

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO. II**

Excise Appeal No.54891 of 2023 (SM)

[(Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-018-20-21 dated 08.07.2020 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore (M.P.)]

M/s.Shakti Pumps (India) Ltd.

Plot No.401, 402 & 413,
Industrial Area, Sector-III,
Pithampur, Distt. Dhar (Madhya Pradesh).

Appellant

Versus

Commissioner of Central Goods & Service

Tax and Central Excise,
29, Bharatpuri, Administrative Area,
Ujjain,
Madhya Pradesh -456 010.

Respondent

APPEARANCE:

Ms. Sukriti Das, Advocate for the appellant.
Shri Mahesh Bhardwaj, Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51286/2023

DATE OF HEARING/DECISION:11.09.2023

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved - which is the relevant date from which the appellant is entitled to interest on refund, which was sanctioned and disbursed on 30.12.2020.

3. The Appellant is engaged in the manufacture of submersible pumps, power driven pumps, centrifugal pumps and solar pumping systems falling under Chapter heading 8413 of the Central Excise Tariff Act, 1985 (CETA). The Appellant is, presently, registered as GST tax payer vide GST Registration No. 23AAEC85027L1 ZC. Prior to the implementation of GST,

the Appellant was registered with Excise department vide registration no. AAEC5027LXM002 and were availing Cenvat credit on inputs, input services and capital goods in accordance with the provisions of the Cenvat Credit Rules, 2004.

4. The Appellant was engaged both in domestic supplies as well as exports. For undertaking export supplies, appellant imported raw material and components, i.e., Solar Pump Drive, Stainless Steel Sheets, Coils etc., without payment of customs duty, against 5 Advance Authorization Nos. 5610003473 dated 2.1.2014; 5610004305 dated 18.6.2014; 5610004450 dated 21.10.2014; 5610004495 dated 16.12.2014 and 5610005074 dated 6.2.2017 (prior to 01-07-2017).

5. However, on account of shortfall in fulfillment of export obligations within the time period specified in Advance Authorization, the Appellant *suo-motu* discharged the appropriate Countervailing Duty ("**CVD**") and Special Additional Duty ("**SAD**") amounting to **Rs. 1,33,86,856**[Rs. 74,94,647 (CVD) + Rs. 58,92,209 (SAD)]vide several challans dated from 3.7.2018 to 24.12.18, on the duty free imported inputs, to regularize the imports. Additionally, the Appellant paid the differential customs duty including CVD (Rs. 81,04,635) and SAD (Rs. 29,40,186) amounting to **Rs. 1,10,44,821** vide challans dated from 27.3.18 to 3.7.18 by considering the rate of duty applicable. The duties (shortfall) were paid on the imported items, during the GST regime.

6. The Cenvat credit of the amount of CVD and SAD paid by appellant, post implementation of GST, could not be availed, even though 'duty paid on imported inputs' were used in the manufacture of final dutiable goods. Further, such amounts could neither be carried forward as transitional credit, at the time of migrating to GST.

7. Hence, the Appellant filed 2 applications both dated 9.5.2019 claiming refunds amounting to Rs. 1,33,86,856 and Rs. 1,10,44,821 in respect of the amount of SAD and CVD paid by appellant, post implementation of GST, in terms of Section 142(3) read with Section 142 (6)(a) of the CGST Act before the Joint Commissioner of State Tax, GST, Indore. Due to revamping of the GST jurisdiction, the appellant was advised to be not the appropriate authority.

8. Accordingly, the Claim papers were re-submitted by Appellant on **8.7.2019** before the concerned Assistant Commissioner, CGST, Central Excise requesting for refund of Rs. 1,33,86,856 and Rs. 1,10,44,821, in cash.

9. Thereafter, the refund was initially rejected by the Adjudicating Authority and pursuant to Order-in-Appeal No.IND-EXCUS-000-APP-018-20-21 dated 08.07.2020, the refund was held allowable by the Commissioner (Appeals), subject to verification of unjust enrichment. Thereafter, the refund was sanctioned on 30.12.2020 vide Order-in-Original No.07/AC/CEX/Refund/Pith-II/20-21 dated 30.12.2020. However, the claim of interest was denied observing that as certain documents, which were required, were filed by the appellant/assessee on 7.12.2020, it was held that refund has been granted within a period of 3 months, and hence, no interest was payable.

10. Against the order of denial of interest, the appellant had preferred appeal before the Commissioner (Appeals), who was pleased to observe that - when initially the refund claim was filed in May, 2019, no requisition was raised by the Revenue for additional documents and hence, the claim of interest is tenable relying on the ruling of the Hon'ble Supreme Court in the case of **Dunlop India Ltd. & Madras Rubber Factory Vs. Union of India**

– **1983 (13) ELT 1566 (SC)** and also the precedent order of this Tribunal in the case of **Hero Motors Ltd. Vs. CCE – 2014 (307) ELT 138 (T)**. It was held that the appellant is entitled to interest and accordingly, the Adjudicating Authority was directed to pay interest in terms of Section 11 BB of the Act.

11. Thus, I find that there is clear direction by the Commissioner (Appeals) to pay interest and there was further direction to treat the period of interest starting after three months from the date of filing of refund claim i.e. 9.5.2019.

12. Under the aforementioned circumstances, I find that the denial of interest subsequently by the Adjudicating Authority is highly illegal and also amounts to insubordination, by not following the directions of the superior court. Further, such act by the Adjudicating Authority is also contemptuous.

13. In view of the aforementioned findings and observations, the appeal is allowed. The impugned order is set aside and the Adjudicating Authority is directed to grant the interest starting from 9th August, 2019 till the date of disbursement i.e. 30th December, 2020. Whatever interest has already been paid, if any, shall be adjusted from the interest so calculated. Such interest should be disbursed within a period of 45 days from the date of receipt of copy of this order.

14. Appeal allowed.

[Order dictated & pronounced in open court]

(Anil Choudhary)
Member (Judicial)

Ckp.

