Plot No.139, 139A, 139B, 140, 138, 141 & 142, Anand Industrial Estate, Mohan Nagar, Ghaziabad, against the Orders-in-original Nos.236 & 237/Div.-II/GZB/2017-18 both dated 29.06.2017, which are set aside, are allowed with the direction to the concerned authority to sanction and pay the applicable interest within ten(10) days of this order."*

6. We further take note of the fact that the issue has been examined by the Hon'ble Madras High Court in the case of Commissioner of C.Ex., Chennai-II v. Ucal Fuel Systems Ltd. [2014 (306) E.L.T. 26 (Mad.)] and the Hon'ble High Court has observed as under:-

"6. We are in full agreement with the finding rendered by the learned single Judge that the limitation contained in Section 11B of the Central Excise Act is not applicable to the case of the first respondent since the amount in question was not paid towards excise duty but only by way of deposit during investigation. Moreover, as per Section 11BB of the Central Excise Act, this Court can order payment of interest at a very reasonable rate and accordingly, learned single Judge directed the appellants to refund a sum of Rs.13,20,578/- relating to the final order No.471 of 2007, dated 30-4-2007 to the first respondent with interest @6% per annum from the date of deposit till the date of payment to the first respondent."

7. We further take note of the fact that the amount paid by the appellant was under protest during the course of investigation itself. Therefore, the said amount is not paid towards duty and was a deposit by the appellant under protest. Moreover, this Tribunal vide its final order dated 13.11.2016 has held that the respondent was not liable to pay any duty therefore the amount of refund was no duty and was only a deposit. Therefore, as held by the Hon'ble High Court of Madras in the case of Ucal Fuel Systems Ltd. (supra), we hold that the provisions of section 11BB of Central Excise Act is not applicable as the amount in question was not paid towards duty, but only by way of deposit during investigation. As the Hon'ble High Court has granted interest on such deposit from the date of deposit till the date of refund, therefore, following the precedent decision of the Hon'ble High Court of Madras in the case of Ucal Fuel Systems Ltd. (supra), we hold that the learned Commissioner(Appeals) has rightly sanctioned the refund of interest to the respondent from the date of deposit till the date of refund.

8. In view of this, we do not find any infirmity in the impugned order. The same is upheld. In result, the appeal filed by the Revenue is dismissed.

(Pronounced in the open Court.)

SD/  
**(ANIL G. SHAKKARWAR)**  
**MEMBER(TECHNICAL)**

SD/  
**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**

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