CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60376 of 2020

[Arising out of OIA 39-ST-CGST-APPEAL-GURUGRAM-SG-2020-21 dated 21.09.2020 passed by the Commissioner (Appeals) Central Goods & Service Tax, Gurugram]

M/s Shahi Exports Ltd ......**Appellant**
Plot No. 1, Sector 28, Faridabad,
Haryana

VERSUS

Commissioner of CE & ST, Gurgaon-I ......**Respondent**
Plot No. 36-37, Sector 32, Near Medanta Hospital,
Gurgoan, Haryana
(Applicant here)

<u>APPEARANCE:</u>

Present for the Appellant: Mr. Anubhav Goel, C.A.

Present for the Respondent: Mr. Bhasha Ram, Authorized Representative

<u>CORAM:</u> HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60875 /2021

DATE OF HEARING: 16.08.2021
DATE OF DECISION: 16.08.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein part interest has been granted to them for the amount paid by them during the investigation under protest as pre-deposit.

2. The facts of the case are that the appellant is an exporter of readymade garments. During the course of investigation in 2007, the appellant was asked to pay service tax on commission paid to the

agent to procure orders from the foreign buyers. The appellant paid certain amounts on 03.02.2007 and 01.07.2008 under protest. Thereafter, on 22.01.2009 a show cause notice was issued to the appellant to appropriate the amount paid during the course of investigation. The matter was adjudicated and the demand was confirmed. Thereafter, the matter traveled up to this Tribunal and this Tribunal vide Final Order dt. 20.02.2019 held that the appellant is not liable to pay service tax. Thereafter, the appellant claimed the refund from the department through an application dt. 22.07.2019. The refund claim was sanctioned to the appellant but interest on account of delayed refund was not given to the appellant for the intervening period. The matter went to the ld. Commissioner (Appeals) who held that it is a pre-deposit made by the appellant and granted 10% of the interest to the appellant. Against the said order, the appellant is before me.

3. The ld. Consultant appearing on behalf of the appellant submits that the amount has been paid by the appellant under protest during the course of investigation, therefore, the appellant is entitled to claim interest from the date of deposit till its realization. It is not a pre-deposit as the said amount was paid under protest. It is further submitted that the said amount was retained by the Revenue without any authority of law. It was recorded in the order-in-original itself that it is under protest, the appellant is entitled to claim interest for non refunding the amount for which they have not authority to retain the same with them. In that circumstance, the appellant is entitled to claim interest at the rate of 12%.

4. On the other hand, the ld. AR opposed the contention of the ld. Consultant and submitted that the appellant themselves have admitted that they have paid service tax, therefore, it is not a deposit, it is an amount of service tax; therefore, the Commissioner (Appeals) rightly held that it is a deposit.

5. Heard both the sides and considered the submissions.

6. On careful consideration of submissions made by both the sides, I find that it is an amount paid by the appellant as service tax under protest during the course of investigation. This fact is not in dispute. When any amount paid under protest, it is neither pre-deposit nor service tax; it is only a deposit made by the appellant and the said amount was retained by the Revenue without any authority of law as held by this Tribunal that the appellant was not liable to pay service tax. The order of this Tribunal has attained finality. In that circumstance, the appellant is entitled to claim interest from the date of deposit till its realization. Therefore, I hold that impugned order is not sustainable in the eyes of law granting 10% of interest to the appellant. Considering it is a pre-deposit but the appellant is entitled to claim interest on the said amount as the said amount has been paid under protest from its payment till its realization @12 % p.a.

7. In these terms, the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi