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

Excise Appeal No.50898 of 2020 (SM)

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL/27/2020-21 dated 29.05.2020 passed by the Commissioner (Appeals), Central Goods & Service Tax, Dehradun]

M/s. Kukreti Steels Ltd. **Appellant**
E-73-76 & F-23 to 27,
Jasodharpur Industrial Estate,
Kotdwar, Uttrakhand (Uttrakhand).

VERSUS

Commissioner of Central Goods & Service Tax, **Respondent**
E-157, 158, Nehru Colony,
Dehradun.

APPEARANCE:

Shri S.K. Mathur, Advocate for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

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

FINAL ORDER NO.51760/2021

DATE OF HEARING/DECISION:19.07.2021

ANIL CHOUDHARY:

The appellant in the course of investigation had made a deposit of Rs.5 lakhs vide a challan dated 25.03.2008. Thereafter, central excise duty of Rs.50,05,446/- was confirmed vide an order-in-original date 23.06.2014. Further, penalty was also imposed. The appellant in the appellate proceedings before the Tribunal succeeded in appeal vide a Final Order dated 5.7.2018. Thereafter, the appellant filed a refund claim before the jurisdictional Asstt. Commissioner, which was received in the Department on 11.02.2019. The Asstt. Commissioner relying on the Board's Circular No.984/08/2014-CX dated 16.09.2014 adjudicated the refund application as follows:-

> "4. *As per para 3.1 of CBEC Circular No.984/08/2014-CX dated 16.09.2014, payment made during the course of investigation or audit, prior to the date on which appeal is*

filed, to the extent of 7.5% or 10%, subject to the limit of Rs.10 crores, can be considered to be deposit made towards fulfilment of stipulation under Section 35 F of the Central Excise Act, 1944. Further as per para 3.2. of the CBEC Circular No.984/08/2014-CX dated 16.09.2014, the amount paid during invitation/audit takes the colour of deposit under Section 35 F of the Central Excise Act, 1944 only when the appeal is filed and the date of filing appeal shall be demand to be the date of deposit made in terms of the said Sections. As per para 5.2 of above referred circular dated 16.09.2014 pre deposit filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944" in view of the provisions of para 3.1, 3.2 and 5.1 of the said circular no.984/08/2014-CX dated 16.09.2014.Therefore, in the instant case the party is entitled for refund of 7.5 % of demand amount of Rs.50,05,446/- i.e. Rs.3,75,408/- for which the parity has to make the pre-deposit at the time of filing of appeal.

5. Para no.5.1 of CBEC Circular dated 16.09.2014 laid down that "Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35 FF of the Central Excise Act". The rate of interest has been decided vide notification No.14/2014-CE(NT) dated 12.08.2014 as 6% per annum. Therefore, party is eligible for interest on Rs.3,75,408/- from 23.09.2014 i.e. the date of filing of appeal in Hon'ble CESTAT, New Delhi."

2. Further, the interest was allowed @ 6% from 23.09.2014 (date of filing before the Tribunal upto grant of refund i.e. 9.4.2019).

3. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to uphold the order-in-original further making reference to the Master Circular dated 10.03.2017.Being aggrieved, the appellant is before this Tribunal.

4. Ld. Counsel for the appellant urges that the rate and amount of deposit mentioned under Section 35 F is minimum amount of pre-deposit to be made for acceptance of the appeal by the Commissioner (Appeals) or Tribunal, that there is no stipulation that an appellant shall not make more pre-deposit and/or and the department is duty bound to make the refund of excess pre-deposit immediately on filing of the appeal.

5. Ld. Counsel states that circulars of the Board cannot over-ride the provisions of the Act, which are explicit, and do not have any binding effect on the Tribunal. It is further urged that the court below has erroneously mis-interpreted the Board's Circular.

6. It is further urged that in the facts and circumstances, the refund has to be made of full amount of pre-deposit, which is evident from the language of the Section 35 FF, which read as follows:-

> ***"Section 35F, effective from 6th August, 2014, reads as under: "35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.- The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal: (i) under sub-section (1) of Section 35, unless the appellant has deposited seven and half percent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise Act."***

Or

> ***"Section 35FF of the Excise Act has been amended to provide for interest on delayed refund of pre-deposit from the date of pre-deposit made till the date of refund as against earlier provisions where interest was payable only if pre-deposit was not refunded within 3 months from date of communication of order of Appellate Authority. However, the new provisions are applicable only to the pre-deposit made under Section 35F of the Excise Act after August 6, 2014. Further, the rate of interest has been fixed at 6% per annum vide Notification No. 24/2014-CE (NT) dated August 12, 2014."***

7. It is further urged that from a plain reading of Section 35 FF (as amended), it is explicit that the full amount of pre-deposit even if it is more than the minimum prescribed under Section 35 F has to be refunded by the Department, when an assessee is successful in appeal, along with interest from the date of deposit till the date of refund.

8. Accordingly, ld. Counsel prays for allowing their appeal with consequential benefits.

9. Ld. Authorised Representative for the Respondent – Department relies on the impugned order. He relies on the ruling in the case of **Modern Diaries Ltd. Vs. Commissioner of Central Excise & Service Tax,Panchkula – Final Order No.E/61085/2019.**

10. Having considered the rival contentions, I hold that there is no ambiguity on reading Section 35 FF read with Section 35 F. I hold that the full amount of pre-deposit, even if it is more than the prescribed limit, has to be refunded by the Department along with interest. I further hold that the interest has to be granted from the date of deposit till the date of granting refund @ 12% p.a. (as held by the Division Bench of this Tribunal in **Parle Agro)**. Accordingly, this appeal is allowed.

11. The Revenue is directed to grant further refund of the balance amount along with interest on full amount @12% from the date of deposit till the date of granting refund, after making adjustments for the interest already granted.

12. The impugned order is set aside and the appeal is allowed.

[Order dictated and pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.