CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 55209 of 2023 [SM]

[Arising out of Order-in-Appeal No. 83(AK)CE/JDR/2023 dated 11.04.2023 passed by the Commissioner of CGST & Central Excise (Appeals), Jodhpur]

M/s. J.K. Cement Works **...Appellant**
(Unit of J.K. Cement Limited)
Nimbahera, District Chittorgarh,
Rajasthan - 312617

VERSUS

Commissioner of CGST & Central Excise,
Udaipur **...Respondent**
142B, Hiran Magri, Sector – 11,
Udaipur - 313002

WITH

Excise Appeal No. 55757 of 2023 [SM]

[Arising out of Order-in-Appeal No. 283-84(AK)CE/JDR/2023 dated 12.09.2023 passed by the Commissioner of CGST & Central Excise (Appeals), Jodhpur]

M/s. J.K. Cement Works **...Appellant**
(Unit of J.K. Cement Limited)
Nimbahera, District Chittorgarh,
Rajasthan - 312617

VERSUS

Commissioner of CGST & Central Excise,
Udaipur **...Respondent**
142B, Hiran Magri, Sector – 11,
Udaipur - 313002

WITH

Excise Appeal No. 55210 of 2023 [SM]

[Arising out of Order-in-Appeal No. 82(AK)CE/JDR/2023 dated 11.04.2023 passed by the Commissioner of CGST & Central Excise (Appeals), Jodhpur]

M/s. J.K. Cement Works **...Appellant**
(Unit of J.K. Cement Limited)
Nimbahera, District Chittorgarh,
Rajasthan - 312617

VERSUS

Commissioner of CGST & Central Excise,
Udaipur **...Respondent**
142B, Hiran Magri, Sector – 11,
Udaipur - 313002

AND

Excise Appeal No. 55756 of 2023 [SM]

[Arising out of Order-in-Appeal No. 283-84(AK)CE/JDR/2023 dated 11.04.2023 passed by the Commissioner of CGST & Central Excise (Appeals), Jodhpur]

M/s. J.K. Cement Works **...Appellant**
(Unit of J.K. Cement Limited)
Nimbahera, District Chittorgarh,
Rajasthan - 312617

VERSUS

Commissioner of CGST & Central Excise,
Udaipur **...Respondent**
142B, Hiran Magri, Sector – 11,
Udaipur - 313002

APPEARANCE:
Shri R.S. Sharma, Advocate for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

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

DATE OF HEARING: 07.10.2024
DATE OF DECISION: **06.02.2025**

FINAL ORDER No. 50290-50293/2025

DR. RACHNA GUPTA

The present order disposes of 4 appeals pertaining to the same appellant. Arising out of the common orders and involving the same issue of rejection of refund claim. The details of appeals are as follows:

S.NO.	Appeal No.	O-I-O	O-I-A	Refund claim
1.	E/55209/2023	08/2022 dated 15.09.2022	83/2023 dated 11.04.2023	Rs.3,51,873/- Dated 09.08.2022
2.	E/55757/2023	09/2022 dated 01.11.2022	283-84/2023 dated 12.09.2023	Rs.2,11,100/- Dated 10.10.2022
3.	E/55210/2023	07/2022 dated 15.09.2022	82/2023 dated 11.04.2023	Rs.2,50,695/- Dated 09.08.2022
4.	E/55756/2023	10/2022 dated 01.11.2022	283-84/2023 dated 12.09.2023	Rs.2,36,386/- Dated 10.10.2022

The facts in brief are as follows:

Present are the refund claims filed after two rounds of litigation. This Tribunal vide Final Order No. 521-540/2011 dated 04.07.2011 remanded the matter to Commissioner (Appeals) for quantifying the amount of credit disallowed. However, Tribunal allowed some amount of credit. In compliance of this order Commissioner (Appeals) passed the order dated 04.07.2018 quantifying the credit for such amount as equal to the amount of refund claim as mentioned above in respective appeal and also ordered the imposition of penalty. The said amount of penalty was paid, however, the order of Commissioner (Appeals) dated 04.07.2018 was challenged before this Tribunal. Vide the final order dated 06.07.2022, the Tribunal allowed the appeal, thereby holding appellant eligible for entire amount of credit i.e. respective amounts in each appeal (even the requantified amount).

1.1 Since the order of reversal of Cenvat credit has totally been set aside that the appellant filed the impugned refund claims as mentioned above. However, the original adjudicating authority in respective appeals has sanctioned the refund claims but not awarded the interest. Being aggrieved the appeal was filed before Commissioner (Appeals). Commissioner (Appeals) has sanctioned the refund claims, however, has not passed any order with respect to sanctioning of interest. Being aggrieved the appellant is before this Tribunal.

2. We have heard Shri R.S. Sharma, learned Advocate for the appellant and Shri Rohit Issar, learned Authorized Representative for the respondent.

3. Learned counsel for the appellant has mentioned that the final order of this Tribunal dated 06.07.2022 has held appellants entitled to consequential benefits in accordance with law. Hence, the refund claim filed pursuant to said order would have been sanctioned along with the interest as law permits for the amount of interest to be paid along with the amount of refund sanctioned. Learned Commissioner (Appeals) has denied the entitlement of appellant for interest for the reason that the Tribunal in the said final order has not issued specific order for sanctioning of interest to the appellant.

3.1 Learned counsel further impressed upon that the amount in question was deposited at the stage of investigation, hence it was very much in nature of Revenue deposit. The law with respect to the such deposits vis-à-vis entitlement of interest, is clear in favour of sanction of interest along with the sanctioned amount of refund. Learned counsel has relied upon the decision of this Tribunal in the case of **Parle Agro Pvt. Ltd. Vs. Commissioner of Central Excise, Noida reported as 2018 (360) ELT 1005 (Tri.All).** The decision of the Tribunal in the case of **Shahi Exports Ltd. Vs. Commissioner of C. Ex. & S.T., Gurgaon-I reported as 2022 (58) GSTL 367 (Tri.-Chan.)** has also been relied upon. It is mentioned that in appellant's own case decided by Delhi Bench of the Tribunal vide Final Order No. 51052 dated 02.03.2021, the interest at the rate of 12% per annum on the amount of sanctioned refund has been granted. The said decision has relied upon in the decision of Hon'ble Supreme Court in the case of **Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune reported as 2006 (196) ELT 257 (SC).**

3.2 Learned counsel also brought to the notice that final order of this Tribunal in their own case has been appealed before the Hon'ble High Court of Rajasthan at Jodhpur and vide the interim order dated 27.10.2021 interim relief has already been granted to the appellant to the extent of providing that the department shall release, subject to outcome of the appeal, 50% of the amount of interest as per the judgment of the Tribunal in favour of the respondent-assessee. Finally, it is impressed upon that present is not the case of unjust enrichment. With these submissions, learned counsel has prayed for setting aside the impugned Order-in-Appeal with a request to order sanctioning of interest at the rate of 12% on the amount of refund sanctioned from the date of deposit till the date of payment and to allow the appeal accordingly. Learned counsel relied upon the following decisions including the one in their own case for a different period:

(i) J.K. Cement Works Vs. Commissioner of Central Goods & Service Tax, Udaipur in Excise Appeal No. 51367, 52086 of 2019 vide Final Order No. 50590-50591/2022 dated 06.07.2022.

(ii) Parle Agro Pvt. Ltd. Vs. Commissioner of Central Goods & Service Tax, Noida in Excise Appeal No. 70628, 70674 of 2019 vide Final order No. 70180-70181/2021 dated 25.05.2021

(iii) J.K. Cement Works Vs. Commissioner of Central Excise, Central Goods and Service Tax, Udaipur in Excise Appeal No. 50479 of 2019 vide Final Order No. 51052/2021 dated 02.03.2021

4. While rebutting these submissions, learned Departmental Representative has mentioned that the amount of wrongly availed Cenvat credit, as alleged, was reversed by the appellant voluntarily after the issuance of the six show cause notices proposing the recovery of the said amount of Cenvat credit. Hence, it is a wrong submission on behalf of the appeallant that the amount in question was deposited at the stage of investigation. Resultantly, the amount in question cannot be called as the amount of revenue deposit. Admittedly, it is not an amount of mandatory pre-deposit in terms of Section 35F of Central Excise Act. It is also mentioned that in all the decisions as relied upon by the appellant, the amount in question was the amount under protest or was an amount of revenue deposit/or an amount of pre deposit. As already mentioned above, it is not the fact for the present case, hence, none of the case law relied upon by the appellant applies to the given set of facts and circumstances.

4.1 It is further impressed upon that the entitlement of interest on any amount of refund arises only after three months from the date of communication of the refund sanctioning order. Learned Departmental Representative further impressed upon that the refund was sanctioned under Section 11B of Central Excise Act for the entitlement of interest. It shall be Section 11BB which will be applicable, according to which the interest to the applicant shall be paid if and only if any amount ordered to be refunded in terms of Section 11B(2) of Central Excise Act is not refunded within three months from the date of receipt of application under Section 11B(1) of the Act and said interest shall in case has to be awarded, it shall be awarded at the rate as shall be fixed by notification in the official gazette passed by the Central Government.

4.2 Learned Departmental Representative has brought to the notice that the Central Government has fixed the rate of such interest to be paid at the rate of 6% of the amount refunded. With these submissions and impressing upon no infirmity in the order where appellant is held not entitled for interest, learned Departmental Representative has prayed for dismissal of all these appeals.

5. In rebuttal to these submissions, learned counsel has mentioned that any amount deposited even at the stage of adjudication, the same is held to be an amount of revenue deposit as has been held by **Hon'ble Madras High Court in the case of Commissioner of Central Excise Coimbatore Vs. M/s Pricol Ltd in CMA No. 3185 of 2008 decided on 12.02.2015.**

6. Having heard the rival contentions of the parties, perusing the record of all these appeals.

7. It is observed that the impugned refund has the history which relates back to the six show cause notices which proposed the reversal of the Cenvat credit availed by the appellant on the inputs used by the appellant in relation to the manufacture of the finished goods. The show cause notices were issued in the period September 2003 to April 2004. It is also an admitted fact that the total amount of Rs.13,20,352/- as was proposed to be reversed vide the show cause notices was got reversed by the appellant after the issuance of the said show cause notices. Though the appellant

has claimed that the deposit was under protest but the department has objected the same alleging that the reversal was made voluntarily by the appellant. Apparently and admittedly, there is no written protest ever raised by the appellant for reversing the said amount of credit.

8. It is also an apparent fact that initially the entire amount was held to have been wrongly availed credit. However, this Tribunal vide final order dated 04.07.2011 has partly allowed the availment of Cenvat credit and ordered reversal of the remaining directing the Commissioner (Appeals) to requantifying the amount of reversal of Cenvat credit. In view of those directions, the amount of the eligible Cenvat credit to the appellant was quantified. However, the Cenvat credit of such amount, for which the refund claim was filed was held to be ineligible Cenvat credit and thus was ordered to be reversed by the appellant and got reversed also. The said amounts stand appropriated by the adjudication order. These circumstances makes it apparently clear that the amount of Cenvat credit was reversed after it was proposed to be reversed. Hence I do not find it to be an amount deposited under protest nor there is any apparent protest on record. Also for the reason that the amount of credit reversed was the same amount as was proposed to be reversed vide the six show cause notices. This reversal to my opinion amounts to appropriation. Appropriation is the act of setting aside money for a specific purpose. The reversal of this amount by the appellant on his own post issuance of show cause notice proposing the said reversal is therefore nothing but the appropriation of the amount towards duty.

9. I observe that there is no provision in the excise act which deals with the refund of revenue deposit and so the rate of interest has not been prescribed in the Act. The Act deals with:

(i) the interest on delayed payment of duty under Section 11AA,

(ii) With interest on delayed refunds under Section 11B(2)

(iii) With interest on the amount collected in excess of duty under Section 11DD of Central Excise Act.

(iv) With the interest on delayed refund of amount deposited under Section 35F in terms of Section 35FF of Central Excise Act.

10. Thus there are only two provisions in the entire Act which talk about refund and the interest thereupon. Section 11 which talks about the recovery of duties not levied or not paid or short levied or short paid or erroneously refunded.

11. Section 35F which talks about the amount of pre deposit to be filed while challenging the order confirming duties which can be refunded if required consequent upon the order of the appellate authority along with the interest at such rate to be fixed by the Central Government vide a notification, however, for not below 5% per annum and not exceeding 36% per annum. Since the amount in question was not deposited for the purposes of filing appeal nor it is proved to have been deposited under protest, on the contrary it is observed to be an amount appropriated for the specific proposal of the six show cause notices about reversing the said amount. It cannot be called as the revenue deposit. The question of applicability of Section 35FF does not at all arise. Admittedly, present is not the case of the amount collected in excess of duty.

Resultantly, the only provision applicable in the given circumstances is Section 11BB. The said section reads as follows:

> ***"11-BB. Interest on delayed refunds.—***
>
> *If any duty ordered to be refunded under sub-section (2) of Section 11-B 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, [2][not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed [3][by the Central Government, by notification in the Official Gazette,]] on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:*
>
> *Provided that where any duty ordered to be refunded under sub-section (2) of Section 11-B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is 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.*
>
> *Explanation.--- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under sub-section (2) of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."*

12. The bare perusal of the provision reveals that the liability of interest on delayed refunds vis-à-vis amount of duty arises only when the amount is not refunded within three months from the date of receipt of the application/claim. Since admittedly the refund claim was sanctioned within three months from the date of respective application, the appellant is held not entitled to claim interest on the amount of refund.

13. Finally coming to the decisions relied upon by the appellant, I observe that in all the said decisions the amount in question was deposited at the stage of investigation i.e. prior the issuance of show cause notice. As already discussed above, the same is not the fact for the present case. Thought the Hon'ble Madras High Court in the case **M/s Pricol Ltd** (supra) has held that a consistent view is being taken by the courts that any amount which is deposited during the pendency of adjudication proceedings or investigation is in the nature of deposit made under protest but as already observed above, there is no evidence of the reversal of Cenval credit to have been made under protest rather the same is held to be an act appropriation on part of the appellant i.e. reversing the utilized amount of Cenvat credit for the reason that the appellant was alleged to not to be entitled for the said credit. In the given circumstances, the entire case laws as relied upon by the appellant is held not applicable to the present case. With the entire above discussion, the order under challenge is hereby upheld. Consequent thereto, all the four appeals are hereby dismissed.

[Order pronounced in the open court on **06.02.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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