CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51326 / 2018 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-604-17-18 dated 13.02.2018 passed by the, Commissioner (Appeals) CGST&CE, Indore]

Prestige Food
30 Jarora Compound
M.Y.H Road
Indore.

...Appellant

Vs.

The Commissioner
CGST & Central Excise
Headquarter,
Indore **...Respondent**

<u>APPEARANCE:</u>

Mr. Rajesh Rawal, Advocate for the Appellant
Mr. K. Poddar, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHANA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 07.10.2019
DATE OF DECISION :07.10.2019

<u>FINAL ORDER No. 51316/2019</u>

The Appellant herein are engaged in manufacture of vegetable oil and by products thereof. The amount of Rs. 18,90,323/- (Rs. 4,72,600/- and Rs. 14,17,723/-) was deposited by the Appellant on 29.12.2003 and 02.03.2012. The said amount was initially proposed to be recovered vide show cause notice dated 31.05.1994 and the proposal thereof was confirmed in April, 1998. The Commissioner (Appeals) also ordered pre-deposit of 100% duty. However, penalty in full was waived off. It is only vide order dated 06.08.2012 in an SLP of the Appellant that Hon'ble Supreme court directed for restoration of the previous appeal, directing the Commissioner (Appeals) to dispose of the same on merits without taking any coersive steps during the pendency thereof. In furtherance of the said order Commissioner (Appeals) allowed the appeal of the Appellant vide order dated 08.02.2016 holding the Appellant to be entitled for the refund of the aforesaid entire amount.

2. In furtherance thereof the said amount got refunded on 19.04.2006. It is thereafter that the Appellant demanded interest, however, the impugned show cause notice bearing No. 4118 dated 28.01.2017 was served upon the Appellant proposing the rejection of the claim of interest on the said amount that to from the date of deposit. The said proposal was confirmed initially vide Order-in original No. 031 dated 28.08.2017 the appeal thereof was dismissed vide Order No. 604 dated 13.02.2018 which has been assailed before this Tribunal.

3. I have heard Mr. Rajesh Rawal, Advocate.

It is submitted on behalf of the Appellant that the appellant was forced to make a deposit of Rs. Rs. 4,72,600/- in 2003 and 14,17,723/- in 2012, the same has finally been refunded in 2016 but the fact remains is that the amount was lying detained with the department unlawfully over these years which entitles the Appellant for the interest on the said refunded amount that too from the date of the payment thereof. Learned Counsel has relied upon (i) **2004 (174) E.L.T. 422 (All.) Hello Minerals Water (P) Ltd. Vs. Union of India** (ii) **2009 (243) E.L.T. 560 (Tri.-Bang.) ,Omjai Bhavani Silk Mills (P) Ltd. Vs. C.C.E., Cus. & S.T., Hyderabad** (iii) **1997 (95) E.L.T. 3 (S.C) Kuil Fireworks**

Industries Vs. Collector of Central Excise (iv) **2009(240) E.L.T. 124 (Tri.-Bang.) Toyota Kirloskar Auto Parts Pct. Ltd. Vs. COMMR. Of CUS, Bangalore** to justify the submissions.

While rebutting these arguments, it is mentioned by learned Department Representative that the amount was deposited in furtherance of the due adjudication orders not only of the adjudicating authorities of the department but also by the High Courts and even by the Hon'ble Supreme court. It is submitted that interim order of Commissioner, Bhopal directing pre-deposit of 100% duty was challenged by the Appellant before High court, Jabalpur where 1/4th amount of duty was directed to be pre-deposited within three weeks time vide Order dated 07.05.1999, the SLP thereof was also dismissed vide Order dated 15.07.1999. Before the pendency of said SLP, since Commissioner (Appeals) had already dismissed the appeal Hon'ble Apex Court ordered the restoration thereof. The order of Commissioner (Appeals) was challenged before CEGAT/present CESTAT. However, the appeal was dismissed vide Order dated 07.02.1999. The writ petition against the said order as was filed before High court, M.P, Jabalpur bench was also dismissed. LPA thereof was also dismissed, the SLP thereof was also rejected by Hon'ble Supreme Court on 22.07.2002. It is thereafter that the 1/4th amount of duty that is Rs. 4,72,600/- was deposited on 29.12.2003. In view of the submissions, it is impressed upon by learned Department Representative that the arguments of the Appellant for amount to have been detained by the department illegally and unlawfully are absolutely false. It is submitted that in furtherance of subsequent order of Hon'ble Supreme court directing restoration and disposal of appeal on merits that Commissioner (Appeals) ordered for refund of amount on 08.02.2016 which was finally refunded/disbursed on 29.04.2016 i.e within a period of three months. Hence, no question of any entitlement of the Appellant for interest at all arises, appeal is prayed to be dismissed.

After hearing both the Parties, it is observed that the narrow compass of the present adjudication is :

Whether Appellant is entitled for interest on the amount refunded w.e.f the date of respective payments in accordance of Section 35 FF of the Central Excise Act, 1944.

For the purpose the section is relevant to be quoted

> 35FF. Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, 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, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, 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 communication of the order of the appellate authority, till the date of refund of such amount.

It is observed that this provision is the amended provision as applicable w.e.f 06.08.2014, the proviso makes it abundantly clear that this will be applicable only for such deposits as are made after coming into existence of this amendment. Apparently and admitted, the amounts in this case were paid in the year 2003 and 2012. The both payments being prior the aforesaid amendment in Section 35FF, this provision is not applicable. Otherwise also it is an admitted fact that order of refund was announced on

08.02.2016, the amount was disbursed on 29.04.2016 once the payment is made within three months of the refund, no question of any interest to be paid along therewith at all arises.

The case law as relied upon by the Appellant is not applicable to the facts and circumstances of the present case, as in the present case there is no illegal detainment of the impugned amount by the department as is apparent from the arguments put forth by the Department Representative that the amount in question was deposited only after Hon'ble Supreme Court had confirmed the deposit of 1/4th amount of duty as was proposed to be recovered vide show cause of the year 1994. The said order was initially passed in December, 2003 and the residual payment of Rs. 14,17,723/- on 02.03.2012 was also made in furtherance of the directions of the Hon'ble Supreme Court. The amount deposited was, therefore, in furtherance of the direction of the Apex Court hence cannot be called as illegally detained amount. Further no doubt Hon'ble Supreme Court in August, 2012 directed the department to dispose of the matter on merits and that the order was passed on 08.02.2016 but there is no apparent delay that too intentional or malafide or even negligent on part of the department as is alleged by the Appellant.

It is observed from the order of Hon'ble Supreme Court dated 06.08.2012 that there are no findings about the entitlement, if any, of the Appellant except ordering restoration of the appeal and disposal thereof on merits. Keeping in view the same even for the period since August, 2012 till February, 2016, the Appellant is held not entitled for the interest as prayed.

As a result of these findings, I do not find any merit in the contention of the appellant. Appeal is accordingly stands dismissed.

(Rachna Gupta)
Member (Judicial)

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