

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Excise Appeal No. E/51237/2022

[Arising out of Order in Appeal No. 80-81(SM)/CE/JPR/2021 dated 08.04.2021 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/s. Sona Plastic Udyog
30, Bhoyatawala, Benad Road,
Jaipur

...Appellant

Versus

The Commissioner
Central GST & Central Excise
Commissionerate,
Jaipur

....Respondent

APPEARANCE:

Mr. Arun Goyal, Advocate for the appellant
Mr. Divey Sethi, Authorized Representative for the Respondent

CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **27/09/2022**

FINAL ORDER No. 50965/2022

DR.RACHNA GUPTA

Present appeal has been filed against the Order-in-Appeal No.80-81 dated 08.04.2021 vide which the order of sanctioning refund of an amount of Rs.8,46,247/- including interest of Rs.91,787/- (Rs.7,54,460/- + Rs.91,787/-) and also of sanctioning refund of an amount of Rs.15,50,000/- without interest has been upheld. Appeal has been filed being aggrieved of not getting the interest on the aforesaid amount of Rs.15,50,000/-, that too from the date of its payment.

2. Facts in brief are as follows:-

The appellants are engaged in manufacture of plastic items. The Anti-evasion Branch of Central Excise Commissionerate, Jaipur conducted search on 14.09.2016 in the premises of the appellants. The team observed the evasion of Central Excise Duty. The appellant at that moment itself had submitted three Cheques total amounting to Rs.65,00,000/-. Out of those Cheques, one amounting to Rs.25,00,000/- got debited from the appellants accounts. The appellant filed the refund of the said amount of Rs.25,00,000/- on 21.11.2016 (Approximately two months later the said search). During the consideration of the said refund claim that the Show Cause Notice No.218 dated 08.05.2017 for duty demand was issued against the appellant. Based thereupon, the refund claim of the appellant dated 21.11.2016 was rejected vide the Order-in-Original dated 21.06.2017 holding it to be premature. Commissioner (Appeals) had confirmed the said order. However, the appeal before this Tribunal was allowed and the said amount of Rs.25,00,000/- was allowed to be refunded. Meanwhile, the Show Cause Notice for duty demand was adjudicated by the Original adjudicating authority vide its order dated 28.12.2017. The confiscation of the goods as were seized at the time of search was also ordered while giving an option to pay the redemption fine of Rs.15.5 Lakhs so as to get the goods released. The appellant paid the said redemption fine on 25.01.2018. Challenging the said order that an appeal was filed alongwith deposit of an amount of Rs.7,54,460/-.

3. The Appeal was allowed vide final order of this Tribunal dated 08.01.2020. Pursuant to the said order that the appellant filed a refund claim for the said amount of pre-deposit alongwith the aforesaid amount of redemption fine. The same was initially rejected vide Order-in-Original dated 25.02.2020. The appeal there against has been rejected vide the aforementioned order in appeal. Being aggrieved, the appellant is before this Tribunal.

4. I have heard Shri Arun Goyal, Id. Counsel for the appellant and Shri Divey Sethi, Id. Authorised Representative for the Respondent.

5. It is mentioned by the Id. Counsel for the appellant that the appellant was compelled at the time of search, to make the deposit of huge amount. There have been several decisions of Hon'ble High Courts clarifying that the Department is not supposed to get deposits at the time of investigation and if any amount has got deposited during the investigation, the Department has no right to retain the same. Id. Counsel had relied upon the decision of **Raghu Export vs. Union of India reported in 2008 TIOL 785 (High Court of Punjab & Haryana)** and also on the decision of Hon'ble High Court of Bombay in the case of **Nelco Limited Vs. Union of India reported in 2002 (144) ELT 56 (Bom.)**. It is further submitted that in the light of those decisions that the appellant had filed the refund of the aforesaid amount on 21.11.2016. Separate proceedings were in progress with respect to the refund of the aforesaid amount. In the present appeal, initially

the refund of the amount of pre-deposit and that of redemption fine was claimed. The said refund claim was partly allowed sanctioning the refund of both the amounts i.e. the amount of pre-deposit (Rs.7,54,460/-) with interest of Rs.91,787/- and the amount of redemption fine (Rs.15.5 Lakhs) (but without interest). Ld. Counsel impressed upon that the interest on the amount of pre-deposit was sanctioned. However, no interest on the amount of redemption fine was sanctioned, despite that appellant is entitled for the interest on the said amount because earlier also this Tribunal vide its final order of 8th January, 2020 had allowed the appeal granting all consequential benefits to the appellant. Interest on Rs.15.5 Lakh, that too, from the date of deposit is being prayed. With these submissions, order in Appeal is prayed to be set aside.

6. While rebutting these submissions Id. D.R. has mentioned that the appellant has been very strategic since the time of the search of his premises. He was found running two separate units and was wrongly claiming the benefits of SSI exemption. Accordingly, the amounts were asked to be deposited at the time of investigation itself. However, since the said amount stands already refunded, it is no more relevant for the present appeal. In the present appeal it is only the interest accrued on the amount of redemption fine of Rs.15.5 Lakhs, which is in question. Ld. DR has impressed upon section 11A (ec) as the relevant provision. According to the section if the refund claim is not sanctioned within 3 months of the date of its application, the interest on the said

amount has to be paid by the Department but from the date of the judgement, vide which the assessee became entitled for the said refund.

7. Ld. DR has therefore emphasised that the Commissioner (Appeals) has rightly mentioned that in terms of aforesaid provision the refund has been made before the expiry of three months. Hence, no question of sanctioning any interest at all arises. Impressing upon no infirmity in the order, Id. DR has prayed for dismissal of the impugned appeal.

8. Having heard the rival contentions, I observe that in the present case what is sought to have been claimed to be refunded is the interest on the amount of redemption fine (Rs.15.5 Lakhs) as was paid by the appellant after the original adjudicating authority confirmed the confiscation of the goods, however, giving an opportunity to redeem those goods after payment of the redemption fine. The appellant opted for getting the goods redeemed. After paying Rs.15.5 Lakhs as redemption fine, the appellant had got the goods provisionally released. Later the said order of absolute confiscation has been set aside by this Tribunal vide the Final Order dated 08.01.2021. Consequent to said order, refund of amount of said redemption fine of Rs.15.5 Lakhs with interest was claimed. The refund sanctioned but without interest. The bare perusal makes it clear that the amount which was prayed to be refunded is nothing but the interest on the value of the goods, the ownership whereof stands finally confirmed in favour of the present appellants. From no stretch of imagination the same can be called as the amount of duty paid by the appellants. Hence as of now, the said amount is

nothing but a deposit made with the Revenue. The issue of refund of such deposit alongwith the interest is no more *res integra*.

9. This Tribunal in the decision of Bangalore Bench of this Tribunal, in the case of **CCE, Nasik vs. Motor Industries Ltd. reported as [2006 (205)ELT 274 (Tri-Bang)]** while accepting the appellants contention has dismissed the departmental appeal in following words:

*"2. On a careful consideration, I notice that the assessee had cleared inputs for processing under Rule 57F(4) which were not received back fully within the stipulated period. The appellants paid the duty of Rs 4,71,197 in RG 23-A, dated 30-9-97 as directed by the preventive team of Central Excise Officers. However, the goods were received back subsequently and hence they filed refund application. The question is as to whether the Commissioners has power to condone the delay in a circumstance when the inputs were received after a period of 60 days. The Commissioner has noted that the proviso of Rule 57 was amended to 180 days and found that this is only a condonable offence. Therefore, he noted that the amount deposited was required to be refunded. He also noted that the assessee had deposited the amount only on the insistence of preventive officers. Therefore it is to be construed as a deposit under protest. On similar facts in the cited judgments, **such deposits are treated as deposits made 'under protest'**. Further more, the Apex Court in the case of **Mafatlal Industries Ltd. v. UOI [1997 (89) E.L.T. 247(S.C.)]** has clearly ruled that if duty deposits are made during investigation, then it is to be construed as deposit made under protest. The order passed by the Commissioner is legal and proper and there is no infirmity in the same. The appeal is rejected."*

10. Further perusing the decision of **M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, GST [2021-TIOL-306-CEST-ALL]**, I also endorse the following findings:

"30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

31. Section 11D of the Excise Act deals with duties of excise collected from the buyer to be deposited with Central Government. It provides that every person who is liable to pay duty and has collected any amount in excess of the duty assessed from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

32. Section 11DD of the Excise Act deals with interest on the amount collected in excess of the duty. It provides that where an amount has been collected in excess of the duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded."

11. Since the entire amount as was proposed to be recovered from the appellant was got deposited even prior to the issuance of Show Cause Notice and since the said demands stand already set

aside vide the order of this Tribunal, it stands clear that the said amount was not the liability of the appellant to be deposited i.e. it was not the amount of duty. Hence section 11B of Central Excise Act creating the notion of three months as impressed upon by learned Departmental Representative, is not applicable to the facts of present case. The amount which stands deposited since 06.07.2012 has been kept with the department with no authority for retaining the same. Hon'ble High Court of Madras in the case of **Calcutta Iron and Steel Co. Vs CESTAT, Chennai reported as [2017 350 ELT 327 (Mad)]** has held as follows:

"10.5 the interest on delayed refund can only be paid if the duty is determined, according to us, is clearly answered upon perusal of the CCA's order, dated 30-6-1997. Insofar as argument based on Section 27 of the Act is concerned, according to us, it has no application because the said section is applicable when refund of duty or interest is sought. In the present case, the assessee is seeking interest on delayed payment of refund, and therefore, the circumstances obtaining in the present case can only be a subject matter of Section 27A of the Act. Since duty for past clearances was determined and adjusted, the assessee, to our minds, would be entitled to interest under Section 27A of the Act.

11. Before we conclude, we may also indicate that Mrs. Hemalatha had, while emphasizing of the point, advanced the argument that when DRI collected the amount, there was no assessment and that by itself would show that the amounts paid at that point in time by the assessee were voluntary in nature. According to us, this is an argument, which is, in a sense, self-destructive. To say that payments were made voluntarily when DRI officials descended on the premises of the assessee when wedding celebrations were on would amount to turning a blind eye to the harsh realities obtaining on ground. As a matter of fact, in our view, the officers of DRI had clearly

no jurisdiction to demand and collect any amounts from the assessee, in view of the fact that they are not vested with powers of an Assessing Officer. Furthermore, if we were to accept this argument of the learned counsel, then it would tantamount to allowing the Revenue to take advantage of its own wrong.

*11.1 This apart, the Revenue has enjoyed the benefits of the money collected from the assessee on account of purported liability to pay duty, which was ultimately proved to have been **wrongly foisted. Therefore, in our opinion, it only be right that the Revenue be called upon to pay interest to the assessee because, by its nature, any such collection of money by Revenue can only be termed as exaction under ostensible authority of law.***"

12. The Hon'ble Apex Court also has settled this issue in the case of **Sandvik Asia Ltd. reported as [2006 (196) ELT 257 (SC)]** holding the assessee is entitled for interest along with the refund of the amount which he was not liable to pay to the department. In the case of **Sandvik Asia** (supra), Hon'ble Apex Court has appreciated section 243 of Income Tax Act which talks about the interest on delayed refund. Section 35FF of Central Excise Act, 1944 deals with similar situation and has actually held as para materia to section 243 of Income Tax Act by the Hon'ble Apex Court. The said decision of Hon'ble Apex Court has been followed by this Tribunal in **M/s. Fujikawa Power vs CCE & ST, Chandigarh I** (supra).

13. In the light of above decisions, I hold that appellant is entitled for the interest upon the amount of Rs.15.5 Lakhs also. Section 11BB of Central Excise Act is opined to be not applicable to the

appellant. I draw my support from the decision of Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. Vs. Union of India reported in 2011 (273) E.L.T. 3 (S.C.)** in which the Hon'ble Apex Court has dealt with the issue of interest on delayed refund at great length by interpreting provisions of Section 11BB vis-à-vis Section 11B of the Central Excise Act, 1944. In the said decision, the Hon'ble Court has held as under:-

*"Interest on delayed refund - Interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiring of period of three months from the date of receipt of application under Section 11B(1) ibid and not from the date of order of refund or Appellate Order allowing such refund - Explanation to proviso to Section 11BB ibid introduces a deeming fiction that where order for refund is not made by Asstt. Commissioner/Dy. Commissioner, but by Appellate Authority, such appellate order shall be deemed to be an order under Section 11B(2) ibid - This explanation does not postpone the date from which interest becomes payable to under Section 11BB ibid - It is manifest from the provision of Section 11B of Central Excise Act, 1944. - **That Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate***

Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable."

14. Coming to the aspect of rate at which the interest shall be awarded, I observed that Hon'ble High Court of Kerala vide the decision in the case of **Sony Pictures Networks India Pvt. Ltd. vs Union of India reported as [2017 (353) E.L.T. 179 (Ker.)]** has held as follows:-

"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.

15. Reverting to the facts of the present case, it is apparent that the redemption fine was deposited on 25.01.2018.

Department vide a Notification No.68/2003-CE dated 12.09.2003 as issued under Section 11DD (interest on the amounts collected in excess of the duty) has fixed the rate of interest at 15% per-annum.

16. In view of entire above discussion and the relied upon case laws, it is clear that since the order of confiscation of goods has already been set aside the amount of redemption fine as was deposited by the appellant was an amount of revenue deposit with the department. Hence, I hold the appellant to be entitled for the interest on the refunded amount of Rs.15.5 Lakhs (the redemption fine) to be paid from the date of its deposit at the rate of 15% per annum. As a result, the order of Commissioner (Appeals) is hereby set aside and the appeal stands allowed.

[Order dictated & pronounced in the open Court]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)