CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70230 of 2019

(Arising out of Order-in-Appeal No.62-CE/APPL/LKO/2019 dated 31/01/2019 passed by Commissioner (Appeals), Customs GST & Central Excise, Lucknow)

M/s Kundan Chains **.....Appellant**

(21/13, Chiman Lal Road, Freeganj,
Agra-282004)

VERSUS

Commissioner of Central Excise, Agra **.....Respondent**

(Agra)

APPEARANCE:

Written Submission
Shri Rajeev Ranjan, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71912/2019

DATE OF HEARING : 06 November, 2019
DATE OF DECISION : 06 November, 2019

ARCHANA WADHWA

On matter being called nobody appeared. However our attention stands drawn to the written submissions filed by the appellant and their request to decide the matter on the basis of the same. Accordingly we have heard learned A.R. and have gone through the said written submissions.

2. It is seen that the appellant deposited an amount of Rs.26,59,470/-(twenty six lakhs fifty nine thousand four hundred seventy), under protest, during the course of investigation. Thereafter proceedings were initiated against them confirming the said demands etc. However on appeal,

the Tribunal set aside the confirmation and allowed the Assessee's appeal. As consequence the appellant became entitled to the refund of the deposited money, which was refunded to them vide the present impugned order.

3. However the dispute relates to the interest required to be paid on the said deposited amount. It is seen that the appellants before the Lower Authorities have relied upon various decisions, as detailed below, in support of their contention that they are entitled to interest from the date of deposit of the said amount as the same has to be considered as deposits and not duty.

(i) 2009 (240) ELT 124 (T) in the case of Toyota Kirloskar Auto Parts Pvt. Ltd.

(ii) 2009 (243) ELT 560 (T) in the case of Omjai Bhavani Silk Mills (P) Ltd.

(iii) 2007 (218) ELT 563 (T) in the case of Binjrajka Steel Tube Ltd.

(iv) 2005 (181) ELT 11 (AP-DB) in the case of Goldstone Engineering Ltd.

4. Commissioner (Appeals), though mentioned the said decisions in his impugned order but rejected the appeal by making a cryptic observation as detailed in para 6:-

I have gone through the case record. The adjudicating authority has held that the refund of duty was granted before expiry of three months stipulated under section 11BB of the Central Excise Act, 1944, therefore, there is no question of granting interest on the same. The appellant could not cite any provisions of law to claim the interest.

Hence, there is no legal infirmity in the impugned order and the same is upheld. The appeal is dismissed.

5. Inasmuch as the legal issue is settled by the above referred decisions, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority for fresh decision in the light of the law declared in the above referred decisions or any other decision which the appellant may choose to rely upon. Needless to say that the appellant would be given an opportunity to put forth their case.

6. Thus the appeal is disposed of in above manner.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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