

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Excise Appeal No. 51259 of 2022-SM**

(Arising out of order-in-appeal No. 09-10(SM)/CE/JPR/2022 dated 11.02.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur).

**M/s Jai Bhawani Concast Pvt Ltd.**

E-356, RIICO Industrial Area, Bhiwandi,  
Alwar, Rajasthan  
301019

**Appellant**

VERSUS

**Commissioner of Central Excise &  
Central Goods and Service Tax-Alwar**

A Block Surya Nagar,  
Alwar Rajasthan-301001

**Respondent**

**APPEARANCE:**

Shri Jitin Singhal, Advocate for the appellant

Shri Gopi Raman, Authorised Representative for the respondent

**CORAM:**

**HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER No. 50919/2022**

DATE OF HEARING: 23.08.2022

DATE OF DECISION: 27.09.2022

**ANIL CHOUDHARY:**

The issue involved in this appeal is whether the court below have erred in reducing the amount of refund, which was in the nature of pre-deposit, and further whether interest have been rightly allowed under Section 35FF of the Act.

2. The brief facts are that the appellant was engaged in manufacture of SS Ingots. Investigation/search was held in the premises of the appellant in December 2002. During the course of investigation, the appellant deposited Rs. 5,76,425/- vide debit in Cenvat account vide

entry No. 96 dated 17<sup>th</sup> December 2002. They have further deposited Rs. 50,000/- *vide* TR-6 challan on 30<sup>th</sup> January 2003. These amounts were deposited towards estimated duty on the alleged shortage of finished goods and raw materials. Thereafter, show cause was issued on 13<sup>th</sup> September 2006 and the proposed demand of Rs. 49,83,391/- was confirmed towards central excise duty, and further Cenvat credit was disallowed for Rs. 64,244/- alongwith equal penalty plus interest. Being aggrieved the appellant preferred appeal and finally in the 2nd round of appeal before this Tribunal, the appeal was allowed in part *vide* final order dated 9<sup>th</sup> January 2020, by which the demand was set aside, except confirmation of duty of Rs. 5,76,425/-.

3. Thereafter, the appellant requested for granting of refund of the amount deposited during investigation, as well as the pre-deposit made pursuant to stay order, of Rs. 8 lakhs on 6<sup>th</sup> February 2009, by their request letter dated 6<sup>th</sup> July 2020. The Adjudicating Authority was pleased to allow refund of the principal amount of Rs. 8.5 lakhs however, denied the claim of interest. Being aggrieved, the appellant-assessee preferred appeal before the Commissioner (Appeals) for grant of interest. Revenue also preferred appeal before the Commissioner (Appeals), on the ground that Rs. 8 lakhs were deposited on 6<sup>th</sup> February 2009, in compliance to stay order, whereas Rs. 50,000 was deposited voluntarily on 30<sup>th</sup> January 2003, during investigation in respect of goods allegedly removed without invoices. As this Tribunal had remanded the matter in the 1<sup>st</sup> round *vide* final order dated 19<sup>th</sup> September 2016 to the Original Authority for *de novo* decision, therefore, the claim for refund of Rs. 50,000 should have been made within one year from the relevant date as per Section 11 B of the Act.

Thus, the claim made for Rs. 50,000/- on 6<sup>th</sup> July 2020, being after more than one year, should be held to be hit by limitation. It was also urged by revenue that the benefit of protest clause stood vacated when the matter was remanded in the 1st round, *vide* final order dated 19/09/2016. Thus, the claim of refund of the whole amount of 8.5 lakhs be held to be hit by limitation.

4. Learned Commissioner (Appeals) *vide* common order-in-appeal dated 11<sup>th</sup> February 2022 held that the refund of Rs. 8 lakhs have been rightly granted, however, refund of Rs. 50,000/- was held to be time barred and also hit by unjust enrichment, by observing that though the amount has not been paid against invoices, but he finds that raising invoices and collecting the amount of duty is not the only way to pass on the burden. As regards, interest under Section 35FF, it has been held that the appellant is entitled to interest only on the amount, which was required to be deposited in terms of section 35F of the Act, at the time of filing of the appeal (2nd round) filed on 4<sup>th</sup> July 2017. Further, observing that as the remaining amount of refund has been sanctioned within the stipulated time, no interest is payable thereon.

5. Being aggrieved the appellant is before this tribunal.

6. Heard the parties. Learned Counsel for the appellant-assessee Mr. Jitin Singhal urges that the issue of the eligible amount on which interest is payable, as well as the rate at which the interest is payable under Section 35FF is no longer *res integra*. A Division Bench of this Tribunal in the case of Parle Agro Ltd, under similar facts and circumstances, have held that interest is payable also on the amount paid during investigation/audit as well as the amount of pre-deposit and

further such interest is payable @ of 12% per annum, following the ruling of Hon'ble Supreme Court in the case of **Sandvik Asia Ltd 2006 (196) ELT 257 (SC)**. It is further urged that a Single Member Bench of this Tribunal in **Riba Textiles vs CCE & ST Panchkula 2020 (2) TMI 602-Chandigarh Bench** had also allowed interest under similar circumstances, @ of 12% per annum. This order was appealed against by revenue before Hon'ble Punjab & Haryana High Court in CEA No. 8/2022. The High Court by its judgement dated 14<sup>th</sup> March 2022 have upheld the grant of interest @ of 12% per annum relying upon the ruling of the Apex Court in the case of Sandvik Asia Ltd (supra).

7. I further find that Hon'ble Madras High Court in the case of **CCE vs Pricol Ltd 2015 (320) ELT 703** have held that any amount deposited during investigation has to be treated as pre-deposit and the same is neither hit by limitation nor by the clause of unjust enrichment for the purpose of refund. Similar view has been taken by Hon'ble Allahabad High Court in **CCE vs Eveready Industries Ltd 2017 (357) ELT 11** and also by Hon'ble Gujarat High Court in the case of Principal Commissioner of Customs vs. H.V. Ceramics 2019 (365) ELT 390.

8. In view of aforementioned observations and findings I hold that the learned Commissioner (Appeals) have erred in holding that the amount of Rs. 50,000/- is hit by limitation and unjust enrichment, and further interest is not payable under section 35FF.

9. Accordingly, I allow this appeal and set aside the impugned order. I hold that the appellant is entitled to refund of the balance amount of Rs. 50,000/- which was deposited on 30<sup>th</sup> January 2003. Further held that appellant is entitled to interest on the full amount of Rs. 8.5 lakhs from the date of deposit till the date of refund @ of 12% per annum

under the provisions of Section 35FF of the Act.

10. The Adjudicating Authority is directed to grant the balance refund, as well as the interest within a period of 60 days from the date of receipt of a copy of service of the order. Appeal allowed.

(pronounced in open Court on 27.09.2022)

**(Anil Choudhary)**  
**Member (Judicial)**

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