FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **29/04/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51443-51445/2015-CU[DB]** dated **25/03/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/ROA/61656/2013	C/672/2008	**SEIKO BRUSHWARE (INDIA) ,** 4/15, BAGICHI STREET, VISHWAS NAGAR, DELHI-32.
2	C/ROA/61657/2013	C/673/2008	**SEIKO BRISTIE CORPORATION.,** 4/15, BAGICHI STREET, VISHWAS NAGAR, DELHI-32.
3	C/ROA/61658/2013	C/674/2008	**SEIKO BRUSHWARE (INDIA).,** 4/15, BAGICHI STREET, VISHWAS NAGAR, DELHI-32.
			Name and Address of Respondent
4			-C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037.
5			-C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037.

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-C.C. (ICD) NEW DELHI
ICD, Tughlakabad, New Delhi
110020.

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Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

A. K. Jain
F-1303, CELEBRITY HOMES,
ANSAL S PALAM VIHAR,
GURGAO-122017
Palam Vihar,
Gurgaon,
Haryana- 122017

8 Additional Party's Name & Address :

--

9 Bar Association, CESTAT, Delhi

10 Director Publications, Customs, Excise. I.P. Estate, Delhi

11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 25.03.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal Nos.C/672 - 674/2008-CU[DB]
[Arising out of Order-in-Appeal Nos.CC(A)/ICD/257 – 259/2008, dated 30.07.2008 passed by the C.C.E.(Appeals), New Delhi]

M/s. Seiko Brushware (India)
M/s. Seiko Bristle Corporation
M/s. Seiko Brushware (India) Appellants

Vs.

C.C., New Delhi (Import & General) Respondents

<u>**Appearance**</u>
Shri Rishabh Jain, CA - for the appellants

Shri Amresh Jain, DR - for the respondents

CORAM: Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order Nos. 51443-51445/2015, **dated 25.03.2015**

Per Mr. R.K. Singh :

These appeals have been filed against Orders-in-Appeal Nos.CC(A)/ICD/257 – 259/2008, dated 30.07.2008, which held as under:-

"5. I have carefully gone through the facts of the case available on record. The Adjudicating Authority has sanctioned the refund claims of the amounts deposited by the Appellants. The Adjudicating Authority has not given any finding in the impugned order on the issue of admissibility of interest to the Appellants and also there is nothing on record to show that the Appellants ever applied for the interest due to them while claiming the refund of the amounts deposited by them. Therefore, the Appellants are directed to apply to the Adjudicating Authority for the interest due to them."

2. Ld. Consultant argued that the interest on refund is not required to be claimed and was required to be paid to the appellants as per law. He cited the judgement of CESTAT in the case of ***Binjrajka Steel Tubes Ltd. Vs. CCE, Hyderabad-III [2007 (218) ELT 563 (Tri. – Bang.)***, which held as under:-

*"**5.** We have gone through the records of the case carefully. Even though the appellant held the view that they were entitled for the SSI Exemption benefit, the Departmental Officers compelled them to pay the duty even before the issue of show cause notice, which was later confirmed by the competent authority. Finally, the Tribunal decided the issue in favour of the appellant. Consequent to the Tribunal's order, the refund amount has been granted. But, from the date of collection of the duty till its refund, the amount was with the Government. In view of the Tribunal's order, it is clear that the collection was illegal and the appellant's money was retained by the Revenue illegally. The Hon'ble Gujarat High court, in the case of Vijay Textiles, cited supra, has held that if the Excise authorities have collected any amount as tax without the authority of law, it is just and proper that they should pay interest at the rate of 12% per annum from the date of collection of the said amount till the date of actual repayment. The Hon'ble Calcutta High court, in the case of Dilichand Shreelal (cited supra), has held that the department is liable to pay interest at the rate of 12% p.a. when the duty*

collected is unauthorized. The Hon'ble Rajasthan High court, in the case of Adarsh Metal Corporation (cited supra), has held that there is no need to file any claim arising out of order passed in appeal and the state is liable to refund the amount with interest at the rate of 12%. The Hon'ble Calcutta High Court, in the case of Calcutta Chemical Company Ltd. (cited supra), has held that the department is liable to pay interest for unauthorized collections. The Hon'ble Calcutta High Court, in the case of East Anglia Plastics Ltd. (cited supra), has awarded interest at the rate of 10% for the use of money collected without authority of Law. The ratio of the above case laws is clearly applicable to the present case. Therefore, we allow the payment of interest from the date of payment of the duty by the appellant to the department till the date of payment of refund at the rate as notified for interest on refund under Section 11BB during the relevant periods. The appeal is allowed by setting aside the impugned order."

3. We have considered the submissions of the appellants. Section 27A of Customs Act, 1962 dealing with the interest on delayed refund stipulates as under:-

> *"27A. Interest on delayed refunds. — If any duty ordered to be refunded under sub-section (2) of section 27 to an 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 five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government by Notification in the Official Gazette], 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."*

It is evident from the aforesaid section that it mandates payment of interest and therefore the appellants cannot be "directed to apply to the adjudicating authority for the interest due to them" as has been done in para 5 of the impugned order-in-appeal reproduced earlier. Interest has to be mandatorily paid *suo moto* in terms of Section 27A *ibid* from the date immediately after expiry of 3 months from the date on which their refund applications were received. As regards the judgement of CESTAT in the case of *Binjrajka Steel Tubes Ltd. (supra)* that the Department is liable to pay interest from the date of payment of duty, it is settled law that an authority which is a creature of statute cannot go beyond the provisions of statute which has created it as has been held by the Supreme Court ***Mafatlal Industries Vs. Union of India [1997 (89) ELT 247 (S.C.)]*** and therefore CESTAT order in case of *Binjrajka Steel Tubes Ltd. (supra)* is clearly *per incuriam* of the said judgement of the Supreme Court.

4. In the light of the analysis above, we remand these cases to the primary adjudicating authority to compute and pay interest at the prescribed rate from the date immediately after expiry of three months from the date of receipt of refund applications till the date of actual payment of refund. This exercise shall be completed within a period of 30 days from the receipt of this order.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK