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: 08/11/2017

To

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

Final Order No. A/71310/2017-SM[BR] dated 20/09/2017

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.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70449/2017	**Indo Solar Limited** 100% Eou,3c/1,ecotech-ii,udyog Vihar GREATER NOIDA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

/

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/70449/2017-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1722-16-17 dated 29/03/2017 passed by Commissioner of Central Excise (Appeal-II) & Customs (Appeals), Noida)

M/s Indo Solar Limited **Appellant**

Vs.

Commissioner of Central Excise & Customs, Noida-II **Respondent**

Appearance:

Shri A. P. Mathur (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (Asst. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 20/09/2017
Date of Decision : 20/09/2017

FINAL ORDER NO 71131/2017

Per: Anil Choudhary

The issue in this appeal is whether the learned Commissioner (Appeals) who had been pleased to allow the refund of Rs. 4,60,11,733/- filed under Rule 5 of CCR, 2004 read with Notification No. 5/2006 – C.E. (N.T.) was correct in rejecting the claim for interest on refund.

2. Heard the parties.

3. I find that the learned Commissioner (Appeals) have rejected the claim of interest by making the following observations in the impugned order: –

"However, regarding grant of interest, I find that there happens to be no provision under the Credit Rules for grant of interest on such delayed refund. I observe that Notification

No. 5/2006-C.E. (N.T.), dated 14.03.2006 issued under the authority of Rule 5 the Credit Rules refers to Section 11 B of the CX Act only for setting the time limit for filing of application of refund under Rule 5 of the Credit Rules, Further instant case is of refund of accumulated Cenvat Credit availed on input services it is not a case of refund of duty of excise nor it is a case of refund of credit of duty paid on excisable goods used as inputs."

4. Having considered the rival contentions I find that the learned Commissioner (Appeals) have erred in reading the Cenvat Credit Rules selectively. Under the scheme of taxation the Rules are subordinate to the main Act. The Rules are subservient to the main Act. Thus, the rules have to be read alongwith the main Act and not in isolation. Accordingly, the reason given for rejection is not tenable and I hold that the appellant is entitled to interest under the provisions of Section 11 BB from the end of the three months from the date of application for refund. Accordingly, I direct the Adjudicating Authority to grant the interest within a period of 45 days from receipt of a copy of this order.

5. The appeal stands allowed with consequential benefits.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy

20/11/17

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