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**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**EXCISE APPEAL BRANCH**

Appeal No. E/6254/2004 - EX[DB] Date 19/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E.INDORE M.P
P.O.10-MANIK BAGH PALACE INDORE M.P
452001

C.C.E.INDORE M.P Appellant
Vs
M/S TSAI ENTERPRISES PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 52/2009- **EX[DB]** dated 16-1-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
   M/S TSAI ENTERPRISES PVT.LTD.
   9,R.N.MUKHERJEE ROAD,KOLKATA
2. Adv. / Consult SH. RAMESH NAIR
   "LAKSHMIVIHAR" AG-192,
   SCHEME NO. 64, VIJAYNAGHAR
   INDORE
3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI.

Excise Appeal No.6254/2004-Excise

[Arising out of Order in Appeal No. IND-I/371/2004 dated 24th September, 2004 of Commissioner (Appeals), Central Excise, Indore].

Date of hearing: 02.01.2009.

For approval and signature :

Hon'ble Ms. Jyoti Balasunderam, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

| | | |
|---|---|---|
| 1 | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | |
| 4 | Whether Order is to be circulated to the Departmental authorities? | |

CCE, Indore. ... Appellant
[Represented by Mr. Surinder Shah, SDR]

Vs.

M/s. Tsai Enterprises Pvt. Ltd. ....Respondent
[Represented by Mr. Ramesh Nair, Advocate]

CORAM: Hon'ble Ms. Jyoti Balasunderam, Vice President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL ORDER NO. 52/09-EX /DATED:02.01.2009

**Per RAKESH KUMAR**

This is an appeal filed by the Revenue against the impugned order in appeal dated 24th Sept., 2004 passed by the

CCE (Appeals), Indore by which the Commissioner held that the respondents are eligible for interest on delayed payment of refund w.e.f. 26.8.95.

2. Heard both the sides. The ld. DR defended the impugned order reiterating the grounds of appeal. The ld. Counsel for the respondent, however, pleaded as per the provisions of section 11BB,the interest for delay in payment is payable from the date immediately after the expiry of 3 months' period from the date of filing of re-fund application and since this provision had come into effect w.e.f. 26.05.95, the Commissioner (Appeals) has rightly allowed interest for the period of delay from 26.08.95.

3. We have carefully considered the submissions from both the sides. The refund applications had been filed during the period from February 1990 to April, 1993 i.e. during the period prior to 26.05.95, the date from which section 11BB was inserted in the Central Excise Act, 1944 and obviously the refund was sanctioned in 2004 i.e. long after the expiry of the stipulated period of 3 months from the dates of filing of the refund claims.

The Section 11BB inserted w.e.f. 26.5.95 is reproduced below:-

> *"Section 11BB- Interest in delayed refunds – If any duty ordered to be refunded under section (2) of Sec. 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five percent and not exceeding thirty percent per annum, as is for the time being fixed by the Central Government by notification in the official Gazette, on*

> *such duty immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty.*
>
> *Provided that when any duty ordered to be refunded under section (2) of Sec. 11B in respect of an application under sub-section 41 of that section, made before the date on which the Finance Bill 1995 receives the assent of the President, in not refunded within three months from such date, there shall be paid to the applicant, interest under this section, from the date immediately after three months from such date, till the date of refund of such duty".*

4. In this case, therefore, the interest u/s 11BB become due for the period of delay from 26.08.95.

5. Thus in view of the statutory provisions of section 11BB the appellant would be eligible for interest for the period of delay in the sanction of refund from 26.08.95. We, therefore, find no infirmity in the impugned order. The Revenue's appeal is dismissed.

(Order dictated & pronounced in the open Court on 02.01.2009)

(JYOTI BALASUNDERAM)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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