CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 61056 Of 2019

[Arising out of OIA No. CHD-EXCUS-001-APP-100-2019-20 dated 23.07.2019 passed by the Commissioner (Appeals) of Central Goods & Service Tax, Chandigarh]

M/s Exicom Tele Systems Ltd. : **Appellant (s)**
Electronics Complex Chambaghat
SOLAN, HIMACHAL PARDESH, 173213

Vs

CCE & ST- Shimla : **Respondent (s)**
OFFICE OF THE COMMISSIONER,
CENTRAL EXCISE AND GST Ground & First Floor,
Commercial Parking Complex, Chota Shimla,
SHIMLA, Himachal Pradesh, 171011

APPEARANCE:
Shri Ajay Jain, Advocate for the Appellant
Shri Tarun Kumar, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

ORDER No. A/60001 / 2020

Date of Hearing:06.01.2020

Date of Decision:06.01.2020

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the interest has not been given to the appellant for the amount paid under protest till its utilization.

2. The facts of the case are that in 2009 an audit took place in the premises of the appellant and the appellant was directed to make a deposit as they are not entitled for the benefit of exemption Notification No. 01/2006-ST dated 01.03.2006. The appellant made a deposit of Rs. 31,12,525/- under protest. Thereafter, in 2013 a show cause notice was issued to the appellant for appropriation of the said
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amount and to impose penalty. The matter was adjudicated by the adjudicating authority and the proceedings were dropped against the appellant. Thereafter, the amount deposited under protest was returned to the appellant, but, no interest was given to the appellant for the amount which retained by the revenue illegally. By way of this appeal, the appellant is seeking interest for the period from the amount paid under protest till its utilization.

3. Heard the parties.

4. As the issue has been settled by this Tribunal in the case of ***Parle Agro Pvt. Ltd. vs. Commissioner of Central Excise, Noida – 2018 (360) ELT 1005 (Tri.-All.)*** wherein this Tribunal observed as under:-

> *"**6.** Having considered the rival contentions, we find that as held by Hon'ble Punjab and Haryana High Court and as earlier held by this Tribunal the amounts, which are deposited during the pendency of investigation and proceedings, if the same are not adjudged as duty, fine or penalty then the amount that is not adjudged as duty, fine and penalty is to be treated as revenue deposit and the provisions of refund of duty shall not be applicable to the same. The amount which has been adjudged is as per the authority of law and the amount which is in excess of the adjudged amount if retained that such retention of said amount shall be without authority of law and Article 365 of Constitution of India has not authorized Revenue to retain such amount. In the present case, the penalty was reduced to Rs. 10 lakh. Therefore, we allow Revenue to recover Rs. 10 lakh from Rs. 1.5 crore which was deposited by the appellant and direct the Original Authority to refund Rs. 8,36,185/- and Rs. 1,40,00,000/- and also pay the appropriate interest on the same. We do not pass any order in respect of bank guarantee since the matter was not subject matter of either the Order-in-Original or Order-in-Appeal impugned. We allow the appeal as held hereinabove.*

As the amount has been retained without any authority of law by the Revenue and the same was paid by the appellant under protest, in that circumstances, the appellant is entitled to claim interest for the said amount. Therefore, I direct the Revenue to pay the interest to the appellant from the date of deposit of the amount under protest till its utilization @12% per annum.

5. In these terms, the appeal is allowed.

(Dictated & pronounced in the Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.