CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50773 of 2022-SM
(Arising out of order-in-appeal No. 05-06/CE/DLH/2021 dated 30.09.2021 passed by the Commissioner (Appeals-I) Central Tax, Goods and Service Tax and Central Excise, Delhi).

M/s Design Dialogues India Pvt. Ltd., **Appellant**
AK-11, Arakshan Road, Paharganj, New Delhi-110055.

VERSUS

Commissioner of Central Tax & GST **Respondent**
Delhi North, C. R. Building, New Delhi

APPEARANCE:

Sh. Naveen Mullick, Advocate for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51514/2022

DATE OF HEARING/DECISION: 03.06.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the appellant is entitled to interest on the amount collected from them during investigation, admittedly paid under protest, under the provisions of Section 35FF of the Central Excise Act.

3. Brief facts of the case are that the appellant is engaged in the business of fabricating and installing the Retail Visual Insignia (RVI), mainly for oil marketing company like Indian Oil Corporation/ BPCL. There was inspection in the premises of the appellant on 19.09.2008. It appeared to the Revenue that the activity carried out

by the appellant is excisable, however the appellant explained that they are not fabricating anything, which is generally sold across the country in the market. At best after fabrication in semi finished condition, thereafter, the same was removed to the site - petrol pump, etc. where they are installed by further fabrication and also fixing to the earth and these are in the nature of permanent fixtures which cannot be removed, without cannibalising. However, on insistence of the Officers, the appellant issued three cheques totalling Rs. 50 lakhs as follows:-

Sl. No.	Cheque No.	Drawn on	GAR-7 challan date	Amount
1	107602 dt. 22.09.2008	Indian Bank, Deshbandhu Gupta Road, Delhi	01.10.2008	20,00,000/-
2	107603 dt. 24.09.2008	-do-	01.10.2008	15,00,000/-
3	10704 dt. 26.09.2008	-do-	01.10.2008	15,00,000/-

4. The appellant immediately on the very next date on 20.09.2008 informed the Assistant Commissioner of Central Excise (Anti Evasion), that these amounts had been paid by them under protest on the insistence of the inspecting officer. The appellant reiterated, as per the legal advice, there activity does not fall under the provision of Central Excise and hence no duty is chargeable. The appellant also mentioned that these cheques have been given without prejudice to the right to contest the issue on merit. This fact is also mentioned in para 25 of the show cause notice dated 01.10.2009. Further, there was proposal in the show cause notice proposing demand of Rs.6,06,10,449/- plus cess. Further, there was proposal to appropriate the amount of Rs. 50 lakhs deposited during investigation. The appellant contested the show cause notice and finally was successful in appeal before this Tribunal, in batch of

similar appeals, this Tribunal vide Final Order No. 50711 - 50731/2019 dated 20.05.2019 was pleased to allow the appeals in favour of the appellant – assessee. On being successful before this Tribunal in appeal, the appellant filed refund application before the jurisdictional Assistant Commissioner, which was filed through e-mail and also sent a copy of the same by speed post, which was received in the office of Assistant Commissioner on 26.05.2020.

5. The grievance of the appellant is that although refund of the principal amount has been given, however, the interest has not been granted as per law, as applicable under Section 35FF of the Central Excise Act and as laid down by the Division Bench of this Tribunal in the case of **Parle Agro Limited**. The Adjudicating Authority have granted interest on refund for a truncated period i.e. from date of filing of appeal before this Tribunal, and further have calculated eligible amount pre-deposit @ 7.5% of demand as eligible for calculation of interest.

6. Thereafter, there was cross appeal preferred before the Commissioner (Appeals). The Commissioner (Appeals) took notice of the fact that this Tribunal vide stay order dated 22.11.2011 have held that deposit already made is sufficient for the purpose of admission of the appeal for hearing, thus, the said amount of Rs. 50 lakhs was treated as the pre-deposit on 22.11.2011. It was further observed that interest on delayed refund is payable @ 6% p.a., as notified. The appellant-assessee has been paid interest @ 6% p.a., in terms of the judicial pronouncement by the Tribunal and higher Courts, and as also referred to in the Circular No. 984/8/2014-CX dated 16.09.2014.

Accordingly, the learned Commissioner (Appeals) observed that the matter needs to be remanded for recalculation of interest in terms of his observation.

7. Being aggrieved, the appellant –assessee is before this Tribunal urging that as per Section 35FF, interest is payable from the date of deposit till the date of refund. Secondly, relying on the ruling of this Tribunal in the case of **Parle Agro Limited**, he prays that interest should be allowed @12% p.a. and further states that learned Commissioner (Appeals) has erred in granting interest @6% p.a.

8. Learned Authority Representative appearing for the Revenue relies on the impugned order.

9. Having considered the rival contentions, I hold that the appellant is entitled to interest from the date of deposit or date of encashment of the cheque, till the date of grant of refund. I further hold that appellant is entitled to interest on refund @ 12% p.a., as held by this Tribunal in the case of **Parle Agro(P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL** following the ruling of the Apex Court in the case of **Sandvik Asia Ltd., -2006 (196) ELT 257 (SC)**. Accordingly, this appeal is allowed with consequential relief. The Adjudicating Authority is directed to grant balance amount of interest @ 12% per annum within a period of 45 days from the date of receipt of a copy of this order.

10. In the result, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant