

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal Nos. 50120-50122 of 2019 [SM]

[Arising out of Order-in-Appeal No. 1129-1131(CRM)/ST/JDR/2018 dated 11.10.2018 passed by the Commissioner (Appeals) CE & CGST, Jodhpur (Raj.)]

M/s Arihant Tiles & Marbles Pvt. Ltd.

Village Amberi,
N.H.8,
Udaipur – 313 001 (Raj.)

...Appellant

Vs.

The Commissioner (Appeals)

Central Excise & CGST
G-105, New Industrial Area,
Opp. Diesel Shed, Basni
Jodhpur – 342 003 (Raj.)

...Respondent

APPEARANCE:

Shri Narender Singhvi, Advocate for the Appellant
Shri K. Poddar & Ms. Tamana Alam, Authorised Representatives (DRs) for
the Respondent

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

DATE OF HEARING : 24.09.2019
PRONOUNCED ON : 31.10.2019

FINAL ORDER No. 51400-51402/2019

RACHNA GUPTA

With the present order three appeals as mentioned above are disposed off, the order-in-appeal / the order-under-challenge being common to three of these appeals and also the issue involved is same.

2. Facts in brief relevant for the purpose are :

The appellant herein is engaged in manufacture of marble slabs and tiles. The Appellant on 29.08.2008 & 29.06.2009 filed three refund claims in respect of service tax paid on certain services

received and used for export of goods, during the period from April 2008 to June 2008 in terms of Notification No. 41/2007-ST dated 06.10.2007, relating to refund of service tax paid on GTA services, Port services and technical testing and analysis services. Three of the said claims have been rejected by the Deputy Commissioner, Central Excise, Udaipur, vide Order-in-Original No. 113 dated 02.03.2009 and Order-in-Original No. 402-402 dated 25.09.2009. Aggrieved by the order of the Deputy Commissioner, the Appellant filed an appeal against rejection of their refund claim. The Commissioner (Appeals-II), Jaipur vide Order-in-Appeal No. 282 dated 12.08.2010 and Order-in-Appeal No. 409 dated 27.10.2010, dismissed the appeal of the appellant. Being still aggrieved, the Appellant filed an appeal before this Tribunal challenging the order of the Commissioner (Appeals-II).

2.1 Tribunal vide Final Order No. 50115-50117/2015 (DB) dated 09.01.2015, affirmed the eligibility of the appellant to refund claim and remanded the matter to the lower authorities for re-examination.

In compliance thereof a detailed submission before the Assistant Commissioner, Central Tax, Udaipur, was filed by the appellant on 11.02.2015. Vide Order-in-Original No. 02/15-ST(Ref) dated 07.05.2015 and Order-in-Original No. 03/15-ST(Ref) dated 07.05.2015 the refund in respect of the three of the refund claims was sanctioned. However, interest from the date of filing of refund application was not sanctioned. Aggrieved there from the Appellant filed an appeal before Commissioner (Appeals), Jodhpur who vide

Order-in-Appeal No. 173(CRM)/ST/JDR/2017-18 dated 27.03.2018 and Order-in-Appeal No. 174(CRM)/ST/JDR/2017-18 dated 27.03.2018, since three months from the date of sanction of refund had expired, sanctioned interest from the date of receipt of the application for refund i.e. 29.06.2009 and 06.07.2009, and not 11.02.2015.

2.2 The Appellant, however, filed letter dated 18.04.2018 with the Department for interest @ 12.5% on the refund amount sanctioned to them. The Department issued three Show Cause Notices (**SCN's**) to the Appellant, pursuant to the letters submitted by them denying the interest amount to the extent of 12% rate and that the calculation of interest by the Appellant was alleged to be incorrect.

The Appellant filed a detailed reply contesting the allegations and also the proposal for denial of the interest calculated by the Appellant before the Assistant Commissioner, Udaipur. In appeals 50120, 50121 & 50122 of 2019 claim for the interest of Rs. 33,54,833/-, Rs. 17,27,601/- & Rs. 79,15,871/- respectively was filed by the appellant.

As against this, the Assistant Commissioner vide Orders-in-Original No. (i) 28 dated 06.07.2018, (ii) 29 dated 06.07.2018 (iii) 30 dated 06.07.2018 sanctioned the charge sequence of three amounts also Rs. 18,45,273/-, Rs. 8,29,314/- & Rs. 4,27,681/- respectively to the appellant as interest.

2.3 To assail the said order, the Appellant filed an appeal before Commissioner (Appeals), Jodhpur who vide Order-in-Appeal No. 1129 –

1131 dated 11.10.2018 (**impugned order**), observed the following: -

1. There is no provision for interest on interest.
2. Notification No. 67/2003-CE(NT) dated 12.09.2003, prescribes 6% interest rate per annum for the purpose of Section 11BB of the Excise Act, therefore Appellant is not eligible to interest beyond the statutory 6% interest on delayed payment of refund claims.

Being aggrieved of this order appellant is before this Tribunal.

3. I have heard Mr. Narender Singhvi, learned Advocate for the Appellant and Mr. K. Poddar, learned Authorised Representative for the Department.

It is submitted on behalf of appellant that in furtherance of the order of CESTAT dated 9th January, 2015, the appellant became entitled for the interest w.e.f. the year 2008-09, but it could get sanctioned, only in the year 2018. The delay of more than 10 years for getting the amount of interest refunded entitles the appellant to be compensated for the same. It is impressed upon that interest is compensatory in nature, therefore, interest on delayed sanction of interest is payable. Learned Counsel has relied upon the decision of Hon'ble Supreme Court in the case of **Sandvik Asia Ltd. Vs. CIT reported as 2006 (196) ELT 257 (S.C)** and that the ratio has not be disapproved by Hon'ble larger bench in **Gujrat Fluorochemicals Vs. CIT reported as 2008 (300) ITR 328 (Guj.)**.

- 3.1 It is submitted that the said decision has not been overruled rather has been relied upon by Supreme Court in a subsequent decision in the case of CIT Vs. Gujarat Fluoro Chemicals itself. Even

the division bench of Gujrat, after the matter was referred back by the Supreme Court, is of the opinion that there is general principle for awarding compensation to the assessee for the delay in receiving interest properly due to it. It is alleged that the Appellate Authority below has ignored the said decisions rather the order-under-challenge suffer from gross misinterpretation of these decisions. Learned Counsel has also placed reliance upon the decision of **State of Gujarat Vs Unjha Pharmacy reported as 2016 (341) ELT 211 (Gujrat)** wherein the decision of Gujrat Fluoro (Supra) has been followed holding that compensation for prolonged delay in sanction of interest has to be granted.

3.2 In alternative submission, it has been submitted that when principal amount is payable with interest, payment made by the department is to be first adjusted towards the interest and thereafter towards the principal amount. Thus, to the extent of short fall in refund of principal amount after first appropriating the sanctioned amount towards interest, the liability of Revenue to grant interest still stands. Learned Counsel has relied upon the decision in the case of **V. Kala Bharathi and Ors. Vs. Oriental Ins. Co. Ltd. reported as AIR 2014 (S.C.) 1563**, decision of **Industrial Credit and Development Syndicate Vs. Smithaben H. Patel & Ors. reported as AIR 1999 (SC) 1036** have been relied upon by the appellant. Finally, impressing upon that on the delayed sanction of refund of interest on 6th July, 2018, the appellant is entitled to interest in the terms of Section 11BB for the period from 28.09.2009 to 06.07.2018. Therefore, the order

challenge is prayed to be set aside and three of the appeals are prayed to be allowed.

4. While rebutting these arguments, learned D.R. has submitted that there is no provision in the relevant statute to grant interest on delayed payment of interest amount and that the Appellant vide the impugned appeal is actually asking for the interest on the delayed amount of interest which has been sanctioned in favour of the appellant with reference to the refund which could not be disbursed within three months of the sanction thereof. The claim herein is not for the compensations, as is impressed by the appellant. Hence, none of the case law, as relied upon is applicable to the present facts & circumstances.

4.1 It is submitted that rather the appellant is wrongly interpreting the decision of Sandvik Asia Ltd. (Supra). It has been pointed out that the Hon'ble Supreme Court has clarified therein that it is only that interest as provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest. It was only the compensation which as per Hon'ble Apex Court may be granted to the assessee. There is no power vested with the Tribunal to grant compensation in view of delay, if any. It is impressed upon that there is no infirmity, as alleged, in the order-under-challenge. Appeal is, accordingly, prayed to be dismissed.

5. After hearing the rival contentions of the parties and perusing the appeal record as well as the case law relied upon. We observe and hold as follows :

Present is the case where the appellant had filed refund claims in respect of service tax paid on certain services received and used for the export of goods during the period from April, 2008 to June, 2008. The refund claims were accordingly filed on 29.08.2008 & 29.06.09.

These refund claim Appeals were initially rejected, however, this Tribunal vide order dated 09.01.2015 while affirming the eligibility of the appellant to said refund claims, remanded the matter back to the lower authorities for re-examination. It is, thereafter that three of refund claims as were filed under Notification No. 41/2007 dated 06.10.2007 were got sanctioned by the original adjudication authority vide its order dated 07.05.2015. However, no interest was sanctioned from the date of filing of the refund application. The interest was finally sanctioned on delayed refund of service tax vide order dated 27.03.2018.

6. In furtherance whereof the demand of the sanctioned interest that too @ 12.5% on the refund amount was filed by the appellant. The interest was disbursed @ 6% vide order dated 06.07.2018. The appellant today has not contested the rate of interest. However, has claimed the interest on the said disbursed amount of interest on the ground that the same was disbursed after a reasonable delay. Hence, the only question is to be adjudicated is opined as:

Whether the appellant is entitled to interest on the sanctioned amount of interest qua refund claims which could not be disbursed with three months thereof.

6.1 The relevant provision in this respect is Section 11BB of Central Excise Act, 1944, it reads as follows :

Section 11BB. Interest of delayed refunds –

If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below ten per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.]

The provision makes it, abundantly, clear that the interest is allowed on delayed refunds. But the provision is silent about any interest on delayed payment of interest as claimed herein. Learned Counsel for appellant has relied upon **Sandvik Asia Ltd. (Supra)** case, impressing upon that the Hon'ble Apex Court has allowed such amount in case of apparent delay. But it is observed that there has been expressed clarification that such interest only can be claimed by an assessee which is provided under the statute and no other interest on such statutory interest can be granted.

The relevant para of the decision of a division bench of Hon'ble Supreme Court while considering a reference doubting correctness of their previous decision of Sandvik Asia case had held as :

" In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assesseees and also by the Revenue. They are of the view that in Sandvik case (supra) this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in Sandvik case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest."

14. The aforesaid shows that in the latter decision of the Larger Bench, it was held that the decision in the case of Sandvik Asia Ltd. (supra) cannot be read to mean that Revenue is obliged to pay interest on interest in the event of its failure to refund the interest payable within the statutory period. The Apex Court further held that in the peculiar facts and circumstances of the case of Sandvik Asia Ltd. (supra) the Court had come to the conclusion that there was inordinate delay on the part of the Government to refund certain amount, which includes statutory interest and, therefore, directed the Revenue to pay compensation for the same, but not interest on interest.

15. In our view, as per the above referred observations of the Apex Court in the case of Gujarat Fluoro Chemicals (supra), obligation on the part of the Government to pay compensation for non-payment of the statutory interest by way of interest on interest was not approved. Further, in the above referred decision of the Larger Bench of the Apex Court at paragraph 7, it was observed that the interest provided under the statute, which may be claimed by the Assessee from the Revenue would be available and interest on such statutory interest would not be available.

16. From the conjoint reading of the decision of the Apex Court in the case of Sandvik Asia Ltd. (supra) and the latter decision of the Larger Bench in the case of Gujarat Fluoro Chemicals (supra) it appears that the liability to pay interest on interest by the Revenue is not approved and to that extent the contention of the Revenue can be maintained. But the further contention of the Revenue that no interest whatsoever would be payable if the refund of the amount of tax or refund of the amount deposited towards tax is to be made, no interest whatsoever would be available by way of compensatory measure.

17. In our view, the general principles for awarding compensation to the Assessee for the delay in receiving monies properly due to it is not disapproved by the Larger Bench of the Apex Court in the case of Gujarat Fluoro Chemicals (supra).

18. In view of the aforesaid observations and discussion, we find that the petitioner - Assessee would be entitled to compensation and the interest can be awarded by way of compensation, but would not be entitled to further compensation by way of interest on such interest, which is awarded as compensation.

19. Under these circumstances, we find that the Court can take a reasonable approach when the interest is to be awarded by way of compensatory measure, but with further caution that the interest on such interest cannot be ordered as per the above referred latter decision of the Apex Court in the case of Gujarat Fluoro Chemicals (supra)."

The Hon'ble Apex Court in this case while relying upon the decision of **Commissioner of Income Tax Vs. Narender Doshil 254 ITR 606 (S.P)** has, however, held that the Revenue is liable to pay compensation on the amount of interest which it should have given to the assessee but has unjustifiably failed to do this. It becomes clear that inordinate delay for the grant of justified claim may entitle the person to get compensation against that delay the power of granting compensation is an inherent power. Present being a tribunal is not vested with any such inherent power. This Tribunal is a quasi judicial authority which is absolutely bound by the statutory provisions. No power as that of awarding compensation is available with the Tribunal as not being provided by the statute. Otherwise also it has never been the prayer of the appellant. Appellant is praying for entitlement of interest on the amount of delayed interest. Same cannot be called as the claim of compensation.

7. No doubt the decision of Sandvik Asia Ltd. (Supra) has not been overruled by the Hon'ble Apex Court in the subsequent decision of Gujarat Fluoro Chemicals (Supra). But, perusal of that decision shows that the question to be adjudicated in that decision before the Supreme Court was whether an assessee is entitled to be

compensated by the Income Tax department for the delay in paying interest on the refunded amount, admittedly, due to the assessee. The question was adjudicated in affirmative. Revenue was directed to pay compensation for the delay in making payment after the lapse of statutory period. In that case also Hon'ble Supreme Court has clarified that amount, specifically, is compensation and is not an interest on interest. The similar clarification has come in the subsequent case of Gujrat Flourochemicals (supra) also i.e. "we clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest".

8. Thus, the first argument of the appellants that they are entitled for interest on interest being compensatory in nature is not sustainable. Since, it technically is interest on interest it cannot be called as compensation suo moto, nor has been so prayed by the appellant himself.

In view of this discussion, we answer the afore framed question in favour of Revenue.

9. Now coming to the alternate argument of the Appellant that from the amount of refund sanctioned since there is an interest liability, the amount should be first adjusted towards the interest liability. It is observed that this rule of first appropriating the interest is applicable only to the debts or to the decretal amount. The case law as relied upon by the appellant is also either qua debts or qua the decretal amount. Hence, the same is not applicable to

the present case of refund of indirect taxes. The said rule of interpretation is otherwise contained in order-21 Rule-1 of Civil Procedure Code relating to execution of decrees for recovery of money. Such a provision stands absolutely excluded from the Central Excise Act, 1944. Further, hon'ble Apex Court in the case law relied upon by the Appellant i.e in the case of **V. Kala Bharathi (supra)** has rather clarified that, **"after such appropriation the decree holder is entitled to interest only to the extent of unpaid principal amount. Hence, the interest be calculated on the unpaid principal amount."** This clarification stands unsatisfied by the Appellant in the present case. Hence, the second line of argument of Appellant is also opined not applicable to the given set of facts & circumstances.

10. In view of entire above discussion, we do not find any infirmity in the orders under challenge. Accordingly, same are upheld hereby. Three of these appeals, consequently, stand dismissed.

[Pronounced in the open Court_____]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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