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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/3658/2006 – SM[BR] E/ MISC / 589 / 2008 –SM[BR] Date 11/08/2009

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR Appellant
Vs
M/S KOTHARI PRODUCTS LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 905 / 2009 –SM[BR]& M/ 171/2009 dated 29.7.2009 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 KOTHARI PRODUCTS LTD
   6&7, INDUSTRIAL ESTATE, FAZALGANJ, KALPI ROAD, KANPUR.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 29.7.2009

Miscellaneous Application No.589 of 2008 and Central Excise Appeal No.3658 of 2006

Arising out of the order in appeal No.373-CE/APPL/KNP/2006 dated 11.8.06 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

C.C.E., Kanpur .... Appellant

Vs.

M/s Kothari Products Ltd. .... Respondent

Appearance:

Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondent

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. 905/2009 SM(BR)
M-171/2009 SM(BR)

Per M. Veeraiyan:

Learned Advocate on instruction does not press for the preliminary objection. Accordingly, the Miscellaneous Application is disposed of.

2. This is an appeal by the Department against the order of Commissioner (Appeals) No. 373-CE/APPL/KNP/2006 dated 10.4.08/11.8.06.

3. Heard both sides.

4. The relevant facts, in brief, are as follows:

a) The appellants filed four refund claims dated 4.1.2000, 10.4.2000, 12.12.2000 and 28.8.2000 with the Department under the provisions of Rule 173-L of Central Excise Rules, 1944 totally amounting to Rs.41,98,105/-.

b) Four show cause notices dated 24.7.2000, 24.7.2000, 18.4.2001 and 21.11.2000 were issued to them proposing rejection of said refund claims which were rejected vide order numbers 09/Refund/DCK-III/2001 dated 28.2.2001, 34-35/Refund/DCK-III/2001 dated 15.6.2001 & 43/Refund/DCK-III/2001 dated 23.8.2001 respectively.

c) The Commissioner (Appeals) , Central Excise , Kanpur set aside the said orders vide order -in-appeal No.174-177/CE/APPL/KNP/05 dated 28.2.2005. Accordingly, the appellants requested for the refund of Rs.41,98,105/- along with interest thereon vide letter dated 28.2.2005.

d) The Assistant Commissioner, Central Excise, Kanpur III again issued a show cause notice dated 22.11.2005 proposing rejection of refund claims on different grounds, which was decided by him vide impugned order dated 13.3.2006 sanctioning the refund along with cheque dated 13.3.2006 (which was received by them on 5.4.2006) which was totally silent about interest aspect.

e) Commissioner (Appeals) vide impugned order allowed the appeal of the party and held that they are eligible for interest from the date immediately after expiry of three months from the date of receipt of such refund applications till the date of refund of such duty.

5. Learned SDR submits that these refund claims were filed under Rule 173 L and such refunds are eligible only after reversal of Cenvat credit taken on inputs used in processing of the returned goods. This has been held by the Tribunal in their own case relating to the earlier period in Final order Nos.367-368/2000-D dated 2.11.2000 in Appeal Nos.E/1488-89/2000-D. The Cenvat credit involved amounting to Rs.1,13,431/- was paid on 16.8.05. Refund was sanctioned on 13.6.06. Therefore, he submits that interest is payable only from 16.8.05 till the date the refund claim was actually given to the respondent on 13.3.2006

6. Learned Advocate for the respondent submits that what is envisaged in the order of the Tribunal cited supra is that Cenvat credit amount involved shall be reversed and paid back before the refund is sanctioned. The eligibility of interest for refund should be considered from the date immediately after expiry of three months from the date of receipt of refund claims. He also relies on the decision of the Hon'ble Rajasthan High Court in the case of J.K.Cement Works – 2004 (170) ELT 4 (Raj.) and the decision of the Larger Bench of the Tribunal in the case of Jayanta Glass Ltd. vs. C.C.E., Kolkata – 2004 (165) ELT 516 (Tri-LB).

7.1 I have carefully considered the submissions from both sides. There is no dispute that the applicant is eligible for the refund of Rs.41,98,105/-. The liability to interest after the expiry of three months from the date of filing refund claims is also not in dispute and the same has been settled.

7.2 In this connection, the relevant portions of the decision of the Hon'ble High Court of Rajasthan are reproduced below:

> ***"21. The perusal of Section 11B goes to show that it prescribed a period within which the amount of refund can be claimed by the applicant. It also prescribes three months from the date of application as the period within which such refund is to be paid. Consequence of not paying refund within three months of making such application under Section 11B is that the Revenue becomes liable to pay interest on amount of refund with effect from the expiry of three months from the date of application until date of actual payment. The liability to pay interest is not tagged with decision to pay interest but in case it is ultimately found to be payable liability is with effect from expiry of three months of the date of receipt of application required to be made under Section 11B(1). The rate of interest is to be prescribed by the Board and the interest is payable with effect from the date commencing from the expiry of three months from the date of receipt of such application till the refund of such duty.***
>
> ***32. This brings in the question whether in such circumstances the petitioner could lay claim to the interest for the period prior to the expiry of three months, from the date of order, dated 15-12-2002.***
>
> ***33 A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determination the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest,***

notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant.

34. If ultimately it is decided that notwithstanding the refund has become due as per final adjudication and amount is to go to the Consumer Welfare Fund it brings an end to the claim of the applicant whether to refund or interest thereon. However, ultimately if it is found that amount is not to go to the Consumer Welfare Fund but is to be refunded to the applicant, in such event merely because of the time taken in deciding the issue the applicant can not be deprived of the interest on delayed payment of refund which ought to have been paid by the authorities in the first instance within three months of the application for claiming refund."

7.3 The very same issue has been decided by the Larger Bench of the Tribunal in the case of Jayant Glass Ltd. holding that interest will be due from the date immediately after expiry of three months from the date of filing of refund claims.

8. The fact of the present case is slightly different from the cases of the normal refund claims. Admittedly, a sum of Rs.41,98,105/- was due to the respondent subject to payment of reversal of credit amounting to Rs.1,13,341/- which amount has been paid by the respondent only on 16.8.05. In the facts and circumstances of the case, to deny the interest for the entire amount of Rs.41,98,105/- till 16.8.05 as canvassed by the learned SDR is not justified . At the same time, allowing interest for the entire amount of Rs.41,98,105/- from the expiry of three months from the date of filing refund claims as claimed by the learned Advocate is also not justified. It will be just and proper to sanction interest on the amount of Rs.40,84,674/- (Rs.41,98,105/- minus Rs.1,13,431/-) till 15.8.05 and the interest for the entire amount of Rs.41,98,105/- from 16.8.05 till the date of sanction of the refund claims on 13.3.2006. Ordered accordingly.

9. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/