CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.60083 of 2023 [SM]

[Arising out of Order-in-Appeal No.CHD-EXCUS-001-LDH-APP-04-2022-23 dated 10.02.2023 passed by the Commissioner (Appeals), CGST Commissionerate, Chandigarh]

M/s G.S. Promoters and Developers : Appellant (s)
SCO-409, 1st Floor, Sector-20,
Panchkula-134117

Vs

The Commissioner of CGST
Commissionerate, Ludhiana : Respondent (s)
Central Excise House, F-Block
Ludhiana, Punjab-141001

APPEARANCE:
Shri Vikrant Kackaria, Advocate for the Appellant
Shri Rajeev Gupta and Shri Shivam Syal, Authorised Representatives for the Respondent

CORAM: HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60703/2023

Date of Hearing: 10.11.2023
Date of Decision: 11.12.2023

Per: P.ANJANI KUMAR

The brief facts involved in the case are that the appellants, M/s G.S. Promoters and Developers, are engaged in providing the services of Construction of Residential Complexes and Construction of Commercial Complexes; on the basis of a search conducted by the officers of DGCEI, it was noticed that the appellants have not paid service tax to the tune of Rs.75,95,723/-; a show-cause notice was issued and was confirmed by the Commissioner of Central Excise, Chandigarh-II vide Order dated 20.01.2016; on an appeal filed by the appellants, this Bench vide Final Order No.61106-61107/2019 dated
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29.11.2019, allowed the appeal of the appellants; accordingly, the appellants have applied for refund of Rs.25 Lakhs which was deposited by them during the investigation; Assistant Commissioner of Central Excise vide Order dated 08.01.2020 has sanctioned the refund; aggrieved by the Order of the Assistant Commissioner in non-granting the interest on the refund, the appellants preferred an appeal before the Commissioner (Appeals), who vide impugned order dated 10.02.2023 rejected the request of the appellants to grant interest.

2. Shri Vikrant Kackria, learned Counsel for the appellants, submits that the issue is no longer *res integra*; in a number of cases, it was held that interest is payable from the date of deposit of amount at the rate of 12%. He relies on the following cases:

- M/s Impressive Management Solutions Pvt. Ltd. – Final Order No.60090 of 2023 dated 06.04.2023.
- M/s Riba Textiles Ltd. – Final Order No.60015/2020 dated 07.01.2020.
- M/s Parle AgroPvt. Ltd. – 2022 (380) ELT 219 (Tri. All.).
- M/s Kesar Enterprises – 2022 (380) ELT 319 (Tri. All.).
- M/s Marshal Foundry Works Pvt. Ltd. – Final Order No.60055-60059/2022 dated 15.03.2022.
- M/s Shahi Exports Ltd. – 2022 (58) GSTL 367 (Tri. Chen.).
- MGF Construction Pvt. Ltd. – 2021 (51) GSTL 311 (Tri. Del.)

3. Shri Rajeev Gupta, assisted by Shri Shivam Syal, Authorized Representatives for the Department, reiterates the findings of the impugned order and submits as follows:

(a) In terms of Section 11B/11BB of Central Excise Act, 1944, if any duty is ordered to be refunded under sub-section (2) of Section 11B of the Act to the applicant and the same is not refunded within **three months** from the date of receipt of such application under sub-section (1) of Section 11B of the Act, then the applicant would be entitled to interest.

(b) Notification No.67/2003-CE (NT) dated 12.09.2003 prescribes the interest rate at 6% Per Annum.

(c) It has been held by the Hon'ble Apex Court in the case of Willowood Chemicals Private Limited – 2022 (60) GSTL 3 (SC); in Gujarat Fluoro Chemicals – 2017 (51) STR 236 (SC) and in VKC Foosteps (India) Private Limited – Civil Appeal No.290 of 2023, that once there are statutory provisions, no authority can grant interest beyond the statutory provisions.

(d) CESTAT, being a creature of statute, cannot traverse beyond the provisions in the Statute as held in Veer Overseas – 2015 (18) GSTL 59 (Tr. LB); Bochasanwasi Shri Aksharpurushottam Swaminarayan Sanstha – 2022 (380) ELT 82 (Tri. Ahmd.); Kali Aerated Water Works – 2023 (383) ELT 413 (Mad.); Ajay Exports – 2016 (335) ELT 150 (Tri. Mumbai) and Maa Mahamaya Industries Ltd. – 2014 (310) ELT 244 (A.P.).

(e) Refund of any amount deposited during investigation should be processed in accordance with Section 11B only as held by Hon'ble Gujarat High Court in the case of Ajni Interiors – MANU/GJ/1628/2019following the decision of the Constitutional Bench of the Hon'ble Apex Court in the case of Mafatlal Industries – 1997 (89) ELT 247 (SC) which was followed by the Tribunal in the case of Nino Chak of Delhi HC – 2020 (371) ELT 701 -Delhi and Ratnami Metals – 2019 (366) ELT 139 (Tri. Ahmd.).

4. In view of the above judgments, reliance made by the appellants, in the cases of Riba Textiles Ltd; M/s Parle Agro Pvt. Ltd; M/s Impressive Management Solutions Pvt. Ltd; M/s Kesar Enterprises; M/s Marshal Foundry Works Pvt. Ltd; M/s Shahi Exports Ltd and MGF Construction Pvt. Ltd. (all supra), is of no avail.

5. I have gone through the rival submissions and the records of the case. The appellants rely heavily on the decision of the Tribunal in some cases wherein interest was not only allowed but was allowed beyond the statutory provisions. Revenue relies on the recent judgments of Hon'ble Apex Court in the cases of Willowood Chemicals Private Limited (supra) and Cosmo Films Ltd. (supra) and submits that when a statute prescribes a certain rate of interest, it is not free for the Courts and Tribunals to increase the same. I find that Hon'ble Apex Court's decision in the case of Sandvik Asia Ltd. – 2006 (196) ELT 257, relied upon by the various judgments cited by the appellants, is distinguishable on the facts that in the case of Sandvik Asia, the refund was granted inordinately in a delayed manner i.e. after 20 years.

6. I find that Hon'ble Apex Court in the case of Cosmo Films Limited (supra) has made it clear as follows:

> "**72.** This Court recollects its recent decision, on the question of entitlement to refund, under the old tax regime, which was subsumed and resulted in some businesses being affected. Negativing the challenge to constitutionality of the provisions of GST, it was held, in *Union of India (UOI) &Ors.* v. *VKC Footsteps India Pvt. Ltd.* [2021 (15) SCR 169 = 2021 (52) G.S.T.L. 513 (S.C.)] that :

> "A claim to refund is governed by statute. There is no constitutional entitlement to seek a refund. Parliament has in Clause (i) of the first proviso allowed a refund of the unutilized ITC in the case of zero-rated supplies made without payment of tax. Under Clause (ii) of the first proviso, Parliament has envisaged a refund of unutilized ITC, where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. When there is neither a constitutional guarantee nor a statutory entitlement to refund, the submission that goods and services must necessarily be treated at par on a matter of a refund of unutilized ITC cannot be accepted. Such an interpretation, if carried to its logical conclusion would involve unforeseen consequences, circumscribing the legislative discretion of Parliament to fashion the rate of tax, concessions and exemptions. If the judiciary were to do so, it would run the risk of encroaching upon legislative choices, and on policy decisions which are the prerogative of the executive."

7. In view of the above, I am of the considered opinion that the provisions regarding interest as provided in the Central Excise Act prevail and this Tribunal cannot intervene as regards the date from which the interest is payable or as regards the rate of interest, so far as refunds under Central Excise Act, 1944 are concerned. Accordingly, I reject the appeal.

(Pronounced on 11/12/2023)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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