REGISTERED / AD

FAX : 0532-2400149

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

Dated: 28/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71641/2017-SM[BR] dated 26/10/2017

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
X	E/70572/2017	**Tin Manufacturing Co (india)** 95-rajendra Nagar Ind. Area, Mohan Nagar GHAZIABAD (U.P.)
		Name and Address of Respondent
		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To

3 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD, (UP)

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/70572/2017-EX[SM]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-0542-16-17 dated 20/06/2017 passed by Commissioner (Appeals) Central Excise & Customs, Meerut-II at Noida)

M/s Tin Manufacturing Co. (India) **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR) for Respondent

CORAM:

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

Date of Hearing : 26/10/2017
Date of Decision : 26/10/2017

FINAL ORDER NO.-71641/2017........

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Appeal No. GZB-EXCUS-000-APP-0542-16-17 dated 20/06/2017 passed by Commissioner (Appeals) Central Excise and Customs, Meerut-II at Noida.

2. Brief facts of the case are that the appellant had pre-deposited an amount of Rs.50 lakhs vide TR-6 challan dated 04/05/2007. The appeal in respect of which said amount was pre-deposited was finalized through the Final Order No.

478/2007-EX dated 16/08/2007 by this Tribunal wherein the order impugned therein was set aside and matter was remanded. The appellant filed an application for refund of pre-deposit of Rs. 50.00 lakhs and the said application was received in the office of the Assistant Commissioner of Central Excise, Division-II, Ghaziabad on 09/10/2007. The said application was decided through Order-in-Original dated 26/12/2007 wherein out of the said amount of Rs. 50.00 lakhs an amount of Rs.18,85,930/- was paid through cheque dated 26/12/2007 though the refund of said amount of Rs.50.00 lakhs was sanctioned. Further, an amount of Rs.31,14,070/- was recovered under Section 11 of Central Excise Act, 1944. The said amount of Rs.31,14,070/- included an amount of Rs.13,26,000/- covering Central Excise duty and Rs.17,88,070/- towards interest. The said amount of duty included amount of duty of Rs.3,83,000/- confirmed through Order-in-Original No. 107/99 dated 01/12/1999. After the subsequent developments said matter covered by said order dated 01.12.1999 was settled. The appellant submitted a refund application for refund of Rs.8,25,000/- on the basis of Order-in-Original dated 02/06/2016 the said application was decided through Order-in-Original dated 30/09/2016. The Original Authority referred to the said Order-in-Original 26/12/2007 and the amount of Rs.31,14,070/- recovered through the same and allowed refund of Rs.8,25,000/- which was part of

Rs.31,14,070/- recovered from the appellant through Order-in-Original dated 26/12/2007. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals), which was decided through impugned Order-in-Appeal. The appellant prayed to the Learned Commissioner (Appeals) to allow interest on refund of Rs.8,25,000/- from the date, it was recovered through adjustment on 26/12/2007 till refund of the same on 30/09/2016. The Learned Commissioner (Appeals) has held that appellant had filed refund application on 10/06/2016 and the learned Commissioner (Appeals) ordered to pay interest from 11.05.2016 to 30.09.2016. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the Learned Counsel for appellant who has submitted that the amount of Rs.8,25,000/- refunded on 30/09/2016 was part of Rs.50.00 lakhs sanctioned on 26/12/2007 through Order-in-Original dated 26/12/2007 and was also part of Rs. 31,14,070/- adjusted through the said order dated 26/12/2007 and it was ultimately refunded on 30/09/2016. He has further submitted that as per Order-in-Original dated 26.12.2007 the application for refund of Rs. 50.00 lakhs was received in the office of Assistant Commissioner on 09/10/2007 and that under Section 11BB of Central Excise Act, 1944 the eligible period for interest start after completion of 3 months from the date of receipt of application and the date of receipt was 09/10/2007.

4. Heard the Learned A.R. who has supported the impugned Order-in-Appeal.

5. Having considered the rival contention and on perusal of records, I find that the Learned Commissioner (Appeals) has erred in treating 10/06/2016 as the date of filing of refund application. I find that Rs.8,25,000/- was refunded on 30/09/2016 which was deposited under TR-6 challan on 04/05/2007 and application for refund of the same was filed on 09/10/2007 and refund of the same was sanctioned on 26/12/2007 but actually refunded on 30/09/2016. Therefore, under the provisions of Section 11BB of Central Excise Act, 1944 the appellant is entitled for interest from 09/01/2008 to 30/09/2016.

6. I, therefore, modify the impugned Order-in-Appeal to the extent that interest on the amount of Rs.8,25,000/- is entitled from 09/01/2008 to 30/09/2016. In above terms appeal is allowed. The appellant shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

प्रमाणित प्रति/Certified True Copy
15/12/17
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

akp