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

Excise Appeal No.52349 of 2018 (SM)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-529-17-18 dated 22.03.2018passed by the Commissioner (Appeals), Central Goods and Service tax, Central Excise and Customs, Raipur]

M/s. AkashIspat Pvt. Ltd., **Appellant**
Ring Road No.2, Gogaon,
Raipur(C.G.).

VERSUS

Commissioner of Central Excise **Respondent**
& Customs,
Tikrapara, Raipur (C.G.).

APPEARANCE:

Ms.Sukriti Das, Advocate for the appellant.
Ms. TamannaAlam, AuthorisedRepresentative for the respondent/Department.

CORAM:

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

FINAL ORDER NO.50166/2022

DATE OF HEARING/DECISION:10.02.2022

ANIL CHOUDHARY:

Akash Ispat Pvt. Ltd., (referred as **'the Appellant'**) is engaged in manufacture of MS Ingots & Runner Riser falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant availed Cenvat credit on Inputs, Capital Goods and Input Services during the period from 2006-2007 to 2008-09.

2. The brief facts are that a Show Cause Notice F. No. V(Ch. 72)15-46/Commr/RPR/2011/Adj/5989 dated 25/07.2011 was issued proposing recovery of Cenvat credit amounting to Rs. 1,15,16,118 with interest and penalty alleging that

the Appellant had wrongly taken Cenvat credit on Concast Blooms, Structural Cobbles and Rail Cuttings, since the same were never used in manufacture of final products. The aforesaid SCN was adjudicated by the Ld. Commissioner, Central Excise, Raipur vide Order-in-Original No. COMMISSIONER/RPR/CEX/84/2012 dated 31.10.2012, wherein the allegation in the SCN was confirmed by upholding the demand of Cenvat credit amounting to Rs. 1,15,16,118 with interest,and imposition of equal penalty. Being aggrieved with the aforesaid OIO, the Appellant filed Appeal No. E/55684/2013 along with Stay Application No.E/Stay/55918/2013 before this Tribunal, New Delhi. The Tribunal vide **Stay Order No. SO/57016/2013-Ex[DB**] dated 22.02.2013 directed the Appellant to deposit an amount of Rs.1,15,16,118within 6 weeks, and stayed the recovery of the balance interest and penalty amount. Compliance was directed to be reported on 4.6.2013. Being aggrieved with the aforesaid Stay order dated 22.2.2013 passed by Tribunal, the Appellant preferred **Tax Case No. 22/2013 before the Hon'ble High Court of Chhattisgarh at Bilaspur.** The Hon'ble High Court refused to modify the stay order of the Tribunal, however, three months further time was granted to deposit the amount. Accordingly, in compliance to the aforesaid direction of Hon'ble Chhattisgarh High Court, the **Appellant deposited Rs.1,15,16,118**under protest, vide **TR-6 Challan No. 020967.** The appeal pending before the CESTAT was heard and vide Final Order No. A/51878/2017-EX(DB) dated 20.02.2017, the Tribunal was pleased to allow the appeal by setting aside the order-in-original dated 31.10.2012.

3. In view of the above, the appellant vide its letter dated 4.4.2017 claimed refund of the pre-deposit amount, along with interest. Vide order-in-original dated 26.5.2017, the ld. Asstt. Commissioner sanctioned only the principal amount to the appellant, in terms of Section 11 B of the Excise Act, whereas with respect to claim of interest, it was rejected by a non-speaking order. Accordingly, the appellant

preferred appeal before the ld. Commissioner (Appeals) claiming interest on the pre-deposit amount, from the date of deposit till the date of the amount refunded to it, i.e. upto 26.5.2017. The ld. Commissioner (Appeals) vide the impugned order-in-appeal dated 22.03.2018 held that refund was sanctioned to the appellant on 26.5.2017 i.e. within 3 months from the date of the refund claim dated 4.4.2017, therefore, the appellant is not entitled to interest on the pre-deposit amount of Rs.1,15,16,118/-. It was further observed that Board Circular also clarified that refund of pre-deposit has to be granted within 3 months of the order passed by the Tribunal/High Court, accordingly, the appellant is not entitled to interest claim from the date of deposit.

4. Hence, the present appeal filed by the appellant for claim of interest from the date of pre-deposit till the date of refund of the principal amount.

5. Ld. Counsel for the appellant submits that it is an admitted fact that the Appellant had pre-deposited an amount of Rs.1,15,16,118 vide challan dated 27.7.2013in compliance to Stay Order dated 22.2.2013,which was subsequently upheld by Hon'ble Chhattisgarh High Court. Therefore, both the lower authorities have correctly recorded that such amounts were in the nature of pre-deposit, as a natural corollary, it never had the character of duty, as it was not payable at all by the Appellant, since the CESTAT vide Final Order dated 20.2.2017 held in favour of the Appellant. He further submits that the issue in dispute is no more *res integra* and has been settled in favour of the assessee by Hon'ble Courts that interest on refund amount of pre-deposit is payable from the date of deposit till the date of its refund. In this regard, he places reliance on the decision of Hon'ble Apex Court in **Sandvik Asia Limited v. Commissioner of Income Tax-I, Pune 2006 (196) ELT 257 (SC)**, wherein interest on delayed refund was held payable to the assessee from the date of deposit till the date of its refund under Section 243 of the Income Tax Act, 1961.The CESTAT relying on **Sandvik Asia case (supra),** which

though was rendered in the context of Income Tax Act, have unequivocally held in the following cases that the provisions of Section 35FF of the Central Excise Act and Section 243 of the Income Tax Act, 1961 are *parimateria,* and thus, the assessee are entitled to interest on the refund amount from the date of payment/deposit till the date of disbursal:

- **J.K. Cement Works v. CE & CGST, Udaipur - 2021 (3) TMI 123 - CESTAT NEW DELHI**
- **Hindustan Perfumers v. CGST, Delhi,2022 (2) TMI 138 - CESTAT NEW DELHI**
- **Parle Agro Pvt. Ltd. v. CGST, Noida (Vice-Versa) - 2021 (5) TMI 870 - CESTAT ALLAHABAD**
- **Tehri Pulp & Paper Limited v. CGST, Meerut (U.P.),2022 (1) TMI 807 - CESTAT ALLHABAD**
- **Dwarikesh Sugar Industries Ltd. v. CGST, Greater Noida,2022 (1) TMI 314 - CESTAT ALLHABAD**
- **Batra Henlay Cables v. CGST, New Delhi,2022 (1) TMI 201 - CESTAT NEW DELHI**
- **Glossy Colour & Paints v. Commissioner of Central Tax, Delhi,2021 (7) TMI 814 - CESTAT NEW DELHI**

. **Marshall Foundry & Engg. Pvt. Ltd v. CGST, Faridabad, 2019 (11) TMI 1269 - CESTAT CHANDIGARH, r/w corrigendum 2.12.2019.**

6. Therefore, in light of the settled proposition, he urges that the appellants are entitled to interest on the refunded amount from the date of deposit till its realization. Such interest may be held payable to the Appellant @12% as directed by the Courts in the above cases also.

7. He further urges that the impugned Order passed by the Ld. Commissioner (Appeals) to the extent of denial of interest to the Appellant isnot sustainable, and the same may be allowed in full.

8. Ld. Authorised Representative for the Department reliesupon the findings in the impugned order.

9. Having considered the rival contentions, I find that admittedly, the amount under dispute was deposited as a pre-deposit within the meaning of Section 35 F. Further, I find that in the preceding order of this Bench in the case of **J.K. Cement Works – Appeal No.50479 of 2019 (SM) vide Final Order No.51052 of 2021 dated 2.3.2021, in para -**21, it has been held that the interest on the refund shall be payable @ 12% per annum, as held by Hon'ble Kerala High Court in the case of Sony Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.), wherein it was held as under:-

> "14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.), the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.), wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice

awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum.

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11-2002, to the amount of refund already made, within a month from the date of receipt of a copy of this judgment, after adjusting any interest paid."

22. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri. Ahmd.), wherein this Tribunal observed as under:-

"5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Hon'ble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre- deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon'ble Supreme Court in October 2004. In July 2005, the Hon'ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment to the appellants."

23. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are pari-materia. Therefore, following the decision of

Hon'ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt. Ltd. (supra) I hold that the appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum."

10. Therefore, following the aforementioned precedent order in the case of **J.K. Cement Works (supra),** I allow this appeal and set aside the impugned order, so far the interest claim has been disallowed. The Adjudicating Authority is directed to grant interest from the date of deposit (31.03.2006) till the date of grant of refund @12% p.a. Such interest on refund should be granted within a period of 60 days from the date of receipt of, or service of a copy of this order.

[Order dictated & pronounced in open court]

(Anil Choudhary)
Member (Judicial)

Ckp.