CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50319 of 2021-SM

(Arising out of order-in-appeal No. 11/CE/DLH/2020 dated 24.06.2020 passed by the Commissioner (Appeals-I), Central Tax, Goods & Service Tax and Central Excise, Delhi).

M/s Panacea Biotec Limited **Appellant**
B-1 Extn./G-3, Mohan Cooperative
Industrial Estate, Mathura Road
New Delhi-110044.

VERSUS

Commissioner of Central Goods and Service Tax (East), **Respondent**
Central Revenue Building
I. P. Estate, New Delhi-110 002.

APPEARANCE:

Shri T. R. Rustagi, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51918/2021

DATE OF HEARING/DECISION: 27.10.2021

ANIL CHOUDHARY:

The issue involved in this appeal is whether the appellant is entitled to interest under Section 35FF of the Act on the amount of pre-deposit, on being successful in appeal before the Tribunal.

2. The brief facts of the case are as under:-

i) In a dispute relating, inter alia, with the availment of cenvat credit on certain input services, the appeal was decided in favour of the appellant by the Tribunal vide Final Order No. ST/A/50079/2019-CU (DB) dated 22.01.2019 Appeal No. ST/51754/2015 (DB). In this appeal an amount of Rs.49,94,990/- had been deposited as pre-deposit.

ii) After receipt of the Tribunal's order, the appellant submitted an application vide letter No. PE/501/ADMN/14-15/264 dated 04.02.2019 to the Assistant Commissioner, CGST (Refund Legacy Cell), Nehru Place, New Delhi for granting refund of the amount of Rs.49,94,990/-.

iii) The Assistant Commissioner was requested to allow the refund, with interest, as applicable under the law. Reference was made to Board's instructions issued under F. No. 390/Budget/1/2012-JC (Circular No. 984/08/2014-CX) dated 16.09.2014.

iv) After verification of the pre-deposit amount and examination of the refund claim, the Assistant Commissioner upheld the claim as admissible and passed order-in-original No. 02/NG/AC/LRC/2020 dated 21.01.2020. However, she allowed only a part of it, being Rs. 15,50,846/- in cash and denied payment of the remaining amount of Rs. 34,44,144/-, by observing that this much amount has been appropriated against the perceived outstanding demand, arising from erroneous grant of rebate to the appellant in some 48 cases. The Assistant Commissioner did not make any mention of the payment of interest in her order.

v) On appeal against the Assistant Commissioner's order, the Commissioner (Appeals-I), Delhi set aside the appropriation of Rs. 34,44,144/- and allowed its refund vide order-in-appeal dated 24.06.2020.

vi) However, as regards, the prayer for interest on the amount of refund of pre-deposit, the Commissioner (Appeals) rejected the prayer, observing that the pre-deposit of the entire amount of Rs. 49,94,990-/- was made through debit of cenvat credit, and as such no interest is payable. In other words, he has taken the view that the interest on the refund of pre-deposit is permissible only when the pre-deposit amount was paid in cash.

3. Being aggrieved by the said order-in-appeal dt. 24.06.2020, the appellant has filed the present appeal before this Tribunal.

4. Heard the parties.

5. Having considered the rival contentions, I find that Section 35FF provides for interest on the amount refundable to an assessee, pursuant to being successful in appeal, does not make any distinction between pre-deposit made by way of cash/ LPA or by way of cenvat credit account.

6. Accordingly, the finding of learned Commissioner (Appeals) is erroneous that no interest is payable whether the pre-

deposit is made by way of debit in cenvat credit account. Accordingly, this appeal is allowed and the impugned order is modified to the extent of denial of interest.

7. I further direct the Adjudicating Authority to disburse the interest @12% per annum (on the refund amount of Rs. 49,94,990/-) from the date of deposit till the date of refund as has been allowed by this Tribunal in **Parle Agro (P) Ltd.,(D.B.).** The appellant is entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant