CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.1419 of 2012-Division Bench

(Arising out of Order-in-Appeal No.59/CE/APPL/NOIDA/2012/217 dated 29/02/2012 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

M/s L G Electronics India Pvt. Ltd. .....Appellant

(Plot No.51, Udyog Vihar, Greater Noida)

VERSUS

Commissioner of Central Excise, Noida ....Respondent

(C-56/42, Sector-62, Noida, U.P.)

WITH

Excise Appeal No.1420 of 2012-Division Bench

(Arising out of Order-in-Appeal No.60 to 61/CE/APPL/NOIDA/11/217 dated 29/02/2012 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

M/s L G Electronics India Pvt. Ltd. .....Appellant

(Plot No.51, Udyog Vihar, Greater Noida)

VERSUS

Commissioner of Central Excise, Noida ....Respondent

(C-56/42, Sector-62, Noida, U.P.)

AND

Excise Appeal No.1421 of 2012-Division Bench

(Arising out of Order-in-Appeal No.60 to 61/CE/APPL/NOIDA/11/217 dated 29/02/2012 passed by Commissioner (Appeals) Customs & Central Excise, Noida)

M/s L G Electronics India Pvt. Ltd. .....Appellant

(Plot No.51, Udyog Vihar, Greater Noida)

VERSUS

Commissioner of Central Excise, Noida ....Respondent

(C-56/42, Sector-62, Noida, U.P.)

APPEARANCE:

Shri B.L. Narasimhan, Advocate & Shri Ayush Agarwal, Advocate for the Appellant
Shri Pradeep Kumar Dubey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOS. - 71418-71420 / 2019

DATE OF HEARING : 16 July, 2019
DATE OF DECISION : 16 July, 2019

PER: JUSTICE DILIP GUPTA

These three appeals filed by the assessee seek to assail the orders passed by the Appellate Authority whereby refund of duty has been allowed but the appellants have been denied interest on the said amount.

2. It transpires from the records that M/s L.G. Electronics India Pvt. Ltd. which is the appellant in all the three Appeals is registered with Central Excise Department and is engaged in the manufacture of Air-conditioners, Colour T.V., Personal Computers, Monitor and other like products. These products were supplied under a provisional assessment carried out under Rule 7 (5) of the Central Excise Rules, 2002 (hereinafter referred as the Rules) as it was unable to determine the actual transaction value of the said goods under Section 4 of the Central Excise Act, 1944 (hereinafter referred as the Act) at the time of clearance from the factory. The Department issued orders for assessment on provisional basis and the provisional assessments were ultimately finalized. The appellant had paid excess duty and so the appellant sought refund. The Adjudicating Authority rejected a portion of the refund on the ground of unjust enrichment but sanctioned the remaining amount. Interest in terms of Rule 7(5) of the Central Excise Rules was, however, not paid.

3. Appeals were filed before the Commissioner (Appeals) against the orders passed by the Adjudicating Authority. The Commissioner (Appeals) partly allowed the appeals holding that there was enough evidence to show that the burden of incidence of duty had not been passed on and therefore, refund was sanctioned subject to verification of the records. However, interest on the delayed payment of refund was denied. It is against this part of the order of Commissioner (Appeals) denying interest that these three appeals have been filed.

4. Shri B.L. Narasimhan learned counsel appearing for the appellants submitted that since the appellant was held entitled to a refund consequent to the final assessment order, interest was required to be paid on such refund at the rate specified by the Central Government by Notification issued under Section 11BB of the Act in terms of Rule 7(5) of the Rules. In support of his submission learned Counsel relied upon a Division Bench order of this Tribunal in **M/s L.G. Electronics India Pvt. Ltd. vs. Commissioner of Central Excise**, **Noida** [E/442/2012, E/443/2012, E/444/2012decided on 28 March, 2019].

5. Learned Authorized Representative of the Department, however, supported the impugned order and submitted that the appellant was not entitled for payment of interest.

6. The submissions advanced by learned Counsel for the appellant and the learned Authorized Representative of the Department have been considered.

7. The dispute in the present appeal is not regarding the entitlement of the appellant for refund since the Appellate Authority has held that the appellant is entitled to refund. The dispute in the present appeal is only with regard to payment of interest under Rule 7(5) of the Rules on this amount of refund.

8. To appreciate the contention of the appellant it will be useful to refer Rule 7(5) of the Rules, which is as follows:-

> "(5) Where the assessee is entitled to a refund consequent to order for final assessment under sub-rule (3), subject to sub-rule (6), there shall be paid an interest on such refund at the rate specified by the Central Government by notification issued under section 11BB of the Act from the first day of the month succeeding the month for which such refund is determined, till the date of refund."

9. A bare perusal of the aforesaid Rule 7(5) indicates that when the assessee is entitled to refund there shall be paid an interest on such refund at the rate specified by the Central Government by notification issued under section 11BB of the Act.

10. The Commissioner (Appeals), while dealing the claim of the appellant for payment on interest, denied it for the reasons mentioned in paragraph 4.3 of the order. This paragraph is reproduced below:-

> "4.3 I find that the sanction of refund is subjected to the provisions of section 11B of the Central Excise Act, 1944 which says that "Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid

by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person." Further I observe that the relevant date defined under section 11B in the case of provisional assessment is the date of adjustment of duty after the final assessment thereof. From the above, it is evident that any person can claim the refund of excess paid duty within one year from the date of adjustment of duty after the final assessment. Further the grant of interest on delayed refund is governed by the provisions of Section 11BB of the Act which says that if any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five percent] and not exceeding thirty percent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. On coherent reading of the provisions of rule 7(5) of the Central Excise Rules, 2002 read with Section 11B & 11BB of the Central Excise Act, 1944, I am of the opinion that all the refund of excess duty paid are subjected to the provisions of Section 11B and grant of interest is subject to the provisions of Section 11BB of the Act. Accordingly question of refund arises only after finalization of the provisional assessment and in my opinion rule 7(5) is not applicable to the instant case. Hence question of grant of interest does not arise. Thus I find that the appellant is not entitled to the interest on refund of the excess payment of duty."

11. A perusal of the aforesaid order of the Commissioner (Appeals) would indicate that :-

(i) Sanction of refund is subject to the provision of section 11B of the Act;

(ii) The grant of interest on delayed payment of refund is governed by the provisions of the section 11BB of the Act which provides that if any duty to be refunded under sub-section (2) of section 11B is not refunded within three months from the date of receipt of the application under sub-section (1), there shall be paid to the applicant interest as is fixed by the Central Government by Notification in the official gazette; and

(iii) A coherent reading of the provisions of Rule 7(5) read with section 11B and section 11BB of the Act makes it clear that all refund are subject to the provisions of section 11B of the Act and grant of interest is subject to the provisions of section 11BB of the Act.

12. These observations of the Commissioner (Appeals) are not in conformity with the provisions of Rule 7(5) of the Rules. Rule 7 deals with the provisional assessment Rule 7(1) permits an assessee who is unable to determine the value of excisable goods or determine the rate of duty applicable to request the Assistant Commissioner or Deputy Commissioner for payment of duty on provisional basis and an order can be passed by such an officer allowing payment of duty on provisional basis at such rate or on such value as may be specified by him. An order for final assessment is passed under Rule 7(3). It is in this context that Rule 7(5) has to be understood. It provides that where the assessee is entitled to refund consequent to an order for final assessment, there shall be paid an interest on such refund at the rate specified by the Central Government by a Notification issued under section 11BB of the Act. The payment of interest under Rule 7(5) is not subject to either section 11B or section 11BB of the Act. Rule 7(5) is an independent provision relating to

payment of interest in a case where an assessee is held entitled to a refund consequent to an order for final assessment when the duty determined under the final assessment is lesser than that determined under a provisional assessment. It is only the **rate of interest** that has to be specified by the Central Government by a Notification issued under section 11BB of the Act.

13. In fact, the Central Government has issued a Notification dated 12 September, 2003 fixing the rate of interest at 6% and the same is reproduced below:-

> **"Notification: 67/2003-C.E.(N.T.) dated 12-Sep-2003**
>
> In exercise of the powers conferred by section 11BB of the Central Excise Act, 1944 (1 of 1944) and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.17/2002-Central Excise (N.T.), dated the 13th May, 2002 [GSR 353(E), dated the 13th May, 2002], except as respect things done or omitted to be done before such suppression, the Central Government hereby fixes the rate of interest at **six percent per annum** for the purpose of the said section."

14. Thus, the appellant was entitled for payment of interest at the rate specified in the notification. The view that has been taken finds support from the decision of a Division Bench judgement of the Tribunal in the appellant's own case in **M/s LG Electronics India Pvt. Ltd.**

15. It is, therefore, not possible to sustain the view taken by the Commissioner (Appeals). Thus, for all the reasons stated above that part of the impugned order that denies payment of interest under Rule 7(5) of the Rules is set aside and the Appellants are held entitled to payment of interest at the rate specified in the notification from the first day of the month

succeeding the month for which such refund was determined till the date of refund. This amount shall be paid expeditiously and not later on two months from the date a copy of this order is produced by the Appellants before the authority concerned.

(Dictated and pronounced in open court)

Sd/-
(JUSTICE DILIP GUPTA)
PRESIDENT

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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