CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60357 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-LDH-APP-95-2022-23 dated 17.03.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

Kalyan Projects Construction Company **......Appellant**
C/o Rajiv Goel and Associates,
1st Floor, SCO 823-824, Sector 22A,
Chandigarh 160022

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Ludhiana **......Respondent**
GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

APPEARANCE:

Mr. Dhruv Goel, Chartered Accountant for the Appellant

Ms. Amita Gupta, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 61003/2025

DATE OF HEARING: 13.08.2025
DATE OF DECISION: 20.08.2025

The present appeal is directed against impugned order dated 17.03.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant filed for grant of interest on refund.

2. Briefly stated facts of the present case are that a demand of service tax amounting to Rs.46,91,052/- was raised against the appellant vide Order-in-Original dated 17.08.2010; aggrieved by the said order, the appellant filed appeal before the Tribunal; during the pendency of that appeal, the appellant was asked to deposit Rs. 15 lakhs as pre-deposit under Section 35F of the Central Excise Act, 1944; subsequently, the Tribunal vide its Final Order No. 60747/2019 dated 04.09.2019 set aside the entire demand along with penalty by allowing the appeal of the appellant. Thereafter, on 17.01.2020, the appellant filed refund claim of the amount deposited as pre-deposit during the proceedings before the Tribunal, which was sanctioned on 09.03.2020 and was dispersed to the appellant on 08.05.2020. The appellant, through the present appeal, is praying only for grant of interest @12% from the date of deposit till the refund is actually made, which was rejected by both lower authorities.

3. Heard both the parties and perused the material on record.

4. The learned Consultant for the appellant submits that the impugned order, rejecting the claim of interest on refund, is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that as per the various decisions passed by the Tribunal, the appellant is entitled for interest @12% from the date of deposit of tax till its ultimate refund. In this regard, he relies on the following decisions:

- **M/s Fujikawa Power And M/s Kenzo International vs. CCE & ST, Chandigarh-I – 2019 (11) TMI 1197 CESTAT Chandigarh**
- **M/s Pensla Exports Pvt Ltd vs. CCE & ST, Jalandhar – 2019 (12) TMI 9 CESTAT Chandigarh**
- **M/s Shri Nakoda Ispat Ltd And M/s Anant Dave vs. CCE & CGST, Raipur – 2022 (8 TMI 926 CESTAT New Delhi**
- **CCE, Panchkula vs. M/s Riba Textiles Limited – 2022 (3) TMI 693 P&H High Court**

4.2 He also makes an alternate plea that the Tribunal's Final Order was passed on 04.09.2019 and the refund was received by the appellant on 08.05.2020; therefore, at least the appellant is entitled to interest from the date of communication of Tribunal's Final Order i.e. 04.09.2019 till 08.05.2020 @6%.

5. On the other hand, the learned Authorized Representative for the Revenue justifies the impugned order and submits that the appellant is not entitled to interest because the refund application was filed on 17.01.2020 and refund was sanctioned on 09.03.2020 which is within the period of three months.

5.1 She further submits that in this case, the appellant deposited the tax under Section 35F of the Act, which stood prior to its amendment on 06.08.2014 and as per the un-amended provision under Section 35FF, it was provided that where any amount deposited by the assessee under Section 35F of the Act is required to be refunded consequent upon the order to the Appellate Authority, it will carry an interest at the specified rate till the date of refund.

5.2 She further submits that all the decisions, relied upon by the appellant cited supra, have been distinguished by the Division Bench of the Tribunal in the case of **Cubex Tubings Limited vs. Commr of Central Tax, Hyderabad –2022 (5) TMI 1039 CESTAT Hyderabad** wherein the Tribunal has considered the statutory provisions of Section 35FF as it stood prior to its amendment. She also submits that in the said case, the Tribunal has also distinguished the judgment of Hon'ble Supreme Court in the case of **Sandvik Asia Ltd vs. Commr of Income Tax-I, Pune – 2006 (1) TMI 55 S.C.**

5.3 She further submits that the refund in this case, which was sanctioned on 09.03.2020, could not be dispersed due to outbreak of COVID-19, during which period, the limitation was extended vide Notification dated 31.03.2020 issued by the Ministry of Law & Justice.

6. I have considered the submissions made by both the parties and perused the material on record as well as the decisions relied upon both the parties. I find that the only issue involved in the present case is whether the appellant is entitled to interest from the date of deposit till the refund is finally dispersed to the appellant and if so, at what rate?

7. Further, I find that in this case, the deposit of Rs. 15 lakhs was made under Section 35F of the Act on the direction of the Tribunal and finally the Tribunal allowed the appeal of the appellant on 04.09.2019. It is pertinent to note that during the said period,

the provisions of Section 35FF of the Act provided payment of interest on delayed refund on the amount deposited under Section 35F of the Act and it is also provided that when the appeal of the assessee is allowed and the amount is refunded in pursuance of the order of the Appellate Authority then such amount shall be refunded and if it is not so refunded within a period of three months from the date of communication of the Appellate Authority's order, the interest shall be payable at the rate specified under Section 11BB of the Act after the expiry of aforesaid period of three month.

8. Further, I find that this issue has been considered by the Division Bench of the Tribunal in the case of **Cubex Tubings Limited** (supra) wherein the Tribunal has held as under:

> **"8.** It is not in dispute that the amount towards pre-deposit under section 35F of the Excise Act was deposited by the appellant on 30.08.2012, which date is prior to 06.08.2014 on which date section 35FF of the Excise Act was amended. The proviso to section 35FF of the Excise Act, as it stood after amendment on 06.08.2014, clearly stipulates that the amount deposited under section 35F of the Excise Act prior to 06.08.2014 shall continue to be governed by the provisions of section 35FF of the Excise Act as it stood before 06.08.2014. Thus, the appellant would not be entitled to claim interest on the pre-deposit amount as the provisions of section 35FF of the Excise Act, as it stood prior to its amendment on 06.08.2014, would be applicable. This is for the reason that section 35FF of the Excise Act, as it existed prior to 06.08.2014, provided that where the amount deposited towards pre-deposit under section 35F of the Excise Act is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the

order of the appellate authority, till the of refund of such amount. In other words, if the amount is refunded within three months from the date of communication of the order, interest would not be paid.

9. In the present case, it is not in dispute that the amount towards pre-deposit was deposited on 30.08.2012 and that the amount was sanctioned within three months from the date of communication of the order of the Tribunal to the adjudicating authority. The appellant would, therefore, not be entitled to claim interest. This is what was observed by the Deputy Commissioner as also the Commissioner (Appeals) while rejecting the claim of the appellant for payment of interest.

10. This view finds support from the judgment of the Allahabad High Court in IFP Products (P) Ltd. vs. Union of India and Anr [Writ Tax No. 653 of 2017 decided on 20.09.2017]. The High Court held that in view of the proviso to the amended provisions of section 35FF of the Excise Act, the unamended provisions of section 35FF of the Excise Act would be applicable under which no interest can be paid if the amount is deposited within three months from the date of communication of the order of the Appellate Tribunal and the relevant observations made in the judgment are reproduced below:

> "Section 35FF of the Act provides for the payment of interest on delayed refund of amount deposited under Section 35F of the Act.
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> The aforesaid provision as it stood at the relevant time i.e. on 03.08.2016 or 28.11.2016, when the appeal of the petitioner was allowed and the amount was refunded provided that where any amount deposited in pursuance of the order of the Commissioner (Appeals) or the Appellate Tribunal is required to be refunded consequent upon the order of the Appellate Authority, such amount shall be refunded and if it is not so refunded within a period of three months from the date of communication of the order of the Appellate Authority, interest shall be payable at the rate specified under Section 11BB of the Act after the expiry of the aforesaid three months.

A reading of the aforesaid provision reflects that any amount deposited pursuant to the order passed by any Authority is liable to be refunded within a period of three months from the date, the order is set aside by the Appellate Authority and in case, it is not so refunded within three months of the communication of the appellate order, interest at the specified rate shall be payable on it for the delayed period after three months.

The aforesaid provision of Section 35FF of the Act was amended by the Finance Act No. 25 of 2014 with effect from 06.08.2014 and it was provided that where any amount deposited by the party under Section 35F of the Act is required to be refunded consequent upon the order of the Appellate Authority, it will carry an interest at the specified rate till the date of refund.

It permits payment of interest at the specified rate for the entire period, the amount remains deposited with the authority. However, the aforesaid provision has been subjected to a proviso, which lays down that if any amount has been deposited prior to the enforcement of the Finance Act No. 25 of 2014 i.e. before 06.08.2014, it shall continue to be governed by the unamended provision of Section 35FF of the Act, which means that in cases of deposit made prior to 06.08.2014, interest would be payable only if the amount is not refunded within a period of three months from the date of communication of the appellate order.

Apart from the above provision, there is no other provision, which permits payment of interest on the amount of excise duty deposited in pursuance to the order of the Commissioner (Appeals) or the Tribunal by any party. A composite reading of unamended Section 35FF and amended Section 35FF of the Act reveals that in respect of an amount deposited prior to the commencement of the Finance Act No. 25 of 2014, interest on the refunded amount is payable only if it is not refunded within three months of the communication of the order of the appellate authority entitling the refund and that too after the expiry of three months of the communication of the order.

In the present case, the amount was deposited on 24.04.2014 and 28.04.2014, the appeal entitling

> the refund was allowed on 03.08.2016 and the refund was actually made on 28.11.2016.
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> All the aforesaid dates are earlier to 06.08.2016, the date of enforcement of Finance Act No. 25 of 2014. Thus, in view of the proviso to the amended Section 35FF of the Act, the payment of interest to the petitioner would be governed by the unamended Section 35FF of the Act.
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> Accordingly, if at all the petitioner would be entitled to interest on the amount refunded, it will be for the period the amount had remained with the respondents after three months from the date of communication of the appellate order."

I also find that in the aforesaid case, the Tribunal has also considered the decision of Hon'ble Supreme Court in Sandvik Asia Ltd (supra) and has distinguished the same by observing as under:

> "**13.** Learned counsel for the appellant, however, placed reliance upon a decision of a learned Member of the Tribunal in J.K. Cement Works. In this case the pre-deposit was made on 31.03.2006 but the appellant succeeded before the High Court on 25.01.2018. While claiming refund of the pre-deposit amount, the contention that was advanced was that the appellant would also be entitled to interest under the amended provisions of section 35FF of the Excise Act. The learned Member allowed payment of interest, even though the amount was refunded within three months from the date of communication of the order following the decision of the Supreme Court in Sandvik Asia Ltd. This judgment of the Supreme Court does not deal with the issue in hand. The main issue that arose before the Supreme Court was whether an assessee is entitled to be compensated by the Income Tax department for the delay in paying to the assessee the amount admittedly due. The delay in the matters before the Supreme Court were for various periods ranging from 12 to 17 years and the Supreme Court noticed that there was no justifiable reason for withholding the amount for such long period time. Interest on the amount refunded was granted to the appellant but the appellant also claimed interest on the Advance Tax that was paid. It is in this

> context that the Supreme Court held that interest was also required to be paid on the Advance Tax since Advance Tax has also to be treated as paid pursuant to an order for assessment. The decision the learned Member of the Tribunal in J.K. Cement Works, therefore, does not lay down the correct position of law and would not come to the aid of the appellant.
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> **14.** The decision of the Tribunal in Riba Textiles also does not help the appellant as it also relies upon the decision of the Supreme Court in Sandvik Asia Ltd.
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> **15.** The judgment of the Delhi High Court in MRF Limited will also not help the appellant. This judgment holds that the pre-deposit amount which is required to be deposited when an appeal is preferred does not bear the character of a tax and, therefore, the filing of a form which is purely for the purpose of administrative convenience cannot in any manner fixe the period of limitation."

9. Further, I find that this issue has also been considered by the Single Member Bench of the Tribunal at Chandigarh in the case of **Kandhari Beverages Pvt Ltd vs. CCE & ST, Chandigarh – 2022 (9) TMI 270 CESTAT Chandigarh** wherein the Tribunal has observed as under:

> **"9.** Admittedly in the instant matter the pre-deposit was made on 25.6.2014, which is prior to 6.8.2014 when section 35FF required an interest as specified in S.11BB to be paid for any amount of pre-deposit which has been refunded after a period of three months from the date of communication of order of appellate authority till the date of refund of such amount. An identical issue came up for consideration before a co-ordinate Bench of the Tribunal in the matter of Hindustan Agro Insecticides vs. CCT, Guntur; 2019 (367) ELT 669 (Tri.- Hyd.) wherein it has been held as under:-
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>> "5. I have considered the arguments made in the appeal memorandum and the relevant legal provisions. The proviso to amend Section 35FF makes it clear that in respect of any amounts

> pre-deposited prior to 6-8-2014 will continue to be covered by the provisions of the unamended Section 35FF. The unamended provisions provided for payment of interest only if the pre-deposit was not refunded within three months from the date of communication of the order of the appellate authority. Therefore, no interest is payable to the appellant in this case. The impugned order is correct and calls for no interference. Accordingly, the appeal is rejected and the impugned order is upheld."

10. In the light of the discussions made in the preceding paragraphs, I am of the considered opinion that in the instant matter the interest on refund has to be dealt with in accordance with the erstwhile section 35FF which clearly mandates the payment of interest only if there was a delay beyond three months. The statutory period prescribed therein is 3 months from the date of communication of the order of the Appellate Authority. While going through the case records I find that based on the Final Order dated 19.2.2020 of this Tribunal, the refund of Rs.50 lacs came to be sanctioned by the authority concerned vide Order-in-Original dated 28.10.2020 that too when the appellant sent letter dated 22.7.2020 to the department requesting refund of the amount of pre-deposit alongwith applicable interest from the date of pre-deposit. The department cannot take advantage of lethargy on their part. This is not proper to say that the order is not received in Central GST Commissionerate, Chandigarh. The statute uses the word 'communication of the order of appellate authority' and that cannot be construed as 'receipt of the copy of the order'. When any order is pronounced in Tribunal, Department is represented through Departmental Representative/Authorised Representative and therefore communication of order to them deemed to have been communicated to the concerned authority which has to sanction refund. So in my view after the expiry of three months from the date of the final order dated 19.02.2020, the appellant is entitled for the interest on delayed refund till the date of refund of the aforesaid pre-deposit amount and to that extent only the impugned order is modified and the matter is remanded to the Adjudicating Authority for calculating the amount of interest on the above terms and to pay the same to the appellant within a period of two months from the date of this order. The appeal filed by the appellant is accordingly partly allowed."

10. In the light of above discussion and by following the ratios of the decisions in the cases of **Cubex Tubings Limited** (supra) and **Kandhari Beverages Pvt Ltd** (supra), I am of the considered view that the in the present case, the appellant is entitled to interest under un-amended provisions of Section 35FF of the Act because the refund has been granted within the period of three months from the date of communication of the Tribunal's order dated 04.09.2019. Therefore, I hold that the appellant is entitled to interest @6% from the date of expiry of three months i.e. from 04.12.2019 till 08.05.2020 when the refund was finally dispersed to the appellant. Consequently, I remand the case back to the original authority for the purpose of quantification of the said interest and thereafter to grant the same.

11. The appeal is partly allowed in the above terms.

(Order pronounced in the open court on 20.08.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi