CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60421 of 2022

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-64-2022-23 dated 21.09.2022 passed by the Commissioner (Appeals), C.E. & CGST, Jammu]

M/s Crystal Crop Protection Ltd **......Appellant**
Lane No. 3C, SIDCO Industrial Complex,
Bari Brahmana, Phase II,
Jammu-181133

VERSUS

Commissioner of Central Goods & Service Tax, Jammu **......Respondent**
OB 32, Rail Head Complex,
Bahu Plaza, Jammu, J&K 180012

APPEARANCE:

Present for the Appellant: Sh. T.R. Rustagi, Advocate

Present for the Respondent: Sh. Siddharth Jaiswal, Sh. Narinder Singh & Sh. Shivam Syal, Authorized Representatives

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

FINAL ORDER NO. 60578/2025

DATE OF HEARING: 23.05.2025
DATE OF DECISION: 28.05.2025

P. ANJANI KUMAR:

M/s Crystal Crop Protection Ltd, the appellants, were availing exemption under Notification No.56/2002 dated 14.11.2002; Revenue issued a show cause notice dated 21.05.2010 to the appellants demanding erroneous refund of Rs.1,44,78,352/- and wrongfully availed CENVAT credit of Rs.38,03,088/-; Commissioner vide Order dated 29.04.2011 confirmed the demand of Rs.1,44,78,352/- of erroneous refund and Rs.16,93,436/- of CENVAT Credit wrongly availed; on an appeal filed by the appellants, CESTAT vide Final Order No.63197/2018 dated 27.08.2018 set aside the impugned order therein with consequential relief; accordingly, the appellant filed a refund claim for Rs.75 Lakhs being the deposit made during the currency of above proceedings; Assistant Commissioner vide Order dated 10.01.2019 sanctioned the refund but rejected the interest on the same holding that there is no delay in sanctioning the refund and therefore, the appellants are not entitled for interest; an appeal filed by the appellants, came to be dismissed by Commissioner (Appeals), vide impugned order dated 21.09.2022; hence this appeal.

2. Shri T.R. Rustagi, learned Counsel for the appellants that this issue is no longer res integra as various Benches of the Tribunal and Hon'ble High Courts have ruled that in such circumstances, appellants are entitled to refund along with interest from the date of payment of deposit. He submits that though there is no express provision in the Central Excise Act or Rules about the manner in which refund of such deposits is to be treated; Revenue, however, has been long treating them at par with refund of Central Excise duty as envisaged in Section 11B of the Central Excise Act, 1944; under these circumstances, various Hon'ble High Courts and also Hon'ble Supreme Court have intervened in the matter and held that interest is payable from the date of deposit; thus, the jurisprudence evolved in the matter requires that the Department grant refund along with interest from the date of such

deposits which has not assumed the colour of "Duty". He relies on the following cases:

- Riba Textiles Ltd. – 2020 (2) TMI 602- CESTAT Chandigarh and 2022 (3) TMI 693 (P&H)
- Indore Treasure Market City Pvt. Ltd. – 2024 (5) TMI 367- MP High Court.
- Indus Towers Limited – 2025 (1) TMI 1261- CESTAT Chandigarh.
- Fine Switchgears – 2025 (2) TMI 947- CESTAT Chandigarh.
- Impressive Management Solutions Pvt. Ltd. – 2023 (4) TMI 433- CESTAT Chandigarh.
- Sandvik Asia Ltd. – 2006 (196) ELT 257 (SC).

3. Learned Authorized Representative for the Department takes us through the provisions of Sections 11B and 11BB and submits that there are only two provisions, as far as refunds are concerned under the Central Excise Law, i.e. under Section 11B or under Section 35FF; it is not the case of the appellants that the refund in question falls under the provisions of Section 35FF as the amount deposited by the appellants was not as a pre-condition for preferring any appeal and also was not as per the direction of an Appellate Authority or Tribunal or the Hon'ble High Courts. He submits that Hon'ble Supreme Court in many occasions held that statutory requirements are required to be followed. He submits that once statutory provisions are in place, interest cannot be granted beyond such provisions. He relies on the following cases:

- Willowood Chemicals Pvt. Ltd. – 2022 (60) GSTL 3 (SC).
- Gujarat Fluoro Chemicals – 2017 (51) STR 236 (SC).
- Cosmo Films Limited – Civil Appeal No.290 of 2023
- G.S Promoters and Developers

4. Learned Authorized Representative further submits that Hon'ble Apex Court in a recent decision in the case of Goldy Engineering Works – 2025 (29) CENTAX 286 (SC) held that interest shall be paid after three months from the date of filing of refund application; therefore, the same has become the law of the land and jurisprudence evolved in this matter till now comes to be settled by the Hon'ble Apex Court and thus, all the cases cited by the appellants are of no avail.

5. Heard both sides and perused the records of the case. We find that in the instant case the appellants have paid the said deposit on 27.08.2018a; show cause notice was issued on 21.05.2010 and the same came to be ultimately settled by the order of the Tribunal on 21.09.2022; the appellants have filed the claim for refund on 13.11.2018 and the original authority has sanctioned the refund vide order dated 10.11.2019; lower authority rejected the claim for interest holding that:

> I further observe that the party has also claimed interest on the amount refundable to them. As the matter pertains to the period prior to 6.8.2018 (sic)* and is covered under section 11 B, and refund claim is being sanctioned within three months from the date of filing i.e., 13.11.2018, hence, no interest is payable to the party.

6. We find that though the issue of grant of interest on the pre-deposits has been a subject matter of litigation for long, in a recent judgment in the case of Goldy Engineering Works – (2023) 10 Centax 189 (Del.), Hon'ble Delhi High Court has put to rest the different interpretations on this issue holding that interest is governed only by two provisions i.e. Section 11BB and Section 35FF of the Central Excise

Act; in the case of refund of deposit made during the investigation or during the proceedings shall be governed by Section 11B and accordingly, the interest shall be governed by Section 11BB. Hon'ble Apex Court has affirmed the decision of the Hon'ble Delhi High Court and thus, the decision has become the law of the land. Hon'ble Delhi High Court observed as follows:

> 23. The Court, at the outset notes, that Section 11B(1) in clear and unambiguous terms contemplates the making of an application for refund being made by any person claiming refund of any duty of excise and interest paid on such duty. The claim of refund insofar as the petitioner is concerned arose in the backdrop of the order in original coming to be set aside in appeal. The petitioner appears to have made an application for refund ultimately and only after the departmental appeal before the CESTAT came to be dismissed.
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> 24. We deem it apposite to observe that the mere pendency of an appeal or an order of stay that may operate thereon would not detract from the obligation of any person claiming a refund making an application as contemplated under Section 11B(1) within the period prescribed and computed with reference to the "relevant date". We do so observe in light of the indubitable principle that an order of stay that may operate in an appeal does not efface the demand or the obligation of refund that may have sprung into existence. It merely places the enforcement of the order appealed against in abeyance. The order of stay would, in any case, be deemed to have never existed once the appeal comes to be dismissed.
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> 25. We further note that the subject of interest on delayed refund which is governed by Section 11BB itself prescribes the starting point for payment of interest on delayed refunds to be the date when an application under Section 11B(1) is received. On a conjoint reading of Sections 11B and 11BB of the 1944 Act, therefore, we come to the irresistible conclusion that interest on delayed refund is clearly dependent upon the making of a formal application as stipulated by Section 11B of the 1944 Act.

26. We also find merit in the contention canvassed by Ms. Narain who had submitted that a refund of duty and interest paid thereon is liable to be viewed as distinct from a pre-deposit that may be made in compliance with Section 35F of the 1944 Act. The Circular of the Board too strikes an identical position when it is stated that a deposit which is made in compliance with a statutory pre-condition for the preferment of an appeal cannot be viewed as "duty". It is the aforesaid aspect which appears to have weighed with the Board in proceeding to formulate its directive for refunds being effected immediately upon an appeal coming to be decided in favour of the assessee and not being made dependent upon any application being made in respect thereof.

27. The aforesaid position stands further fortified when one reads Section 35FF of the 1944 Act. As would be evident from a reading of that provision, Section 35FF as distinct from Section 11B does not require the making of a formal application by the assessee. In fact and contrary to Section 11B, the said provision uses the expression "....there shall be paid to the appellant interest.....". Thus, the language of Section 35FF is an embodiment of the manifest obligation of the respondents to refund the pre-deposit consequent to an order passed by the Appellate Authority notwithstanding an application having not been made by the depositor.

28. The distinction between Sections 11B and 35FF is also evident when one bears in mind the language employed in the latter and which stipulates that interest would commence from the date when the amount deposited by the appellant under Section 35F is required to be refunded consequent to an order passed by the Appellate Authority. Section 35FF thus indicates that interest would commence from the date of the order of the Appellate Authority as distinct from the making of an application which is prescribed to be the starting point insofar as Section 11BB of the 1944 Act is concerned.

29. Regard must also be had to the fact that in the case of refund of duty, it is also incumbent upon the assessee to declare and establish that the burden of tax has not been passed on. Absent that declaration, any refund that may be made would itself amount to the assessee being unjustly enriched. The making of an application and a declaration to the aforesaid effect is thus not merely an empty formality. This too appears to reinforce the imperatives of an application

being formally made before a claim for refund is considered.

30. That only leaves the Court to consider the decisions which were cited by Mr. Mishra for our consideration. However, before proceeding to do so, we deem it pertinent to enter the following prefatory observations. A levy of interest on refund must undoubtedly follow where it is found that the amount has been unjustifiably retained or remitted with undue delay. The respondents cannot be permitted to retain moneys which are otherwise not due or are otherwise liable to be returned. The solitary question which stands raised in these matters is the date from which that interest would flow. In Shri Jagdamba Polymers, the High Court on facts had found that the refund was inordinately delayed even though a claim for the same had been promptly lodged. This is clearly evident from Para 7 of the report. The said decision is thus clearly not an authority for the proposition that a refund must automatically follow de hors the requirements of Sections 11B and 11BB.

31. In eBIZ, the Allahabad High Court was not dealing with a claim for refund of "duty" but an amount deposited in the course of investigation. The High Court further went on to hold that even in the absence of a statutory provision if it be found that tax or duty had been wrongly collected, it would be liable to be refunded. There cannot be a dispute with regard to the aforenoted general proposition. What we seek to emphasize here is that in the present case, the issue of refund is duly regulated by two statutory provisions whose prescriptions would necessarily have to be adhered to. However, for reasons aforenoted we find ourselves unable to endorse the observation appearing in Para 34 of the report where a deposit of duty and a pre deposit were considered to be identical concepts. As was noted hereinbefore, a pre-deposit made as a condition of filing an appeal is in any case not considered to be "duty" even by the respondents.

32. The decision of this Court in Team HR Services, had frowned upon the distinction sought to be advocated by the respondents there between a deposit made under protest and a pre-deposit made in connection with an appeal. As would be further evident from a reading of Paras 14 and 15 the counsel appearing for the respondents had also failed to draw the attention of the Court to any statutory provision which governed the issue of refund. The

> aforesaid decision is thus clearly distinguishable especially when undisputedly, in the present matters the issue of refund is governed by the provisions of Sections 11B and 11BB.
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> 33. Accordingly, and for all the aforesaid reasons, the instant writ petitions shall stand disposed of on the following terms. The respondents shall revisit the issue of payment of interest in light of the observations made hereinabove. Interest, if any, shall be liable to be computed and paid to the petitioners if it be found that the refund was affected beyond a period of three months when computed from the date when the respective applications were made and received.

7. We find that the facts of the case in the impugned case before us and the case dealt by the Hon'ble Delhi High Court as above are similar. Therefore, we find that the decision of the Hon'ble Delhi High Court, also being upheld by the Hon'ble Apex Court, is squarely applicable to the instant case. In view of the same, we find no reason as to interfere with the impugned order.

8. Accordingly, the appeal is rejected.

(Order pronounced in the open court on 28/05/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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