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

Appeal No. E/3929/2006 – SM[BR] Date 01/12/2008

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

To :
C.C.E.RAIPUR
DHAMTARI ROAD, TIKRAPARA, RAIPUR.

C.C.E.RAIPUR Appellant

Vs

M/S BHARAT ALUMINIUM CO. LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1563 / 2008- **SM[BR]** dated 25.11.2008

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

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S BHARAT ALUMINIUM CO. LTD
   BALCO, KORBA (C. G.)
2. Adv. / Consult SHRI RAVI RAGHVAN ADV.
   N/V;-----------------------------

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-1
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16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 3929 of 2006-SM

(Arising out of Order-in-Appeal No. 80/RPR-I/2006 dated 18.05.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur).

DATE OF HEARING : 25.11.2008
DATE OF DECISION : 25.11.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982 ?.	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?	Yes
3.	Whether their Lordships wish to see the fair copy of the Order ?	Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

CCE, Raipur .... **Appellant**
(Rep by Sh. R.K. Verma, DR)

versus

M/s Bharat Aluminium Co. Ltd. .... **Respondent**
(Rep. by Sh. Ravi Raghvan, Adv.)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final **ORDER NO.** 1563/08-SM(DR)

PER JYOTI BALASUNDARAM :

The dispute in this case is limited to the question, as to whether interest is payable to the respondents herein after the expiry of three months from the date of filing of the application/claim for refund or after the expiry of three months from the date of the order of the Commissioner (Appeals) sanctioning claim of refund. The claim for refund was filed on 01.09.1998, while the Commissioner (Appeals) order is dated 12.08.2003. The Department contends that it is only after the expiry of three months from 12.08.2003, namely, 12.11.2003 that interest would be payable, while it is the case of the assessee that as per the finding in the impugned order, interest becomes payable to the them w.e.f. 01.12.1998 which is after the expiry of three months from the date of filing of the refund claim on 01.09.1998.

2. On hearing both sides, I find that this issue stands settled against the Revenue by the recent decision of the Hon'ble Bombay High Court in **Commissioner of Central Excise, Pune-III vs M/s Ballarpur Industries Ltd.,** 2008 (159) ECR 9 (Bom.), holding as under :

> **"5. Perusal of the above provision shows that Section 11BB of the Act comes into operation only after an order for refund has been made under Section 11B of the Act. It lays down that in case any duty paid is found refundable then if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under Section 11B of the Act, then interest on the amount is liable to be paid on expiry of period of three months from the date of receipt of the application. The Explanation appearing below Section 11BB of**

the Act shows that it introduces deeming fiction that where the order for refund of duty paid is made not by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but is made by the Commissioner (Appeals), Appellate Tribunal or by the Court, then for the purpose of this section the order made by the Commissioner (Appeals), Appellate Tribunal or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. Thus, the purpose of introducing explanation was to introduce deeming fiction that for the purpose of sub-section (2) of Section 11B if the order is made not by the Assistant Commissioner or Deputy Commissioner, but by the higher authorities, the order made by the higher authorities shall be deemed to be an order made by the Assistant Commissioner or Deputy Commissioner for the purpose of sub-section (2) of Section 11B of the Act. The explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Interest under Section 11BB of the Act becomes payable on expiry of period of three months from the date of the receipt of the application for refund if the amount is not refunded within three months from the date of receipt of the application. The learned Counsel appearing for respondent also relied in support of his submission on the judgments of various High Courts. However, in our opinion, the position of law is absolutely clear that the interest is payable under Section 11BB of the Act on expiry of period of three months from the date of receipt of the application and that Explanation appearing below Section 11BB of the Act does not have any effect or connection with the date from which interest under Section 11BB of the Act becomes payable. The only purpose served by the explanation, as observed above, is to introduce a deeming fiction which is relevant for the purpose of sub-section (2) of Section 11B of the Act. Thus, we do not find that any question of law arises, and therefore, the appeal is rejected and it is disposed of."

3. Following the ratio of the above decision, I uphold the finding of the Commissioner (Appeals) that interest is payable after

the expiry of three months from the date of filing of the claim for refund i.e interest is payable w.e.f. 01.12.1998 and reject the appeal.

(Dictated and pronounced in the open Court on the 25th day of November, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay