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: 12/01/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70050/2017-EX[DB] dated 10/01/2017

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.

12.1

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2404/2008	**METZELER AUTOMOTIVE PROFILES LTD.,** (FORMERLY KNOWN AS M/S BTR WADCO) 24-A, LINK ROAD, SITE-IV, INDUSTRIAL AREA, SAHIBABAD.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-
211001

--

--

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

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16 Guard~~ File

16.1
Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/2404/2008-EX[DB]

(Arising out of Order-in-Appeal No. 176-CE/GZB/2008 dated 29/08/2008 passed by Commissioner of Central Excise & Customs (Appeals). Ghaziabad)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
and
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

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

M/s Metzeler Automative Profiles Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Atul Kumar Gupta. Advocate, for Appellant
Shri Rajeev Ranjan. Joint Commissioner (AR). for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision: 20/12/2016

FINAL ORDER NO.-70050/2017.............

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s. Metzeler Automative Profiles Ltd., against Order-in-Appeal No. 176-CE/GZB/2008 dated 29/08/2008 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad.

2. The issue in this appeal is whether the appellant are engaged in manufacturer of Rubber Profiles & Weather Strips classifiable under Chapter 40 of the First Schedule to the Central Excise Tariff Act, 1985 and is entitled to interest on refund under the provisions of Section 11BB of the Central Excise Act, 1944.

3. The brief facts of the case are that the appellant manufactures and supply parts to Automobile manufacturers like Telco, Maruti etc. The appellant received Rs.639.14 lakhs from Telco for designing and developing the prototypes for manufacturing the parts, also the sum of Rs.639.14 lakhs had to be amortized in the cost of components manufactured, using the prototypes. On the insistence by the Revenue officials sometime during June 1999, the appellant deposited a sum of Rs.65 lakhs towards probable duty on the advance received from Telco. Thereafter, within the limitation period on 07/12/1999, the appellant filed claim of refund for the said sum of Rs.65 lakhs, on the ground that the prototypes design, developed and used within the factory was exempted

Ar

from payment of duty under Notification No. 67/1995-CE dated 16/03/1995. The refund claim was rejected vide Order-in-Original dated 29/12/1999. Being aggrieved the appellant preferred appeal before Commissioner (Appeals), who vide the Order-in-Appeal dated 22/09/2003 upheld the rejection of refund. The appellant have placed reliance in his own case in the preceding appeal before this Tribunal vide Final Order No. 170/2004–NB(A) dated 05/03/2004 it was held, held – no opportunity was given to the assessee before Commissioner appeals to set up defence against rejection of refund claim on such additional ground that is the contention of the appellant-assessee that only amortized value of tools should be included in the value of clearances. Thus, Adjudicating Authority & Commissioner (Appeals) rejected refund claim in gross violation of principles of natural Justice and accordingly, remanded the matter for De-novo Adjudication of refund claim. In response to the remand order passed by this Tribunal, the Assistant Commissioner vide Order-in-Original dated 30/06/2005, sanctioned the refund claim holding that the amortized cost of the amount received from Telco is already included in the finished goods. Therefore, the amount of Rs.65 lakhs was not required to be paid by the appellant and is required to be refunded.

4. As the interest was not given for the delay in granting the refund, appellant filed another application for interest on 07/11/2005, which was rejected vide Order-in-Original dated

19/12/2007, and the rejection was upheld by ld. Commissioner (Appeals) vide order dated 29/08/2008. Being aggrieved the appellant is before this Tribunal for grant of interest for the period, 7/03/2000 (i.e. after three months of date of application dated 07/12/1999 up to 13/06/2005) when the refund was granted. The ld. Counsel for the appellant, Mr. Atul Gupta, has relied on the ruling in the case of Ranbaxy Laboratories Ltd. *Versus* Union of India reported at 2011 (273) E.L.T. 3 (S.C.) wherein the question before the Hon'ble Supreme Court was – the whole issue which confronts us in all these appeal relates to the question of commencement of the period, for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944. In short the question is whether the liability of Revenue to pay interest under Section 11BB of the Central Excise Act, 1944 commences from the date of expiry of three months, from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made?

5. The Hon'ble Supreme Court held that the liability of Revenue to pay interest under Section 11BB of the Central Excise Act, 1944 commences from the date of expiry of three months, from the date of receipt of application for refund under Section 11BB of the Central Excise Act, 1944 and not on the expiry of the said period from the date on which order of refund is made.

6. The ld. A.R. relies on the impugned order.

7. Having considered the rival contentions & following the ruling of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. (supra) we allow this appeal, holding that the appellant entitled to refund of interest for the period, 07/03/2000 till 13/06/2005, the date on which refund was granted finally. The Adjudicating Authority is directed to grant the interest within a period of 90 days from the date of issue of a copy of this order

(Dictated and pronounced in Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
20.1.17
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