CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.52349 of 2018-SM

(Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-529-17-18 dated 22.03.2018 passed by the Commissioner of Central Excise & Customs (Appeals), Raipur (C.G.)]

M/s. Akash Ispat Pvt. Ltd. **Appellant**
Ring Road No.2, Gogaon,
Raipur (C.G.) 493 221

VERSUS

Commissioner of Central Excise & Customs **Respondent**
Tikrapar, Raipur (C.G.)

APPEARANCE:

None for the appellant.
Shri K. Poddar, Authorised Representative for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51362/2019

DATE OF HEARING: 24.05.2019
DATE OF DECISION: 24.05.2019

ANIL CHOUDHARY:

In this appeal the appellant is seeking interest on the amount to be deposited which was made on 27.7.2013 by challan in compliance to the said order of this Tribunal dated 22.02.2013 under Section 35 F read with Notification no.24/2014-CE(NT) dated 2.08.2014.

2. The brief facts are contained in the order-in-original in the finding portion which are as follows:-

> "6. I find that the CESTAT, New Delhi vide Stay Order No. SO/57016/2013-EX(DB) dated 22.02.2013 granted stay on depositing Rs.10 lacs. The party deposited the amount of

Rs.1,15,16,118/- vide challan no.020967 dated 27.7.2013. On deposit of this amount within the stipulated period, the requirement of pre-deposit of balance amount of duty, interest and penalty by the appellant company stand waived and recovery thereof stayed.

7. M/s.Akas Ispat Pvt. Ltd. Urla, Raipur (C.G.) paid Rs.1,15,16.118/- vide challan No.020967 dated 27.7.2013 and submitted the copy of the same in the Range office along with their intimation letter dated 1.8.2013.

8. The CESTAT, New Delhi vide Final Order No.A/51878/2017-EX(DB) dated 20.02.2017 while disposing off the appeal arising out of Order-in-Original No.COMMISSIONER/RPR/CEX/84/2012 dated 31.10.2012 passed by the Commissioner of Customs & Central Excise, Raipur held that the demand against M/s.Akash Ispat Pvt. Ltd., Urla, Raipur (C.G.) is not maintainable and set aside the impugned order dated 31.10.2012.

9. From the facts narrated above and based on the examination of the documents enclosed by the party, I find that the amount claimed as refund by the party is the amount deposited by the party consequential to stay order dated 22.02.2013, predeposit of duty made under Section 11B ibid and the claim is proper and valid.

10. Regarding the clause of unjust enrichment, I find that the same is not applicable in case of pre-deposit made before the appellate authority in terms of Section 35 F ibid, the amount of pre-deposit not being duty, as has been held by High Court, Bombay in the case of **Suvidhe Ltd. Vs. UOI reported in 1996 (82) ELT 177 (Bombay),** later affirmed by Hon'ble Supreme Court **[1997 (94) ELT A 159 (SC)].**

14. I find that the refund claim is not hit by time bar since the amount deposited by the party is consequential to CESTAT Stay Order dated 22.02.2013. Further, as the amount deposited by the claimant as per CESTAT referred stay order represents "pre-

deposit" the clause of limitation is not applicable to this amount represented as "Pre-deposit".

11. As per Range officer verification report no recoverable arrears are pending for recovery against the party.

In view of the above facts, discussion and legal matrix, I pass the following order."

3. Accordingly, the Asstt. Commissioner was pleased to sanction the refund of pre-deposit of Rs.,1,15,16,118/- by the order-in-original dated 26.5.2017. However, there is no discussion regarding interest, if any payable under Section 35 F of the Act.

4. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals) on the ground that since Section 35 F has been substituted w.e.f. 6.8.2014 by Finance Act (2) of 2014, and on such pre-deposit, which has been made compulsory, interest will be payable as per Section 35 FF which has been introduced w.e.f. 6.8.2014. Hence, interest @6% on pre-deposit amount w.e.f 6/8.2014 to 31.7.2017 may be allowed as per Notification No.24/2014-CE(NT) dated 12.08.2014.

5. The contention of the appellant is that in view of the amended/substituted provision of Section 35 F, they should be also granted interest at the specified rate on the amount of pre-deposit w.e.f. 6.8.2014 to 31.07.2017 as per notification no.24/2014-CE (NT). The ld. Commissioner (Appeals) allowed the impugned order after taking notice of the pre-amended Section 35 FF, as it stood prior to 6.8.2014 which provides that "wherein the amount becomes payable after being successful appellate proceedings being part of the pre-deposit under Section 35 FF, interest shall be payable if such amount is not refunded within 3 months from the date of

communication of such order to the adjudicating authority, unless the operation of the appellate order is made by the superior court or Tribunal. Interest shall be paid at the rate specified under Section 11 BB, after expiry of 3 months from the date of communication of the order of the appellate authority till the date of refund of such an amount". Further, the ld. Commissioner (Appeals) has relied upon the order of the Hon'ble Delhi High Court in the case of **AFCONS Infrastructure Ltd. - 2015 (318) ELT A-158 (Delhi)**, where, it has been held that interest on pre-deposit amount is available only from the date beyond the period of 3 months from the date of receipt /copy of the order by the Department and not from the date of pre-deposit.

6. Having considered the facts on record and the written submissions filed by the appellant, I find that the facts are squarely covered by the Hon'ble Delhi HIigh Court in the case of **AFCONS Infrastructure Ltd. (supra).** Accordingly, there is no merit in this appeal and the same is dismissed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp.