FAX : 0532-2400149

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

Dated: 23/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70867-70868/2016-SM[BR] dated 10/03/2016

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/50391/2014 & E/59427/2013	SUNDEEP ELECTRODES PVT LTD BULAND SHAHAR ROAD,HAOUR GHAZIABAD U.P
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT,UTTAR PRADESH-

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

Bipin Garg
B-1/1289, A - Vasant Kunj,
New Delhi-70

4 Bar Association, CESTAT, Allahabad
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Single Member Bench

Appeal Nos. E/50391/2014 (SM) and 59247/2013 (SM)

[Arising out of Order-in-Appeal No. MRT/EXCUS/CUS/002/60/2013-14 dated 23/10/2013 passed by Commissioner (Appeals), Central Excise-II, Meerut]

For approval and signature:

Hon'ble Shri Anil Choudhary, Judicial Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Sundeep Electrodes Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Present for the Appellant: Shri Bipin Garg and Ms. Rinki Arora, Advocate
Present for the Respondent: Shri D.K. Deb, Assistant Commissioner (AR)

Coram: Hon'ble Shri Anil Choudhary, Judicial Member

Date of Hearing/Decision: 10/03/2016

Final Order No. 70861-70868/2016

Per: Anil Choudhary

The brief facts are that the appellant is engaged in manufacture of Welding Electrodes. The appellant availed the benefit of Notification No. 08/2003-CE dated 01.03.2003 and also availed the facility of Cenvat credit on inputs, input services and capital goods on exceeding the initial exemption limit specified in the said Notification. On 1/4/2007 when the appellant started availing full exemption in the New Financial Year, they were having stock of inputs lying as such, contained in finished goods and also contained in semi finished goods on which the Cenvat credit benefit was taken prior to 1/4/2007. The Revenue felt that one of elements for SSI exemption in the New Financial Year, the Cenvat credit lying unutilised was required to be reversed and accordingly insisted on the appellant to reverse the same. The appellants vide the letter informed the Assistant Commissioner and the Range Superintendent, that though they were not liable to reverse the credit taken and utilised on inputs in stock as such, or contained in finished goods and in semi finished goods, however on the insistence of the Department they reversed the amount vide entry in PLA under protest. Subsequently show cause notice was issued to the appellants on the basis of audit, proposing to recover wrongly utilised Cenvat credit along with interest under Rule 14 and for the imposition of penalty under Rule 15 of CCR's. The SCN was adjudicated on contest, the joint Commissioner disallowed the credit in question and also imposed interest and further penalty of equal amount was imposed under Rule 15 of CCR. Being aggrieved with the Order-in-Original the appellant filed appeals before Commissioner (Appeals), who was pleased to confirm the demand with interest however reduced the penalty. Appellant filed further appeal before this Tribunal which was allowed and it was held that the appellant was not required to be reverse the amount of Cenvat credit lying in balance as on the 31st March on of availment of intention under Notification No. 8 of 2003, in the next financial year. Thereafter the appellant filed application for refund, along with interest, in respect of the payment made earlier under protest by debit to PLA. Although the refund was allowed, but interest was denied. Being aggrieved the appellant preferred appeal before Commissioner (Appeals) for grant of interest, but the same was rejected by the impugned orders. The issue being common in both the appeals, are being disposed of by this common order.

The Ld. Counsel produces a comparative statement as under:

S.No.	Appeal No.	Period of dispute	Refund of duty (granted)
1.	E/59247/2013	16.5.2007 to 11/1/2013	Rs. 6,07,687/-
2.	E/50391/2014	25.4.2008 to 28.6.2013	Rs.6,21,168/-

2. The ld. Counsel for the assessee appellant states that the issue is no longer res Integra and in a recent decision dated 01/5/2015 in the case of CCE, Hyderabad versus I.T.C. Bhadrachalam reported in 2015 (319) E.L.T. 547 (S.C.) under similar facts and circumstances where duty was paid under protest and burden of Excise duty was not passed on to ultimate consumer, it was held that Section 11 B of the Act, is not attracted and further refund with interest was directed, upholding the order of the Tribunal. The ld. Counsel also relies on the ruling of the Andhra Pradesh High Court in the case of Goldstone Engineering Ltd. Vs. Union of India reported in 2005 (181)

E.L.T. 11 (A.P.), under the fact that the revenue had insisted the assessee to pay Excise duty, considering the activity undertaken by it as manufacturing. Despite the assessee bringing into the notice of the authority that the activity was not manufacture, payment of duty under such circumstances by the assessee was under protest. It was also held that the revenue in an order for refund to the assessee cannot deny interest. The appellant is entitled to interest from the date of payment to the Department, under protest.

3. The learnedly A.R. for revenue states that the issue of interest has been considered in detail by Honourable High Court in case of Kanyaka Parameshwari Engineering Ltd Vs. Commissioner of Customs & Central Excise reported in 2011 (270) E.L.T. 73 (A.P.) where in para-10 and 11 of the judgement, it have been held as follows:

> "**Para 10.** Under Section 11BB of the Central Excise Act, 1944, if any duty is not refunded within three months from the date of receipt of application under sub-section (1), the interest shall be paid on such duty from the date immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty. In *Union of India and Another* v. *Shreeji Colour Chem Industries* - (2008) 9 SCC 515 = 2008 (230) E.L.T. 199 (S.C.), the Supreme Court dealing with appropriate procedure relating to claim of interest on refund held as follows :
>
> "If a claim of interest is on equitable grounds, a written demand therefore is imperative. Where the respondent made a written demand of interest on 12-1-2004, as per Section 11BB of the Central Excise Act, 1944, the interest shall be paid on refund after expiry of three months from the date of application for such interest. But the interest could not have been given from 24-7-1991 i.e. the first day on which the Assistant Collector rejected the prayer for refund because no written demand for interest on the refund had been made on that date."

Para 11. Therefore, in the present cases, the appellant/assessee is not entitled for interest immediately after expiry of three months from the payment of duty till the date of refund. The payment of interest as held in the judgment above referred, has to be made in accordance with Section 11BB of the Central Excise Act, 1944 from the date immediately after the expiry of three months from the date of application for such interest till the date of refund. Since the order passed by the learned CESTAT is in accordance with law laid down by the Apex Court, we are not inclined to interfere with the said order."

4. ld. A.R. also stated that, it is evident that interest shall be payable only from the end of 3 (three) months from the date of application, as per Section 11BB, which stipulates for payment of interest, if refund is not given within 3 (three) months from the date of receipt of application.

5. Having considered the rival contentions I find that in the subsequent decision in the case of I.T.C. Bhadrachalam (supra) the Honourable Supreme Court have held that where duty is paid under protest, the interest has to be paid from the date of payment, to the date of grant of refund. Following the same I allow the appeal with a direction to the adjudicating authority to grant interest from the date of payment to the date of grant of refund, within a period of 60 (sixty) days from the date of receipt of a copy of this order. Thus appeals are allowed with consequential benefits.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

सत्यापित प्रति / Certified True Copy
24.10.16

(K. Gupta)