FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/08/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70651/2016-EX[DB] dated 14/06/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2142/2007	**FEDEERS LLOYD CO. LTD.** C-4, PHASE-II, NOIDA
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI-14

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

DIVISION BENCH

E/2142/2007-EX(DB)

Date of Hearing/Decision: 14/6/2016

[Arising out of Order-in-Appeal No. 44/CE/Appl/Noida/07 dated 25.4.2007 passed by Commissioner (Appeals), Central Excise, Noida]

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Fedders Lloyd Co. Ltd. Appellant

Vs.

C.C.E.-NOIDA Respondent

Appearance:

Present for the Appellant: Shri Atul Gupta, Advocate
Present for the Respondent: Shri Kamal Puggal,(Assistant Commissioner) A.R.

**Coram: Hon'ble Shri Anil Choudhary, Judicial Member
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)**

Final Order No. 70651/2016

Per: Anil G. Shakkarwar

Brief facts of the case are that the appellant filed claim of refund of Rs.41,44,452/- on finalization of provisional assessment on

20/5/2002. Through Order-in-Original dated 20/12/2002 the refund was granted but was credited to Consumer Welfare Fund. The appellant filed appeal against said Order-in-Original dated 20/12/2002 before the Commissioner of Central Excise, Noida. The ld. Commissioner (Appeals) through Order-in-Appeal dated 19.8.2004 held that the appellant was entitled for refund of Rs.25,60,615.29 for the period up to 24.6.1999. The appellant brought the said Order-in-Appeal dated 19.8.2004 to the notice of the department through many letters and also requested to grant interest to them as provided by law on the refund due to them. Subsequently, appellant filed Writ Petition before Hon'ble High Court at Allahabad bearing Writ Petition No. 1589/2005 against non implementation of the Order-in-Appeal dated 19.8.2004. The Hon'ble High Court was pleased to passed the order dated 25.11.2005, directing the petitioner to filed a fresh comprehensive representation before the concerned authority and directing the concerned competent authority to decide the same within four weeks of the receipt of such representation. In pursuance of the directions of the Hon'ble High Court at Allahabad, Assistant Commissioner through Order-in-Original dated 29/12/2005, granted refund of Rs.25,60,615.29/-. However, the said order was silent on grant of interest. The said order was challenge by the Appellant before Commissioner (Appeals), on the ground that said Order-in-Original dated 29/12/2005 was non-speaking on the issue of interest on delayed refund. Commissioner (Appeals) vide Order-in-Appeal dated 29.6.2006, remanded the matter with the direction to issue speaking order. Assistant Commissioner passed Order-in-Original dated 29.9.2006 rejecting the interest on delayed refund on the ground that the refund was sanctioned within one month from the order passed by Tribunal. The appellant preferred appeal before Commissioner (Appeals) against Order-in-Original dated 29/9/2006, stating that the finding of original authority was contrary to Section 11BB of the Central Excise Act, 1944. Commissioner (Appeals) through Order-in-Appeal No. 44/CE/APPL/Noida/07 dated 25.4.2007 rejected the appeal.

2. Aggrieved by the said Order-in-Appeal dated 25/4/2007, the appellant before us.

3. The grounds of appeal inter alia are that since the refund application was submitted on 20.05.2002 and since three months period from the date of fling of refund claim was over on 20/8/2002 and since the refund was sanctioned on 29.12.2005, as provided under Section 11BB of Central Excise Act, 1944, interest should have been paid by the respondent on principal amount of Rs.25,60,615.29/- for the period from 21.8.2002 to 19.12.2005. They also reproduced provision of Section 11BB of Central Excise Act, 1944 along with explanation wherein the explanation to said Section has provided that where any order of refund is made by the Commissioner (Appeals), Appellant Tribunal or any Court against an order of Assistant or Deputy Commissioner of Central Excise under Sub Section 2 of 11BB, the order passed by such Appellant Authority or the Court shall be deemed to have been passed under the sub-Section 2 for the purpose of said Section 11BB. Further said Section 11BB has provided that, if any, order for refund of duty is passed after three months from the date of receipts of application for refund, then at the rate notified interest has

to be paid on such duty of refund for the period from expiry of three months from the date of receipt of such application till the date of refund. The appellant also has relied on various case laws.

4. Heard the ld. Counsel for the appellant ~~who~~ has taken us through the provisions of said Section 11BB and explanation to the said Section. He has contended that the refund application was filed on 20.5.2002. As provided ~~said~~ under said Section, the interest was due to be paid to the appellant on principal amount to of Rs.25,60,615.29/- for the period from 21.8.2002 to 19.12.2005. He has relied on ruling of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India reported at 2011(273) ELT 3 (S.C.). The ld. Counsel for Revenue supported the impugned order in appeal.

5. We have carefully gone through the rival contentions. It is undisputed that refund of the Rs.25,60,615.29 was allowed to appellant on 09.12.2005. It is undisputed that the refund application was filed on 20.5.2002. The Hon'ble Supreme Court in the above stated case at Para 15 has ruled as follows:-

> **Para 15.** *In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of*

the said period from the date on which order or refund is made."

6. It is cleared that Hon'ble Supreme Court has ruled that respondent has to pay interest under Section 11BB of Central Excise Act, 1944, from the date of expiry of three months from the date of receipt of refund application and not on the expiry of said period from the date on which order or refund is made. The date of expiry of three months in the present case is 21.8.2002. We, therefore, directed the Original Authority to ensure payment of interest at notified rate on Rs.25.60,615.29/- for the period from 21.8.2002 to 09.12.2005 within four weeks from the date of receipt of this order.

7. The Appeal is allowed.

(Dictated and pronounced in the open Court)

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

-Sd-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(K. Gupta)

प्रमाणित प्रति / Certified True Copy

3.8

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001