CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 54977 of 2023 [DB]

[Arising out of Order-in-Appeal No. 55 (AK) CE / JDR / 2022 dated 01.03.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jodhpur]

M/s. Modern Threads India Limited **...Appellant**
Village – Raila,
Bhilwara-311001 (Rajasthan)

VERSUS

Commissioner of CGST & Central Excise, Jodhpur **...Respondent**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Johdpur, Rajasthan - 342003

APPEARANCE:
Shri Gaurav Dadhich, Company Secretary for the Appellant
Shri V.J. Saharan, Authorized Representative for the Respondent

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

DATE OF HEARING: 29.02.2024
DATE OF DECISION: **28.06.2024**

FINAL ORDER No. 55944/2024

DR. RACHNA GUPTA

M/s. Modern Threads India Limited, the appellant, had filed refund claim of Rs.51,26,639/- on 17.11.2020 in pursuance to the Hon'ble Rajasthan High Court order dated 09.05.2018, Order-in-Original No. 73/98 dated 09.12.1998 and Order-in-Appeal No. 554/RM/CE JPR-II/2003 dated 28.11.2003. Later on the appellant vide their letter dated 27.01.2021 have withdrawn an amount of Rs.9,185/- from their refund claim amount. Therefore, now the claim stands for Rs.51,17,454/-. A notice bearing No. 619 dated 26.02.2018 was issued under Section 11(2)(i) of the erstwhile Central Excise Act, 1944 to the appellant for recovery of outstanding dues amounting to Rs.1,23,41,240/-. The said amount was recovered from the appellant as per details given below:

(i) Rs.47,74,000/- dated 26.02.2018 from Bank Account of the appellant (ICICI Bank Bhilwara)

(ii) Rs.22,38,000/- dated 20.03.2018 from Bank Account of the appellant (ICICI Bank Bhilwara)

(iii) Rs.23,12,122/- dated 27.03.2018 vide GST Refund Order No. 26/GST/Ref/BHL-E/2017-18 dated 27.03.2018

(iv) Rs.12,508/- vide GST Refund Order No. 23(R)18-19 CE (Refund) dated 27.08.2018.

(Total amount recovered Rs.93,36,630/- as above)

1.1 The appellant filed a Writ Petition (C) No. 4678/2018 before the Hon'ble Rajasthan High Court, Jodhpur challenging the said Notice dated 26.02.2018 and for attaching their bank account. The aforesaid Writ Petition was decided by Hon'ble Rajasthan High Court vide said order dated 09.05.2018 in favour of appellant. Pursuant thereto the impugned refund claim dated 17.11.2020 was filed. However, it was proposed to be rejected vide Show Cause Notice No. 121 dated 17.02.2021 on the ground of it being time barred alleging that it should have been filed within one year from 09.05.2018, the date of order of Hon'ble Rajasthan High Court.

1.2 The said proposal was initially rejected vide Order-in-Original No. 01/2021-22 dated 09.04.2021. However, Commissioner (Appeals) vide Order-in-Appeal No. 197/2021 dated 25.08.2021 had remanded the matter to original adjudicating authority directing to pass appropriate order in terms of Order-in-Appeal No. 554/RM/CE/JPR-II/2003 dated 28.11.2003 and representation of appellant made on 20.06.2018, 21.07.2018 and 19.12.2018. Pursuant to these directions of remand Order-in-Original No. 07/2021-22 dated 12.11.2021 was passed sanction the interest refund of claim of Rs.51,17,454/- holding that clause of unjust enrichment is not applicable in the instant case. This order was appealed by the department and their appeal has been allowed vide impugned Order-in-Appeal No. 55/2022 dated 01.03.2023. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Gaurav Dadhich, learned Company Secretary for the appellant and Shri V.J. Saharan, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that present appeal has following three issues:

(i) Whether the interest on refund has to be calculated from expiry of three months after passing of the Tribunal's final order or it has to be calculated from the date of final order of the Tribunal.

(ii) Whether the rate of interest should be 6% or 15% or any other rate.

(iii) Whether the appellant is entitled for interest on interest.

3.1 It is impressed upon that these have been decided by the Tribunal in the case of **Bochasanwasi Shri Aksharpurushottam Swaminarayan Sansth Vs. C.C., Ahmedabad reported as 2021**

(11) TMI 759 – CESTAT AHMEDABAD . Relying thereupon appeal is prayed to be allowed.

4. Learned Departmental Representative on the contrary has relied upon the case of **Sun Pharmaceuticals Industries Ltd. Vs. Commissioner of Central Excise, Chennai reported as 2005 (5) TMI 90 – CESTAT NEW DELHI** and has prayed for dismissal of appeal impressing upon no infirmity in the order under challenge.

5. Having heard the rival contentions and perusing the records, I observe that Commissioner (Appeals) has adjudicated the issue as below:

> "Whether the appellant is entitled to get interest under Section 11BB of Central Excise Act, 1944."

However, has answered it in negative holding that:

The adjudicating authority has rejected the refund of interest vide Order-in-Original No. 07(R)/2021-22/CE(Refund) dated 12.11.2021 as no provision are available for granting of interest on the refund claim which has been sanctioned within three months of the filing of application and in the present case the filing date is the date of quantification order in terms of OIA No. 197(CRM) CE/JDR/2021/2726 dated 25.08.2021, hence, interest of refund sanctioned vide above said Order-in-Original is not payable to the appellant.

6. Department has relied upon a decision of the Year 2005. I observe that much water has flown since then on this issue and the issue is no more remains *res integra.* Section 11B/11BB of Central

Excise Act are held as not applicable to the given set of circumstances. I draw my support from the decision of this Tribunal in the case of **M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, GST, reported as 2021-TIOL-306-CESTAT-ALL,** wherein following findings have been endorsed:

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

The Tribunal in the said case had allowed the interest on the refund amount from the date of deposit till the date of payment thereof.

7. I further observe that Hon'ble Supreme Court also in the case of **Commissioner of Customs (Import), Raigad vs M/s. Finacord Chemicals (P) Ltd.** in Civil Appeal no. 1633-1638 of 2004 as decided on 08.04.2015 reported as 2015 (319) E.L.T. 616 (S.C.) while discussing the liability of the department to pay the interest has referred to Departments' own circular dated 02.01.2002 wherein the Board clarified that the matters of refund other than the amount of duty would not be covered under the provisions of Section 11B of Customs Act or Section 35FF of Central Excise Act. It was held by the Hon'ble Apex Court that in such cases of refund even the concept of unjust enrichment is not applicable. Learned Apex Court has relied upon its decision in SLP titled as **Union of India vs Suvidhe Ltd**. in which decision of Bombay High Court in **Suvidhe Ltd. vs Union of India reported as 1996 (82) ELT 177** has been upheld. The Bombay High Court has observed that in case of deposits which were not in the form of duty, provisions of 11B of Customs Act will have no applicability. The deposits made under Section 35FF since is not the payment of duty, Section 11B will not be applicable.

8. Another circular of department bearing No. 802/35/2004 CX dated 08.12.2004 was also being considered by the Apex Court in the above mentioned judgment dated 08.04 2015. In that circular the Board emphasised that the amounts other than the amount of duty if deposited it should be refunded immediately as non-returning of deposits attract interest that has been granted by the Courts in number of cases. One similar case of Hon'ble Apex Court is the decision of **Sandvik Asia Ltd. reported as 2006 (196) ELT**

257 (SC) wherein it was held that the amount deposited under Section 35FF of Central Excise Act as far as the payment of interest is concerned shall be applicable only in the cases for such deposits as have been made under Section 35F of the Act. As already observed in the present case, the amount in question is neither the amount of duty nor is the amount of pre deposit, the amount in question is an amount of interest claimed on the amount sanctioned as Refund. The said amount had no authority to retain as the appellant was the owner thereof.

9. From the above discussion, once it is clear that Section 11B and 11BB of Central Excise Act will not be applicable to the amount in question, the denial of the interest on the appellant's amount is held to be unjustified. As per the Article 300A of Constitution of India also, no person shall be deprived of his property, save by authority of law. He cannot be deprived of the same and is entitled for benefits arising out of said property. Hence interest accrued on the amount in question during the period it remained deposited with the department is the property of the owner of the amount i.e. the appellant herein. I draw my support from the decision of Hon'ble High Court of Allahabad in the case of **RHL Profiles Ltd. Vs. Commissioner of Customs, Ex. and Service Tax, Kanpur reported as 2017 (352) ELT 349 (All)** has held that once the confiscation has been set aside, confiscation of seized currency has been set aside and the fact is that the Department has earned interest during the period the currency was retained by it, it was held that payment of interest could not be denied merely for the reason that there is no express statutory provision. Bombay High

Court also in the case of **Union of India Vs. M P Desal reported as 2019 (366) ELT 251 (Bom)** has held that amount seized in cash by the authorities is to be refunded along with the interest. Though in this case the rate of interest was held to be simple at the rate of 8%. However, there already has been decisions of Kerala High Court in the case of **Sony Pictures Networks India Pvt. Ltd. Vs. UOI reported as 2017 (353) ELT 179 (Ker)** wherein the decision of Hon'ble Apex Court in the case of **Kuil Fireworks Inds. Vs. Collector reported as 1997 (95) ELT 3 (SC)** is relied and it was held that rate of interest while refunding the amounts has to be 12% of the amount refunded.

10. I also draw our support from the decision of Hon'ble Apex Court in the case of **Sandvik Asia Ltd.** which is now the law of land in terms of Article 141 of the Constitution of India. The Hon'ble Apex Court, in the said case, has observed as follows:

> *"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax*

payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. RamanathaAiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or

satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

The Hon'ble Apex Court thus held that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund.

11. Following the said law of land, I hold that the appellants are entitled to claim the interest on the amount as has been refunded in their favour that too to be paid from the date of payment of initial amount till the date of its refund.

12. Now comes the question about the rate at which the such interest has to be awarded. From the several provisions of Central Excise Act, as quoted above, it is observed that the rate of interest has to be notified by the Central Government from time to time. I take note of following notifications:

(i) The Notification No. 15/2016-CE dated 01.03.2016 issued under Section 11AA of Central Excise Act vide which the Central Government has fixed the rate of interest at 15% per annum for the purpose of said section.

(ii) The Notification No. 67/2003-CE dated 12.09.2003 issued under Section 11BB vide which the Central Government has fixed the rate of interest at 6% per annum for the purpose of said section.

(iii) The Notification No. 68/2003-CE dated 12.09.2003 issued under Section 11DD vide which the rate of interest fixed by the

Central Government is at 15% per annum for the purpose of the said section.

(iv) The Notification No. 6/2011 dated 01.03.0211 under Section 11AB wherein Central Government has fixed the rate of interest at 18% per annum for the purpose of the said section.

From the above notifications, issued under the respective sections of the Act, it becomes clear that the rate of interest varies from 6% to 18%.

13. This Tribunal in the case of **M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida (vice-Versa) reported as 2021 (5) TMI 870 – CESTAT ALLHABAD** has held that in the light of the above discussed notifications the grant of interest at the rate of 12% per annum seems to be appropriate. The decision of Hon'ble Apex Court in the case of **Sandvik Asia Ltd.** (supra) has also been relied upon. Hon'ble High Court of Kerala also in the case of **Sony Pictures Networks India Pvt. Ltd.** (supra) has held that the interest on the refund shall be payable at the rate of 12% per annum. The previous judgment of Hon'ble Apex Court in the case of **I.T.C. Ltd. (supra)** has been relied upon, where the Apex court confined the rate of interest to 12% and further held that any judgment or decision of any high court taking a contrary view will be no longer a good law. The case law as relied upon by the appellant has been discussed by this Tribunal in the case of **Riba Textiles Ltd.** (supra) holding that those decisions are not applicable for the refund of the amount of pre deposit.

14. The above entire discussion makes it clear that the amount in question was an amount in the form of pre-deposit. Hence, it is the refund in terms of Section 35FF. However, the interest on sanctioned amount of refund has been denied on the ground that refund has been sanctioned within three months from the date of communication of the order of appellate authority in terms of the pre amended Section 35FF of Central Excise Act, 1944. I observe that Section 35FF stands amended w.e.f. 06.08.2014 read as follows:

> ***Section 35FF. Interest on delayed refund of amount deposited under Section 35F.-***
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> *"Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five 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, on such amount from the date of payment of the amount till, the date of refund of such amount.*
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> *Provided that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act."*

The bare perusal makes it clear that the proviso is applicable to such amounts which were deposited under Section 35F.

15. Consequent to the entire above discussions, the findings of the order under challenge are hereby set aside. The appellant is held entitled to have interest on the amount of refund sanctioned at the rate of 12% per annum since the amount was got deposited

after denying the substantial benefit of MODVAT. I hold appellant is eligible for interest at the rate of 12% from the date of the deposit of the amount till the date of refund thereof. Resultantly, the Order-in-Appeal under challenge is hereby set aside and appeal is allowed.

[Order pronounced in the open court on **28.06.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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