CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. II

EXCISE APPEAL NO. 51418 OF 2018

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APPL-470-17-18 dated 27.11.2017 passed by the Commissioner (Appeals), Goods & Service Tax & Central Excise, Bhopal)

Vidhya Cylinders P. Ltd. **Appellant**

Versus

Commissioner of Central Goods And Service Tax, Excise And Customs, Bhopal **Respondent**

Appearance

Shri Rajesh Chhibber, Advocate for the Appellant
Shri P. Juneja, Authorized Representative for the Respondent

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

Date of Hearing : 11.06.2021
Date of Decision : 28.07.2021

Final Order No. 51687/2021

Anil Choudhary:

The issue in this appeal is whether the appellant is entitled to interest under Section 35FF for the amount deposited by way of pre-deposit as per the stay order of this Tribunal on being successfully in appeal.

2. The brief facts are that the demand of excise duty of Rs. 19,62,211/- was imposed on the allegation of removal of scrap clandestinely including Rs. 3,571/- on sale of scrap collected from

the buyers. As per stay order No. 687/2009-Ex. dated 10 July, 2009, the appellant deposited the amount of duty of Rs.19,26,211/- on 13.10.2009. Thereafter, the appellant succeeded in appeal which was disposed of vide Final Order No. A/54975/2017-SM(BR) dated 30 June, 2017. Accordingly, the appellant filed refund claim for the amount of pre-deposit of Rs. 19,26,211/- with interest by application dated 31.7.2017. Vide the impugned order, the Commissioner (Appeals) held that under Section 11BB interest is leviable if refund is not paid within three months from the date of application. Accordingly, denied the payment of interest as the refund was granted vide order in original dated 22 August, 2017 i.e. within three months of the date of final order of this Tribunal.

3. Being aggrieved, the appellant is before this Tribunal.

4. The learned Counsel for the appellant, Shri Rajesh Chhibber urges that the learned Commissioner (Appeals) have mis-directed himself and passed the wrong order by relying on Section 11BB. In the facts of the present case interest is payable to the assessee under Section 35FF of the Central Excise Act, which provides that interest shall be granted to an assessee on being successfully in appeal at the prescribed rate on such amount of pre-deposit from the date of payment of the amount till the date of refund of such amount. Proviso further states that for the amounts deposited prior to commencement of Finance Act No. 2/2014 (with effect from 6 August, 2014) shall continue to be governed by the provisions of Section 35FF as it is stood before the commencement of the said Act.

5. Learned Counsel further urges that the issue is no longer res integra in view of the ruling of the Hon'ble Supreme Court in the case of **Sandvik Asia Ltd. Vs. Commissioner of Income Tax, Pune - 2006 (196) ELT 257 (SC),** wherein it was provided that interest is by way of compensation for depriving the assessee of its money resulting in financial loss suffered and accordingly interest has to be paid @ 12% from the date of deposit till the date of refund of any amount found to have been collected or retained by Revenue illegally or without authority of law. Following the ruling of the Apex Court in **Sandvik Asia Ltd.** (supra), this Tribunal Division Bench have held in case of **Parle Agro Pvt. Ltd.,** being Final Order No. 70180-70181/2021 dated 24 March, 2021, that interest is payable @ 12% from the date of deposit till the date of refund.

6. Learned Departmental Representative relies on the impugned order and also relies on the Single Member Bench ruling of this Tribunal in the case of **Hindustan Agro Insecticides (SMB-Hyd.) – 2019 (367) ELT 699** and the Division Bench ruling in the case of **Riba Textile Ltd. Vs. CCE, Final Order No. 60015/2020 dated 7.1.2020** where the Division Bench ruling of this Tribunal in **Juhu Beach Resort Ltd. – 2020 (371) ELT 622 (Tri.-DB)** have been considered.

7. Having considered the rival contentions, I hold that the Commissioner (Appeals) have erred in making reference to Section 11BB instead of the correct Section 35FF, and have passed erroneous order. Thus, the impugned order is set aside and I further hold that following the ruling of Supreme Court in **Sandvik**

Asia Ltd. (supra) and **CCE Vs. ITC Ltd. – 2005 (179) ELT 15 (SC)**, the appellant is entitled to interest @ 12% per annum from the date of deposit till the date of refund. I further direct the adjudicating authority to grant interest as directed within a period of 45 days from the date of receipt on service of copy of this order.

8. Appeal is allowed.

(Pronounced in Court on 28.07.2021)

(Anil Choudhary)
Member (Judicial)

RM