

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

EXCISE APPEAL NO. 53677 OF 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-261-18-19 dated 16.08.2018 passed by the Commissioner of CGST & Central Excise Indore, M.P.)

Sun Pharmaceutical Industries Limited

Industrial Area No. 3, A.B. Road,
Dewas, Madhya Pradesh

.....Appellant

VERSUS

Commissioner of Central Excise, Customs

Customs, CGST & Central Excise
Manik Bagh Palace
Indore, (MP)

.....Respondent

APPEARANCE:

Shri Ashok Nawal, CMA & Ms. Nidhi Nawal, Advocate for the Appellant
Shri O.P. Bisht, Authorised Representative for the Department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 22.03.2021
DATE OF DECISION: 25.05.2021**

FINAL ORDER NO. 51511/2021

JUSTICE DILIP GUPTA :

This appeal seeks the quashing of the order dated 16.08.2018 passed by the Commissioner (Appeals) CGST & Central Excise, Indore¹. The Commissioner (Appeals) has dismissed the appeal and confirmed the order dated 10.05.2018 passed by the Assistant Commissioner, by which the refund claim of Rs. 43,57,427 /- submitted by the appellant has been rejected. The appropriation of an amount of Rs. 14,38,359 /- by the Assistant Commissioner towards interest for payment of the said duty amount in 2008 for the clearance of the goods effected during the

1 . The appellant

period 25.04.2005 to 30.09.2006 by order dated 13.12.2011, has also been upheld.

2. The appellant is engaged in the manufacture and marketing of P & P medicaments and Bulk Drugs. Physician samples of such medicaments, distributed free of cost to physicians/ doctors/ hospitals for the promotion of the product in market, are also manufactured by the appellant. These physician samples are different from the normal sale packs of regular medicines in terms of quantity, colour and size and it is also clearly written in these samples that they are 'not for sale'.

3. The appellant paid excise duty on physician samples by adopting valuation under rule 11 read with rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000² in terms of a Board Circular dated 01.07.2002 during the period 24.04.2005 to 30.09.2006. Such samples were, therefore, cleared on payment of appropriate excise duty on cost of production + 10% profit.

4. The Board, by a subsequent Circular dated 25.04.2005, clarified that valuation of goods of free samples should be done under rule 4 of the Valuation Rules. On verbal communication received from the Range-II Superintendent Dewas, the appellant disclosed the practice of valuation of physician samples on cost of production + 10% profit and also enclosed therewith a list of products cleared on assessable value (cost+10%) by a letter dated 24.05.2006.

5. However, the Indian Drug Manufacture's Association challenged the said Circular dated 25.04.2005 before the Bombay High Court but the Circular was upheld by the High Court by judgment dated 28.09.2006. On receipt of the judgment, the appellant started paying

excise duty as per rule 4 w.e.f. 01.10.2006. The payment of duty under rule 11 of the Valuation Rules had continued only till 30.09.2006.

6. The appellant, however, received a letter dated 16.01.2007 from the Range-II Superintendent of Central Excise directing it to pay excise duty on physician samples according to the Circular dated 25.04.2005. The appellant sent a reply by dated 23.01.2007 stating that it had started paying duty on physician samples under rule 4 of the Valuation Rules w.e.f. 01.10.2006.

7. The appellant has also stated that since there was a continued insistence from the department to pay differential duty, the appellant informed the Division Assistant Commissioner of Central Excise, Ujjain by a letter dated September 19, 2008 that though the appellant did not agree with the contention of the department but still it was depositing the differential amount from 25.04.2005 up to 30.09.2006 **under protest** by debiting the CENVAT credit account of the appellant. It also stated that a representation would be filed in due course as even a show cause notice had not been issued by the department for payment/appropriation/adjustment of the differential duty.

8. It has further been stated by the appellant that it bonafide believed that the department had withdrawn the audit objection since the department did not issue a show cause notice, which is a pre-requisite for confirming any demand of duty under section 11A of the Central Excise Act 1994³, and, therefore, the appellant filed a detailed representation dated 03.11.2008 to explain the circumstances under which it was forced to deposit the amount under protest. The appellant also categorically mentioned that it was entitled to get a refund of the

said amount paid **under protest**, for which a separate application would be filed.

9. The appellant then filed an application on 05.11.2008 for refund of Rs. 43,57,427/- that was deposited by the appellant **under protest**.

10. The Assistant Commissioner of Central Excise, Ujjain issued a show cause notice dated 11.12.2008 requiring the appellant to explain why the refund claim of Rs.43,57,427 /- should not be rejected under the provisions of section 11B of the Excise Act.

11. The refund application filed by the appellant was ultimately rejected by order dated 26.03.2009, by placing reliance upon the Circular dated 25.04.2005 that prescribed for payment of duty under rule 4 of the Valuation Rules. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals), which appeal was also rejected by order dated 30.11.2009.

12. It also needs to be noted that in regard to the 20 rebate claims filed by the appellant before the department for Rs. 4,12,87,601/-, another show cause notice dated 12.12.2011 was issued to the appellant. This show cause notice, if the rebate claims were to be allowed, also proposed appropriation of interest amount of Rs. 14,38,359 /- that was recoverable on the duty amount of Rs. 43,57,427/- paid by the appellant after the due date. The relevant paragraph of the show cause notice is reproduced below:

"3. Now therefore, the Noticee is hereby called upon to Show Cause to the Assistant Commissioner Customs and Central Excise, Division Ujjain, within 7 (seven) days of receipt of this Noticee as to why:-

(i) The Interest amount of Rs. 14,38,359 /- should not be appropriated from the impugned rebate claims of Rs. 4,12,87,601 /- under the provisions of Section 11 of the Central Excise Act, 1994, if the claims are sanctioned

under the provisions of section 11B of the Act read with Rule 18 of Central Excise Rules 2002."

(emphasis supplied)

13. By order dated 30.12.2011, the amount of Rs. 14,38,359 /- was appropriated from the rebate claim. The appellant filed an appeal against this order before the Commissioner (Appeals), but the appeal was dismissed by order dated 25.04.2012 and the order dated 30.12.2011 was upheld.

14. It is against both the aforesaid orders dated 30.11.2009 and 25.04.2012 that the appellant filed an appeal before the Tribunal. Both orders were set aside by the Tribunal by order dated 31.10.2017 and the matter was remanded to the adjudicating authority for passing a fresh order in regard to both the matters, after providing a reasonable opportunity to the appellant to present its case. Liberty was also granted to the appellant to file additional evidence, if any. The relevant portion of the order passed by the Tribunal on 31.10.2017 is reproduced below :

"8. By considering the rival submissions, we are of the view that in the first appeal, the show cause notice was not issue for appropriating/adjustment of the demand, especially when the assessee-Appellants have deposited the amount under protest. Moreover, in the show cause notice it is mentioned that the value of the free sample should be determined under Central Excise Valuation Rules, 2002.

9. On the other hand, in the order passed by the Commissioner (Appeals), it is mentioned that "Rule 4 is not applicable because the said Rule relates to the value of 'such 4 goods' sold by the assessee for delivery at any other time nearest to the time of removal of goods.

10. Thus, it appears that the Department has adopted the contradictory proposition, as stated above, in the assessee-Appellant's case. **When it is so, then we set aside the impugned order and remand the matter to** the adjudicating authority to adopt a clear cut policy, as per law, and decide the issue afresh, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional evidence, if any, as per law.

11. **Similarly, in the second appeal, the interest was demanded without issuing the show cause notice. When it is so, then we set aside the impugned order and remand** the matter to the original authority to decide this issue too afresh, but by providing a reasonable opportunity to the assessee-Appellants to present their case with liberty to file additional evidence, if any, as per law.

12. **In the result, both the appeals filed by the assessee-Appellants are allowed by way of remand.** Misc. Application stands disposed of accordingly."

(emphasis supplied)

15. After remand, the Assistant Commissioner by order dated 10.05.2018, again rejected the refund claim and also approved the appropriation of Rs. 14,38,359 /- as was done by the earlier order dated 30.12.2011. The operative part of the order dated 10.05.2018 passed by the Assistant Commissioner is reproduced below:

"(i) I order that the Refund claim of Rs. 43,57,427 /- filed by the assessee claimant M/s Ranbaxy Laboratories Ltd. Dewas vide application dated 05.11.2008 is hereby rejected.

(ii) I further Order that the appropriation of Rs. 14,38,359 /- towards interest amount, on the aforesaid recovery, made vide OIO No. R-139/2011-12/Rebate/AC dated 30.12.2011, from the Refund claim filled by the assessee claimant M/s Ranbaxy Laboratories Ltd. Dewas is correct and Order upheld."

(emphasis supplied)

16. This order dated 10.05.2018 was assailed by the appellant before the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal by order dated 16.08.2018 and confirmed the order passed by the Assistant Commissioner.

17. In regard to the contention raised on behalf of the appellant that a show cause notice should have been issued under section 11A of the Excise Act for appropriation of the amount deposited by the appellant **under protest**, the Commissioner (Appeals) made the following observations:

"10.3 Further as regards the contention of the Appellant that since the differential duty was paid under protest; the show cause notice should have been issued for the appropriation of said duty. I take note of Section 11A of the Central Excise Act, 1994 and upon going through the same, **I find that there is nothing in this Section which requires issuance of show cause notice in case of duty payment under protest. As per this Section 11A ibid, Show Cause Notice is to be issued in cases of non payment or short payment of duty or in case where duty is not levied or short levied. However in this case, there is no such case.** The differential duty has been paid correctly by the Appellant. Here I find that the Appellant are equating the payment of differential duty under protest with provisional payment of duty under provisional assessment in terms of Rule 7 of the Central Excise Rules, 2002 which needs to be finalized by issue of show cause notice. However it is admitted facts on record that said payment of differential duty of

Rs. 43,57,427 /- was not a provisional payment of duty under provisional assessment in terms of Rule 7 ibid.

10.4 As regards appropriation of an amount paid by the Appellant, I find that it is required only when there is duty dispute regarding said assessment like payment of duty during search of the factory premises while the investigation is yet to be completed and duty payable is yet to be assessed. It also required if the payment of duty is provisional in nature under provisional assessment in terms of under Rule 7 ibid. Here I also find that the Appellant has not given any provision of Statute or authority which requires appropriation of duty paid under protest and particular when no specific ground/disputed issue has been cited by the Appellant for payment of differential duty under protest. **Therefore I hold that said payment of differential duty of Rs. 43,57,427 /- was regular payment of Central Excise duty which was perfectly in tune with the settled legal position regarding the assessment of Central Excise duty on Physician Samples and since there was no dispute raised by the Appellant at the time of payment of the differential duty and as all disputes pertaining to assessment of Physician Samples were settled,** the department did not find it necessary to issue the show cause notice to the Appellant."

(emphasis supplied)

18. In regard to the merits of the refund claim, the Commissioner (Appeals) observed as follows:

"11.1 In present case of refund, I find that there is no dispute that the refund claim has been filed in time. **As regards the admissibility of refund claim on merit, I find that the Appellant has not cited any ground on merit as to how said payment of differential duty was not due to them and that they had made excess payment.** Their only ground for seeking refund is that the differential duty paid under protest has not been appropriated by the department by issuance of show cause notice."

(emphasis supplied)

19. In regard to the appropriation of interest amount of Rs. 14,38,359 /-, the Commissioner (Appeals) observed as follows:

"12. **Further, as regard recovery of interest of Rs. 14,38,359 /- , on the aforesaid amount, it is clear that interest is liable to be paid when the correct duty is not discharged by due date. The Appellant in the present case by subsequently depositing the differential duty of Rs. 43,57,427 /- has accepted that initially duty had not been paid by them correctly and that it has been corrected subsequently.** Further, as per records, I find that a show cause Notice vide C.No.V(18)18-173/11-12/Rebate/10136-37 dated 12.12.2011 was issued to the Appellant wherein it was proposed as to why the Interest amount of Rs. 14,38,359 /- be not appropriated from the impugned claim of Rs. 4,12,87,601 /-, as even after repeated reminders/request letters from the Range Superintendent for deposit of interest amount on the differential duty paid by the Appellant, the Appellant has failed to comply.

17.1 **Thus I hold that no demand notice or written notice is required to be issued for confirmation of interest which is a liability accruing as a consequence of payment of duty.** However in the instant case, a show cause notice dated 12.12.2011 has already been issued and it is on record."

(emphasis supplied)

20. Shri Ashok Nawal learned counsel for the appellant made the following submissions:

(i) Order could not have been passed for appropriation of excise duty of Rs. 45,57,427 /- and of interest of Rs. 14,38,359/ without issuance of a show cause notice demanding the amount;

(ii) The Commissioner (Appeals) completely misinterpreted the provision of section 11A of the Excise Act. In support of this contention, learned counsel placed reliance upon the decisions of the Tribunal in **Bhushan Steel Ltd. vs. Commissioner of Central Excise, Ghaziabad⁴** ; **Jeet Ram Enterprises vs. Commissioner of Central Excise, Delhi⁵** and **Metal Forgings vs. Union of India⁶**;

(iii) Even if payment was made by the appellant **under protest**, it was mandatory for the proper officer to issue a show cause notice for appropriation of the demand. In support of this contention, learned counsel relied upon the decision of the Tribunal in **Kodak India Ltd. vs. Commissioner of Customs, Central Excise, Indore (M.P)⁷**;

(iv) The Tribunal while remanding the matter to the adjudicating authority for passing a fresh order had noticed that show cause notice had not been issued for appropriation of the deposited amount, particularly when the appellant had deposited the amount **under protest**;

(v) The Commissioner (Appeals) failed to appreciate that even in paragraph 11 of the order dated 10.05.2018, the adjudicating authority had admitted that a show cause notice had not been issued; and

(vi) The Commissioner (Appeals) committed an error in holding that interest can be appropriated without issuance of show cause notice or without confirmation of the demand.

4 . 2014 (314) E.L.T. 446 (Tri. – Del.)

5 . 2006 (199) E.L.T. 244 (Tri. – Del.)

6 . 2002 (146) E.L.T. 241 (S.C.)

7 . 2012 (282), E.L.T. 478 (Tri. – Del.)

21. Shri O.P. Bisht learned Authorized Representative of the Department made the following submissions:

- (i) Since there was no dispute raised at the time of payment of differential duty and the dispute pertaining to assessment of physician samples was settled by the Bombay High Court, a separate show cause notice for the appropriation of differential duty was not required;
- (ii) There was no good reason for the appellant to deposit the duty **under protest** in view of the decision of the Bombay High Court in the writ petition filed to challenge the Circular dated 24.05.2005; and
- (iii) It was also not necessary for the department to issue a show cause notice for recovery of the interest since the short payment of duty was admitted by the appellant and payment of interest is mandatory. In fact, a show cause notice dated 12.12.2011 had been issued for appropriation of the interest amount.

22. The submissions advanced by learned counsel for the appellant and the learned Authorized Representative of the Department have been considered.

23. The appellant had been paying excise duty on the physician samples by adopting valuation under rule 11 read with rule 8 of the Valuation Rules in terms of the Board Circular dated 01.07.2002. Subsequently, the Board issued a Circular dated 25.04.2005 clarifying that the valuation of free samples should be done under rule 4 of the Valuation Rules. This Circular was assailed in a writ petition before the Bombay High Court but by judgment dated 28.09.2006, the validity of the Circular was upheld. The appellant paid excise duty under rule 11 of the Valuation Rules up to 30.09.2006 and w.e.f. 01.10.2006 started paying duty under rule 4 of the Valuation Rules. In response to a letter dated 14.08.2008 sent by the Superintended of Central Excise and

Customs, the appellant submitted a letter dated 19.09.2008, pointing out that though it was not required to deposit the differential duty for the period from 25.04.2005 up to 30.09.2006, but in view of the insistence of the department, the appellant was making payment of Rs. 43,57,427 /- **under protest** through CENVAT credit account.

24. The contention of learned counsel of the appellant is that this amount of Rs. 43,57,427 /- could have been appropriated towards the differential duty from 25.04.2005 to 30.09.2006 only after issuance of a show cause notice as contemplated under section 11A of the Excise Act and not otherwise.

25. This contention of the learned counsel for the appellant deserves to be accepted. Section 11A of the Excise Act deals with recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. The relevant portion of section 11A is reproduced below:

"11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-

(1) **Where any duty of excise** has not been levied or paid or **has been** short-levied or **short-paid** or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

(a) **the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty** which has not been so levied or paid or **which has been so short-levied or short-paid** or to whom the refund has erroneously been made, **requiring him to show cause why he should not pay the amount specified in the notice;**

(b) **the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-**

(i) **his own ascertainment of such duty;** or

(ii) **the duty ascertained by the Central Excise Officer,**

the amount of duty along with interest payable thereon under section 11AA.

(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect

of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(emphasis supplied)

26. It would be seen from the aforesaid provision of sub-section (1) of section 11A that where any duty of excise has been short paid, the Central Excise Officer shall within one year from the relevant date serve notice on the person chargeable with the duty which has been short paid requiring him to show cause why he should not pay the amount specified in the notice. Further, the person chargeable with duty may, before service of notice pay the amount of duty along with interest. on the basis of his own ascertainment of such duty or the duty ascertained by the Central Excise Officer. Sub-section (2) of section 11A requires the person to inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice.

27. In the present case, the appellant only deposited an amount of Rs. 43,57,437 /- **under protest** but specifically stated that it was not accepting the contention of the department that it was required to pay differential duty from 25.04.2005 to 30.09.2006. It cannot, therefore, be urged that the appellant had deposited any amount under sub-section (1)(b) of section 11A of the Excise Act, in which case only notice was not required to be served on the appellant.

28. In such circumstances, it was obligatory on the part of Central Excise Officer to have issued a notice to the appellant for payment of the short paid amount of duty and, thereafter, adjudicate upon it. In the present case, however, the amount deposited by the appellant **under protest** has been appropriated towards differential excise duty without

issuance of any notice contemplated under section 11A of the Excise Act.

29. A Division Bench of the Tribunal in **Jeet Ram Enterprises**, while dealing with this aspect and after referring to earlier decisions, observed that in view of the provisions of section 11A of the Excise Act, is necessary to issue a show cause notice before a demand can be confirmed. The relevant portion of the decision is reproduced below:

"6. We find from the records that the appellant M/s Kandhari Radio Corporation was not put on notice by the lower authorities. Since the lower authorities did not issue a show cause notice to M/s Kandhari Radio Corporation, it would be fixing a liability on a person without divulging the commission and omission done by the assessee. It is also not disputed by the Revenue that the appellant M/s KRC was not issued a show cause. It is a settled law that the issuance of show cause notice to a person is not a mere formality. **The show cause notice intimates the recipient about the allegations against him, and seeks his defence against the allegations. If the issuance of the show cause would have been a mere formality, then the provisions of Section 11A of CEA, 1944, would be redundant.** The Central Excise Act, being an all encompassing Act, in itself, has provided the mechanism for dealing of the violations of the provisions of the Act. If the Central Excise Act, 1944 provides for the initiation of proceedings against an assessee by issuance of the show cause notice, it is the primary requirement of the law that has to be adhered to by the authorities. **In the absence of any show cause notice, the proceedings initiated against an assessee would be vitiated and would be a serious violation of the principles of natural justice.** The purpose of the principles of natural justice is to prevent miscarriage of justice.

7. We find that the Hon'ble High Court of Calcutta in the case of Pradeep & Co. v. Customs reported in 2003 (152) ELT 294 (Cal.) has held as follows:

"Having regard to the mandatory provision of Section 124 even if the petitioner was aware of such proceedings the duty to serve notice upon the petitioner and to adjudicate the question of confiscation and penalty in the manner indicated under Section 124 could not be shaken off. A mere plea of constructive notice is not a sufficient answer either to such non-compliance with statutory duty. Be that as it may, the fact remains that before the conclusion of the adjudication proceeding culminating in the impugned order of confiscation and penalty they had the knowledge that the respondent No. 5 was a hirer of the car under a Hire & Purchase Agreement with the petitioner as owner of the car and that agreement was sought to be terminated for breach of certain terms. In spite of these facts, failure to issue a show cause notice against the petitioner constituted undoubtedly a breach of statutory duty of Customs Authorities and this has vitiated the entire adjudication proceedings & resultant order of confiscation and imposition of penalty."

9. We find from the above decisions that, it is a settled law, that, under Central Excise Act, 1944, a demand can be

confirmed only on issuance of a show cause notice. Failure to issue a show cause notice is against the provisions of the law and saddling the assessee with a liability not known to him. It is also to be noticed, that, there are no provisions in the Central Excise Act 1944 for the waiver of show cause notice; unlike the provisions in Customs Act.

(emphasis supplied)

30. In **Metal Forgoings**, a contention was raised before the Supreme Court by the learned Counsel appearing for the appellant that in the absence of any show cause notice, no demand could have been made under section 11A of the Excise Act. The Supreme Court accepted the contention and observed as follows:

"For the reasons stated above, we are of the opinion that in the absence of a show cause notice it is not open to the Revenue to make a demand on the appellants even assuming that the contention of the Revenue in regard to classification as held by the Tribunal is correct."

31. In **Kodak India Ltd.**, the Tribunal reiterated that it is necessary to issue a show cause notice before confirming a demand. The relevant portion of the decision is reproduced below:

"7 Even when viewed from other angle, the appellants had deposited the said payment, when there was no confirmation of demand. Even subsequent to the said deposit, no show cause notice stand issued to the appellants proposing appropriation of the said deposit made by them. The other show cause notice issued for confirmation of demand, stands vacated by the adjudicating authority and were accepted by the Revenue. The law is clear that the empty containers of modvatable raw materials do not attract duty at the time of their sale. **When the appellants has made a lump sum deposit at the instance of the Revenue officer, it was equally obligatory and mandatory for the proper officer to issue the show cause notice for appropriation of the same. The said show cause notice having not been issued, the deposits made by the appellant cannot take the colour of the 'duty' so as to invite the limitation provisions.** The appellants were admittedly not required to pay the said duty and the refund claim does not pertain to the routine payment of duty in the ordinary course of the business where such refund claim requires scrutiny from the angle of limitation as also from unjust enrichment angle. The order of the Commissioner (Appeals) denying the refund claim on the point of limitation cannot be upheld. The same is accordingly set aside and the appeal allowed with consequential relief to the appellants."

(emphasis supplied)"

32. As noticed above, after the appellant deposited the amount **under protest**, it filed a representation dated 03.11.2008 explaining the circumstances under which the amount had been deposited **under**

protest. The appellant also mentioned that it was entitled to refund of the amount, for which a separate application would be filed. Subsequently, the appellant did file an application on 05.11.2008 for refund Rs. 43,57,427 /-. The application was initially rejected by the Commissioner and the appeal filed by the appellant before the Commissioner (Appeals) was also dismissed but on a further challenge to the Tribunal, the matter was remitted to the adjudicating authority for passing a fresh order in the light of the observations made in the order of the Tribunal.

33. The adjudicating authority again rejected the claim for refund and also found that the amount of interest of Rs. 14,38,539 /- was correctly appropriated. The appeal filed by the appellant before the Commissioner (Appeals) was dismissed. The reasoning given by the Commissioner (Appeals) that there was no requirement of issuing a notice under section 11A of the Excise Act is, therefore, not correct. It is, therefore, not possible, for all the reasons stated above, to uphold the order rejecting the refund claim of Rs. 43,57,427 /- filed by the appellant.

34. It has now to be seen whether an amount of Rs. 14,38,359 /- could have been appropriated as interest for alleged late payment of the amount of Rs. 43,57,427/-, which was deposited **under protest** (from rebates claimed and sanctioned to the appellant).

35. In the first instance, when the order rejecting the refund claim filed by the appellant has been set aside and the appellant is entitled to the refund amount, there is no reason as to why the appellant should be asked to pay any interest for the alleged delay in deposit of said the amount.

36. Secondly, no notice was issued to the appellant for deposit of this interest amount. In the absence of any notice having been issued demanding this amount, for the reasons stated above, the amount could not have been appropriated.

37. Thus, for all the reason stated above, the order dated 16.08.2018 passed by the Commissioner (Appeals) rejecting the refund claim is set aside. The appellant would be entitled to refund of Rs. 43,57,427 /- claimed in the application filed on 05.11.2008. The order dated 13.12.2011 for appropriation of Rs. 14,38,359 /- towards interest, as confirmed by the Commissioner(Appeals) by order dated 16.08.2018, is also set aside. The appellant shall also be entitled to all consequential reliefs, if any. The appeal is, accordingly, allowed.

(Order Pronounced on 25.05.2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)