TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 15/12/2010

Appeal No. E/1986/2005 - EX[DB]

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

To :
M/S DHARAMPAL SATYAPAL LTD.

A-85,86,SECTOR-2,NOIDA

M/S DHARAMPAL SATYAPAL LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 821/ 2010 EX[DB]** dated 30-11-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.T. R. RUSTAGI, ADVOCATE
   SD-84, TOWER APARTMENTS, PITAMPURA, DELHI -34
3. C.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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:30.11.2010

Appeal No.E/1986 of 2005-Excise Branch

(Arising out of Order-in-Appeal No.34/CE/APPL/Noida/05 dated 22.03.2005 passed by the Commissioner of Central Excise, Noida).

For approval and signature:

Hon'ble Mr. Justice R.M. S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	Yes
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

M/s. Dharampal Satyapal Ltd. Appellant

Vs.

CCE, Noida Respondent

Appearance: Rep. by Shri T.R. Rustogi, Advocate for the appellant.
Rep. by Shri N. Anand, DR for the respondent/Deptt.

CORAM: **Hon'ble Mr. Justice R.M.S. Khandeparkar, President**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

FINAL Order No..821/10-Ex./Dated:30.11.2010

Per Justice Shri R.M.S. Khandeparkar:

Heard ld. Advocate for the appellants and DR for the respondent.

2. This appeal arises from the order dated 22nd March, 2005 passed by the Commissioner (Appeals), Noida. By the impugned order, the claim for interest on the refund of the amount, which was deposited pursuant to the order passed in the appellate proceedings arising against the order of adjudication has been denied on the ground that in terms of Section 11 BB, interest is payable on refund of duty amount and not on the amount paid as pre-deposit in compliance of the orders of CESTAT.

3. The ld. Advocate for the appellants drawing our attention to the decisions of the Apex Court in the matters of Kuil Fireworks Industries Vs. CCE reported in 1997 (95) ELT 3 (SC), Union of India Vs. Tata SSL Ltd. reported in 2007 (218) ELT 493 (SC) and of the Larger Bench of the Tribunal in the matter of Garlon Poly Fab Industries Ltd. Vs. CCE, Kanpur reported in 2003 (155) ELT 259 (Tribunal-LB) and Circular No.802/35/2004-CX dated 8.12.2004 issued by the Board submitted that the authorities below erred in rejecting the claim for the interest.

4. DR, on the other hand, submitted that in absence of specific provision in relation to the deposit made pursuant to the order in pre-

deposit proceedings, there is no scope to find fault with the impugned order.

5. The facts of the case as revealed from the records are that the Addl. Commissioner by his order dated 3rd July, 1996 confirmed the demand of duty against the appellants to the tune of Rs.15,51,418/-. The appeal carried against the same was dismissed by the Commissioner (Appeals) on 31.12.96. The matter was then carried in appeal to this Tribunal and by order dated 26.03.97 the Tribunal stayed the order passed by the lower authorities subject to deposit of the amount demanded under the order of the adjudicating authority. Since the appellants had already deposited Rs.4 Lakhs, the appellants deposited the balance amount of Rs.11,51,418/- on 17.05.97. The Tribunal disposed of the appeal filed on 19.01.98 by remanding the matter to the Commissioner (Appeals) for de novo decision. Accordingly, the Commissioner (Appeals) heard the matter and decided the same in favour of the appellants on 22.4.99. Since the order of the adjudicating authority consequently stood quashed and the amount deposited by the appellants was not re-paid to the appellants, they filed an application claiming refund of the amount on 10.09.99. The Dy. Commissioner by his order dated 4/12.09.2000 allowed the refund application for Rs.15,51,418/-. On 26.09.2000, the appellants requested the Dy. Commissioner to pay the interest on the refund amount. The said request was rejected by the Dy. Commissioner by its order dated

16.10.2000. The appeal carried against the same before the Commissioner (Appeals) came to be rejected by the impugned order dated 22.03.2005.

6. Section 11 BB reads thus:-

> "**Interest on delayed refunds.**— If any duty ordered to be refunded under sub-section (2) of Section 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 per cent] and not exceeding thirty per cent per annum as is for the time being fixed [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 11B 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."

7. Undoubtedly, the said provision of law speaks of interest on delay in refund of the duty amount. The deposit during the pendency of the appeal is evidently in terms of Section 35 F. Section 35 F reads thus:-

"**Section 35 F.** Deposit, pending appeal, of duty demanded or penalty levied – Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the [Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

[**Provided** further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.]"

8. Plain reading of Section 35 F would disclose that the amount which is required to be deposited during the pendency of the appeal is nothing but the duty amount, interest payable thereon and penalty levied. Being so, any amount deposited under Section 35 F would be for all purposes the duty amount within the meaning of the said expression under Section 11 BB also.

9. Consequently, while refunding the amount, the said provisions would apply and the party would be entitled for interest. The authorities below have not considered this aspect and have wrongfully refused the payment of interest.

10. The decisions sought to be relied upon, undoubtedly, disclose direction to pay the interest. However, none of those decisions deal with the issue as to whether the amount, which was deposited in terms of Section 35 F, if to be refunded, would be along with interest or not. In all those decisions, some directions were given to pay the interest while disposing the appeals. In any case, the above provisions of law comprised under Section 35 F read with Section 11 BB, the same are sufficient to disclose that in case of refund of such deposit, the claimant would be entitled for interest on such amount in accordance with the provisions of law.

11. Hence, the appeal succeeds. The impugned order is set aside and the respondents are directed to pay the interest on the actual amount in accordance with the provisions of law referred to above.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

Ckp.