CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Excise Appeal No. 50764 / 2019

[Arising out of Order-in-Appeal No. 58(CRM)CE/JPR/2019 dated 16.1.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

SHREE RAJASTHAN SYNTEX LTD. **APPELLANT**
Village: Udaipura
Simalwara road
Dungarur (Rajasthan)

Vs.

THE COMMISSIONER (APPEALS), CENTRAL EXCISE & CENTRAL GOODS AND SERVICE TAX,
G-105, New Industrial Area, Opp Basni
Diesel shed, **JODHPUR** **RESPONDENT**

APPEARANCE:

Shri Bipin Garg & Ms Kainaat, Advocates for the Appellant
Shri Pradeep Gupta, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: August 24, 2021
DATE OF DECISION: 09.11.2021

FINAL ORDER No. 51926 /2021

PER RACHNA GUPTA

Order-in-Appeal No. 58/2019 dated 16.1.2019 has been assailed by the impugned order. The facts, in brief, relevant for the purpose are as follows:

The appellants are engaged in the manufacture of yarn. During the finalisation of the provisional assessment, demands of Rs.11,20,304/- and Rs.5,62,608/- (Rs.16,82,912/-) were confirmed against the appellant initially vide the Order-in-Original No. 238-239/2002 dated 04.09.2002 and later vide Order in Appeal dated 14.09.2004. CESTAT vide Final order dated 23.03.2010 remanded the matter for fresh adjudication. Commissioner (Appeals) vide Order dated 19.01.2011 again upheld the demand confirmed during finalisation of provisional assessment.

On being challenged before this Tribunal, the stay was granted vide Stay Order No. 165/2012 dated 25.01.2012 along with the direction to the appellant to deposit the aforesaid entire amount. Consequently, the same was deposited on 07.03.2012. However, vide Final Order No. A/56374/2016 dated 21.12.16, the matter was remanded back to the Commissioner (Appeals) who vide Order-in-Appeal No. 316/2018 dated 20.06.2018 set aside the aforesaid assessment of Order-in -Original dated 4.9.2002. It is pursuant to that order, that the claim was filed by the appellant on 19.7.2018 for refund of aforesaid amount of Rs.16,82,912/-. The said claim was sanctioned initially vide Order-in-Original No. 11/2018 dated 26.09.2018, however without interest. Vide the aforesaid order under challenge, the entitlement of the appellant for interest was declined. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Bipin Garg & Ms Kainaat, learned Counsels appearing for the Appellant and Shri Pradeep Gupta, learned Authorised Representative for the Department.

3. Learned Counsel has submitted that denying the interest on the refund amount from the date of deposit till the amount refunded is absolutely against the law. It is impressed upon that this Tribunal in identical situation has allowed interest in numbers

of cases that too from the date of deposit. He relied upon the following cases laws in support:

i) **M/s. J K Cement Works vs. CCE** [F.O. No.A/51052/2021 (SM) dated 02.03.2021];

ii) **Hitesh Industries and ors. vs. CCE** [F.O. No.A/51631-51633/2020 (SM) dated 07.12.2020]; and

iii) **Fujikawa Power & ors. vs. CCE** [F.O. No. 61041-61042/2019 dated 26.11.2019]

4. Relying upon these case laws, he prayed that order of Commissioner (Appeals) be set aside and appeal be allowed.

5. While rebutting these submissions, learned Departmental Representative has laid emphasis upon the decision of Hon'ble Apex Court in the case of **Union of India vs. Orient Enterprises** reported as [1998 (99) ELT 193] wherein it was held that claim of interest is in the nature of compensation only and can be awarded in case of wrongful retention of money by the Department that was collected from the assessee in the form of either of customs duty or redemption fine or penalty, hence interest cannot be awarded as a matter of right. Another decision of Apex Court in the case of **Ranbaxy Laboratories vs. Union of India** reported as [2011(273) ELT 3 (SC)] has been impressed upon. It is submitted that in view of these decisions there is no infirmity in the order under challenge. Appeal is, accordingly prayed to be dismissed.

6. After hearing the rival contentions and perusing the entire record, I observe and hold as follows:

The right to claim interest arises under section 11BB of Central Excise Act, 1944. The said section 11BB comes into play only after the refund claim has been made under section 11B of the Act. Section 11BB of the Act says that in case any duty paid is found refundable and if the duty is not refunded within three months from the date of application, seeking the refund then the applicant shall be paid interest at such rate as per fixed by the Central Government, on expiry of a period of three months from the date of receipt of application. Thus, the only interpretation of section 11BB can be that interest under the said section becomes payable only on expiry of a period of three months from the date of receipt of application under sub section (1) of section 11B of the Act.

Perusal to section 11B makes it clear that application for claiming the refund of any duty or interest it made before the expiry of one year from the relevant date, proviso thereof makes it clear that the said period of limitation shall not apply in case the duty has been paid under protest. Relevant date is defined under section 11B oc CEA, 1944 and Rule 5 (B) of Central Excise Rules itself. Sub clause (e) and (c) are applicable in the present case for the purpose of relevant date for the sole reason that the duty was paid consequent to the order of Tribunal dated 25.1.2012 and the said assessment was set aside vide the order of Commissioner (Appeals) dated 20.6.18. Reverting back to the facts as far as application of refund claim is concerned, I peruse that the refund claim application as required under section 11B has been filed by the appellant in the present case after the aforesaid order of 20.6.2018, i.e. on 19.7.2018. The said claim was sanctioned in cash vide the order dated 26.9.18. This perusal is sufficient for me to hold that the refund claim was sanctioned within three months from the date of application filed by the appellant for the said claim. In view of the above discussion and interpretation of section 11BB and above facts in the present case, I do not find the present case to be fit case for award of interest along with the sanction of refund.

7. The case law as relied upon by the appellant is not applicable in the given facts and circumstances of the case because in all those cases, the observation of Hon'ble Courts was the noticed deliberate and long delays in sanctioning the refund, post the application for the same was filed but as already mentioned above, there is no delay on part of the Department, while sanctioning refund claim, question of granting interest which otherwise is intended to be granted as compensation for retaining the money does not at all arises. Provisions of section 11BB of the Act are attracted automatically for the amount refund sanctioned even by virtue of Board's circular No. 268/51/02 dated 1.10.02 but only and only in the cases where refund has been sanctioned beyond three months from the date of application for the same. Apparently and admittedly, the order of Commissioner (Appeals) dated 20.6.2018 is an order in terms of section 11B (2) and the application dated 19.7.2018 is the application under section 11B(1) of CEA. Thus, there is no delay in grant of refund consequently, no question arises for grant of interest. The question of interest from the date of deposit does not at all arises also for the reason that there is no apparent protest of the appellant while depositing the amount in question which otherwise was deposited pursuant to the said order of this Tribunal. In view of this discussion, I do not find any infirmity in the order under challenge. Same is hereby upheld.

8. Appeal stands dismissed.

(Pronounced in the open Court on 09.11.2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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