CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50941 of 2020-SM

(Arising out of order-in-appeal No. 12/CE/DLH/2020 dated 14.07.2020 passed by the Commissioner (Appeals-I), Central Tax, Goods & Service Tax and Central Excise, Delhi).

M/s Hindustan Perfumers **Appellant**
3388, Singhada Chowk
Sadar Bazar, Delhi-110006.

VERSUS

Commissioner, Central Goods and Service Tax, **Respondent**
Room No. 134, C. R. Building
I.P. Estate, Delhi-110002.

APPEARANCE:

Shri Anubhav Goel, C. A. for the appellant
Shri Ravi Kapur, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 50091/2022

DATE OF HEARING: 14.12.2021
DATE OF DECISION: 02.02.2022

ANIL CHOUDHARY:

The appellant –assessee is in appeal against the rejection of their appeal by the Commissioner (Appeals), refusing to condone the delay in filing of the appeal, as well as on merits.

2. The admitted facts are that the order-in-original dated 05.11.2019 was served on the appellant on the same date. The appellant filed appeal before the Commissioner (Appeals) admittedly on 03.02.2020. It is stated in the application for condonation of delay

before the Commissioner (Appeals), that Mr. Tewari, Consultant of the appellant was going with the appeal papers on 01.01.2020 to the office of Sh. P. K. Mittal, Advocate for drafting and filing of appeal. However, on the way Mr. Tewari had received an urgent call and accordingly he stopped the vehicle, and thereafter came out from the vehicle to attend the call. In the meantime, his briefcase which was lying in the car was stolen, in which the appeal papers were kept. Mr. Tewari approached the Police Station to register the FIR, but in vain. The appellant also applied for certified copy of the impugned order. After few days on 28.01.2020, Mr. Tewari received a telephone call from an unknown person stating that the paper relevant to this case are lying with him and called Mr. Tewari near Wazirabad, Delhi to collect the same. Accordingly, the documents were collected on 29.01.2020 and thereafter the appeal was drafted and was ready for filing on 31.01.2020. However, 1st and 2nd February, 2020 being the Saturday and Sunday, the appeal was filed on 03.02.2020, i.e. on Monday.

3. Learned Counsel further points out that the appellant has even otherwise filed the appeal on 90th day (Nov. 25 days + Dec. 31 days + Jan.31 days + Feb. 2 days = 89 days). Thus, the appellant has given plausible explanation for delay and the appeal was filed within 90 days and the same is within the power of Commissioner (Appeals) to condone the delay. Learned Commissioner (Appeals) has thus erred in rejecting the appeal on the ground of limitation.

4. Learned Counsel for the appellant relies on the Final order No. 52002/2021 dt. 25.11.2021 of this Tribunal in the case of **Jovex International**, under the same management. Under the similar facts and circumstances, this Tribunal directed for grant of interest on the refund amount under Section 35FF.

5. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

6. In view of above, I find that on the issue of limitation I am satisfied, and agree with the appellant. The appellant was due to sufficient cause prevented from filing their appeal within the prescribed period of limitation of sixty days. Further, on the issue of appeal filed on 90th day, which is within time. Accordingly, the delay before the Commissioner (Appeals) is condoned.

7. Having considered the rival contentions, I hold that the applicable section for grant of interest is Section 35FF, which provides for grant of interest on the amount refundable pursuant to order of the Appellate Court. It is further provided in this section that interest should be granted from the date of deposit till the date of refund, without any discrimination. I further take notice that a Division Bench of this Tribunal in **Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL**, wherein interest on pre-deposit (made during investigation), have been enhanced from 6% to 12%, following the ruling of the Apex Court in **Sandvik Asia Ltd., - 2006 (196) ELT 257 (SC)**. Thus, I direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the

date of refund. Such interest should be granted within a period of 45 days from the date of receipt or service of the copy of this order. Thus, the appeal is allowed in the above terms.

(Pronounced on 02.02.2022).

(Anil Choudhary)
Member (Judicial)

Pant