CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH
Court-I

Appeal No.E/60248-60252/2020-Ex (SM)

(Arising out of Order-in-Appeal No.29/CE/CGST-Appeal-Gurugram-SG/2020-21, OIA No.31/CE/CGST-Appeal-Gurugram-SG/2020-21,OIA No.30/CE/CGST-Appeal-Gurugram-SG/2020-21, No.27/CE/CGST-Appeal-Gurugram-SG/2020-21, No.28/CE/CGST-Appeal-Gurugram-SG/2020-21 dated 31.7.2020 passed by the Commissioner (Appeals), CGST, Plot No.24, Mudit Square, Sector 32, Gurugram-122001)

M/s. Marshall Foundry Works Pvt.Ltd. **Appellant**
(Plot No.221 & 224, Sector 24, Faridabad)
M/s. Marshall Auto Industries Ltd.
(Plot No.283, Sector 24, Faridabad)
M/s. Marshall Auto Cast Pvt.Ltd.
(Plot No.360, Sector 24, Faridabad)
M/s.Marshall Casting Limited
(Plot No.347-348, Sector 24, Faridabad)
M/s. Marshal Foundry Engg. Pvt. Limited
(Plot No.359, Sector 24, Faridabad)

Vs.

Commissioner of CE & ST, Faridabad **Respondent**
(Block D, New CGO Complex, NH-IV, NIT, Faridabad-121001)

Present for the Appellant: Shri Anubhav Goel, CA
Present for the Respondent: Shri Bhasha Ram, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of hearing/Decision: 15.03.2022

FINAL ORDER NO.60055-60059/2022

Per: Ashok Jindal

The appellants are in appeal against the impugned orders wherein the claim of interest to pay on delayed refund @ 12% was rejected by the authorities below.

2. The brief facts of the case are that this Tribunal vide Final Order No.61058-61062/2019 dated 28.11.2019 has held that the appellants are entitled to claim interest on delayed refund from the date of

deposit till its realization. In the said case, this Tribunal framed the issue whether the appellants are entitled to claim interest @ 12% of the deposit made during the period of investigation till its realization or not? Consequent to that order, the authorities below granted interest @6% in terms of section 11BB of the Act. The appellants aggrieved that the interest provided @6% instead of @ 12% has been examined by this Tribunal in the earlier proceedings, the appellant claimed the differential interest which was rejected by the authorities below. Against, the said order, the appellants are before me.

3. Ld. Chartered Accountant for the appellants has relied on the decision of Allahabad Bench of this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. vide Final Order No.70180-70181/2021 dated 25.5.2021.

4. On the other hand, ld.AR opposed the contention of the Chartered Accountant and submits as under: -

4.1 That the basic and core issue in these appeals is that neither the Appellants contested the statutory provisions of Section 11B of the Act under which refund was sanctioned to them nor the statutory provisions of Section 11BB of the Act under which interest @6% was granted as per statutory provisions, which is clear admission and acceptance of refund under Section 11B and interest under Section 11BB of the Act and when these facts are on record and not disputed then the Appellants have no legal right to claim interest @12% without challenging these statutory provisions and thus these appeals are not maintainable and merit dismissal.

4.2 That the Appellants have sought interest @12% by referring Hon'ble Tribunal Order dated 28.11.2019 and corrigendum dated 02.12.2019, but operative portion of these orders merely held that appellants are entitled to claim interest on delay refund from the date of deposit till its realization. Thus claims that they are entitled interest @12% is without any legal support. When the Hon'ble Tribunal not given any specific findings on the rate of interest then it is automatic that rate of interest would be available only as per the law and that has already been sanctioned @6%. As regards relying upon various judgements when the issue already stands finalized by the Hon'ble Tribunal then the issue cannot be opened afresh and these judgements are having no relevance.

4.3 That it is well settled position of law that any claim of amount from Government can be disbursed only based on statutory provisions and there is no legal mandate with the tax authority to act beyond the statutory provisions;

4.4 That the fact on record is that when the Appellants claimed interest @12% per annum from the date of deposit of the amounts, but failed to place on record any statutory provisions in support of said claims. The Appellants only relied upon certain decisions, which are based on decisions rendered by Hon'ble High Courts as well as Hon'ble Apex Court under Constitutional powers by way of writ jurisdiction and since the Hon'ble Tribunal is not having such Constitutional powers and is creature of statute, therefore, claiming any monetary benefits on the basis of such decisions is without legal sanctity. In support following decisions are relied upon:-

i) The Hon'ble CESTAT, Principal Bench, New Delhi in case of AFCONS Infrastructure Ltd. v. Commr. of C.Ex., Visakhapatnam – 2006 (204) ELT 333 (Tri.Del.) - held in Para 8.6 (relevant portion) as under:-

"8.6 .... The decision in Kuli Fireworks Industries in which the Hon'ble Supreme Court while directing the refund of duty, **awarded interest cannot generate power to award interest for the Tribunal contrary to the provisions of Section 11BB of the Act since the award of interest under the decision is obviously relatable to the plenary powers of the Supreme Court**. **Even the award of interest by the High Courts in exercise of their writ jurisdiction will not constitute a ratio creating power of the Tribunal or revenue authorities to award interest contrary to provisions of Section 11BB on the delayed refunds**....."

ii) On the issue of interest on refund sanctioned the Division Bench of Hon'ble CESTAT, Chennai in case of Hindustan Photo Films Manufacturing Co. Ltd. v. CCE Salem – 2018 (364) ELT 471 (Tri.Chennai) - while discussing the judgements titled as Commissioner of

Income Tax v. Gujrat Fluoro Chemicals – 2013 (296) ELT 433 (S.C.) - and Sandvik Asia Ltd. v. Commissioner – 2006 (196) ELT 257 (S.C.) - has held as under in Para 6 (relevant portion):-

"6. ………… **we note that the appellant did not quote any statutory provision under the Customs Act, 1962 to support their claim. Any claim of amount from the Government can be disbursed only based on a statutory provision. The Tribunal cannot pass an order for general compensation**, the facts of the present case. **We note that in Gujarat Fluoro Chemicals (supra), the Hon'ble Supreme Court, examining similar provisions under the Income Tax, held that the payment ordered in Sandvik case (supra) cannot be considered as interest on interest and it was ordered in special circumstances as a compensation for unduly long delay in sanctioning the refund/interest**. **It is clear that interest as indicated under the Customs Act, 1962 only can be paid to the appellant and no other amount which is not covered by the statutory provisions can be paid and on this ground**, the impugned order cannot be interfered with. Accordingly, the appeal is dismissed.

4.5 That in support of decision of the department allowing interest @6% following Notification/decisions are relied upon:-

i) A copy of **Notification No.67/2003-Central Excise (N.T.) dated 12.09.2003 under Section 11BB of the Central Excise Act, 1944 fixing the rate of interest at six percent per annum**.

ii) The CESTAT, Principal Bench, New Delhi in the case of Devendra Udyog v. Commissioner of CGST, Jodhpur – 2020 (372) ELT 385 (Tri.Del.) – **held that Notification No.67/2003-C.E.(N.T.) issued under Section 11BB of Central Excise Act, 1944 having fixed the rate of interest @6% per annum for the purpose of said section, interest rate of 6% only admissible to assessee**.

iii) A copy of Final Order No.51400-51402/2019 dated 31.10.2019 of the CESTAT, Principal Bench, New Delhi in Service Tax Appeal Nos.50120-51022 of 2019 (SM) in case of M/s Arihant Tiles & Marbles Pvt. Ltd. v. The Commissioner (Appeals), CGST, Jodhpur under which party's appeal **claiming interest @12.5% dismissed and held Revenue decision on sanctioning of interest @6% as per Notification No.67/2003-CE(N.T.) dated 12.09.2003**. **The Bench also referred decision in Gujrat Flourochemicals (supra) also i.e.**

“we clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest.”

iv) The Hon’ble Gujrat High Court in the case of Vijay Tanks and Vessels Ltd. v. UOI – 2019 (368) ELT 931 (Guj.) – **directed to pay interest @6%.**

v) The Hon’ble Madras High Court in the case of Estee Auto Pressings (P) Ltd. v. Commissioner of C.Ex., Chennai-II – 2017 (346) ELT 72 (Mad.) – **held that refund admissible along with interest @6% from the date of order till date of payment.**

vi) The Constitutional Bench of Hon’ble Apex Court in case of Commissioner of Cus. (Import), Mumbai v. Dilip Kumar & Company – 2018 (361) ELT 577 (S.C.) – has ruled as under in Para 19:-

“19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. ParamnidhiSadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.”

In view of above facts, statutory provisions and relied upon decisions, the appeals merit dismissal.

5. Heard the parties and considered their oral/written submissions.

6. In the earlier round of litigation, this Tribunal has entertained the issue “whether the appellant are entitled to claim interest @ 12% of the deposit made during the period of investigation till its realization.” The said issue was allowed in favour of the appellants, inadvertently the rate of interest could not be quoted in the said order. The issue of rate of interest has been decided in the earlier

round of litigation, therefore, I hold that the appellants are entitled to claim the interest @ 12% from the date of deposit on its realization. As the deposit were made by the appellants under protest, the decisions relied on by the ld.AR are not applicable to the facts of the case in hand. The issue in this case is whether the appellant is entitled to claim interest @12% on delayed refund till its realization has been examined by this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. (supra) wherein this Tribunal has held as under: -

"33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded.

34. To be able to have some guidance regarding the rate of interest in case revenue deposit has to be refunded, the aid of the interest provisions under section 11AA (which deals with interest on delayed payment of duty), section 11BB (which deals with interest on delayed refunds under section 11B(2) and section 11DD (which deals with interest on the amount collected in excess of the duty) can be taken.

35. The Notification issued under section 11AA of the Excise Act provides interest at the rate of fifteen per annum. The notification is reproduced below:

Notification No. 15/2016-C.E. (N.T.), dated 1-3-2016
Notification Under Section 11AA

Rate of interest on delayed payment of duty (w.e.f. 1-42016). – In exercise of the powers conferred by section 11AA of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 5/2011 – Central Excise (N.T.), dated the 1st March, 2011 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide, number GSR 136(E), dated the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at ***fifteen per cent per annum*** *for the purpose of the said section.*

2. This notification shall come into force from the 1st day of April, 2016.

36. The Notification issued under section 11BB provides interest at the rate of six per cent per annum. It is reproduced below:

Notification No. 67/2003-C.E. (N.T.), dated 12-9-2003

Notification Under Section 11BB

***Interest @ 6% per annum on delayed refunds**. – In exercise of the powers conferred by section 11BB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 17/2002-Central Excise (N.T.), dated the 13th May, 2002 [GSR 353(E), dated the 13th May, 2002], except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at **six per cent per annum** for the purpose of the said section.*

37. The Notification issued under section 11DD provides interest @ of 15% per annum on the amount collected in excess of duty. It is reproduced below:

M.F. (D.R.) Notification No. 68/2003-C.E. (N.T.), dated 12-9-2003

Notification Under Section 11DD

Interest @ 15% per annum on amounts collected in excess of duty. – In exercise of the powers conferred by section 11DD of the Central Excise Act, 1944 (1 of 1944) the Central Government hereby fixes the rate of interest at Fifteen percent per annum for the purpose of the said section.

38. It would also be to pertain to refer to the Notification issued under section 11AB of the Excise Act, as it existed prior to 08.04.2011. It provides interest @18% per annum. The said Notification is reproduced below:

*"**Notification No. 6/2011-C.E. (N.T.), dated 1-3-2011***

Notification Under Section 11AB

***Rate of interest on delayed payment of duty**. – In exercise of the powers conferred by section 11AB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 66/2003-Central Excise (N.T.), dated the 12th September, 2003 [GSR (E), dated the 12th September, 2003], except as respects things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at eighteen percent per annum for the purpose of the said section. This notification shall come into force from the 1st day of April, 2011."*

*39. In this connection reference can also made to the decisions of the Allahabad High Court in **Pace Marketing Specialities** and **Ebiz**. Com Private Limited, wherein after making reference to the decision of the Supreme Court in **Sandvik Asia Ltd**., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication*

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*40. In **Riba Textiles**, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.*

41. In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @12% per annum seems to be appropriate.

*42. Thus, for the reason stated above, **Excise Appeal No. 70628 of 2019** is allowed and the order dated 28.05.2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @12% instead of @6% from the date of deposit till the date of payment."*

7. As the issue has been settled by this Tribunal in the case of M/s. Parle Agro Pvt. Ltd. (supra), therefore, I hold that the appellants are entitled to claim interest @ 12% per annum of deposit made during the investigation till its realization.

8. In these terms, the appeals are allowed by holding that the appellants are entitled to claim differential interest.

(dictated & pronounced in court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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