CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
REGIONAL BENCH, ALLAHBAD
COURT NO.I

Excise Appeal No.70209 of 2020

[Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1506-19-20 dated 5.3.2020 passed by the Commissioner (Appeals), Central Goods & Service Tax, Noida]

M/s.Kesar Enterprises **Appellant**
Baheri,
Distt.-Bareilly.

VERSUS

Commissioner of Central Goods & Service Tax, **Respondent**
Noida.

APPEARANCE:

Shri Kapil Vaish, Chartered Accountant for the appellant.
Shri Anupam Kumar Tewari, Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 70250 / 2021

DATE OF HEARING:04.08.2021
DATE OF DECISION:02.11.2021

ANIL CHOUDHARY:

The issue is regarding claim of interest on refund of the pre-deposit made or deposit made during investigation, under protest.

2. The brief facts of the case are that the appellants are engaged in manufacture of sugar and alcohol in its factory. A team of Central Excise officers visited appellants factory on 23rd/26th February, 2010 and examined the records. The appellants deposited an amount of Rs.89,42,650/- during the period from 31.01.2010 to 05.03.201, as directed by the Commissioner, Central Excise, Meerut vide Order dated 29.03.2012. A show cause notice dated 17.02.2011 was issued to the

appellant, which was contested. Ld. Commissioner vide order-in-original dated 29.03.2012 confirmed the demand of Rs.2,00,59,303/- and imposed equal amount of penalty. He ordered for appropriation of amount already deposited.

3. Further, the Tribunal vide Final Order No.A/71988/2018-EX(DB) dated 09.08.2018 upheld the demand of Rs.26,97,397/- along with interest, setting aside all the penalties along with remaining demand of Rs.1,73,61,916/-.

4. Consequent to the Tribunal's aforesaid order, the appellant filed refund claim on 25.09.2018 of Rs.62,45,253/- i.e. (Rs.89,42,650/- minus Rs.26,97,397/-), along with interest. The Assistant Commissioner allowed the refund of Rs.61,47,462/- but rejected the request for grant of interest on the ground that Section 11 BB does not cover such cases.

5. On appeal, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, and held that interest liability would arise only after 3 months from the date of filing of refund application. Since in this case, the refund application was filed only on 25.09.2018, the interest liability would start from 24.12.2018. As refund has been granted on 18.12.2018 within limitation period, no interest is payable.

6. Being aggrieved, the appellant is before this Tribunal.

7. Ld. Counsel for the appellant urges that the appellants deposited the amount of Rs.89.42 lakhs, due to duress of the department. Hence, the appellants are eligible for interest for the period when the Department retained the amount. During the period of investigation, the appellants deposited a huge amount of Rs.89.42 lakhs in cash, under duress by the

Department, for which they had taken loan from the bank, suffering interest liability.

8. Ld. Counsel further urges for refund of interest on pre-deposit or deposit during investigation, which was made under protest.

9. In support of his contention, he referred to the Tribunal's Final Order No.70180-70181/2021 dated 25.05.2021, wherein the Tribunal held that the appellant-assessee should be allowed interest @12% from the date of deposit, till the date of refund.

10. Further, ld. Counsel in support of his contention also relies upon the following case laws:-

(i) Parle Agro Pvt. Ltd. Vs. CCE – 2018(360) ELT 1005.

(ii) Kuil Fireworks Industries – 1997 (95) ELT 3.

(iii) Goldstone Engineering Ltd. – 2005(181)ELT 11.

(iv) Hindustan Coca-Cola Beverages Pvt. Ltd.-2015(324) ELT 299.

(v) Final Order No.72936/2018 in case of M/s.Balaji Wire Pvt.Ld.

He, therefore, urges that the findings in the impugned orders are liable to be set aside. He prays for allowing their appeal with consequential benefit in accordance with law.

11. Ld. Authorised Representative for the respondent/Department relies upon the impugned orders.

12. Further, I notice that Division Bench of this Tribunal in **Parlo Agro (P) Ltd. Vs. Commissioner, CGST – 2021-TIOL-306-CESTAT-Allahbad** held that**, "**wherein interest on pre-deposit (made during

investigation) has been enhanced from 6% to 12%, following the ruling of the Apex Court in **Sandvik Asia Ltd. – 2006 (196) ELT 257 (SC).**

13. Having considered the rival contention, I further direct the Adjudicating Authority to grant interest @ 12% p.a. from the date of deposit till the date of refund. Such interest should be granted within a period of two months from the date of receipt or service of the copy of this order.

14. Accordingly, the impugned order is set aside and the appeal is allowed.

[Order pronounced on 02.11.2021.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.