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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/507 /2007 - EX[DB] Date 04/05/2011

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

To :
C.C.E. INDORE
POST BOX NO 10, MANIK BAGH PALACE, INDORE

C.C.E. INDORE Appellant

Vs

M/S MAN INDS. (INDIA) LTD. (ALUMINIUM DIVISION) Respondent

I am directed to transmit herewith a certified copy of **Final order No.382/ 2011 EX[DB]** dated 07-4-11 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 MAN INDS. (INDIA) LTD. (ALUMINIUM DIVISION)
PLOT NO 67-A, SECTOR- 1,
PITHAMPUR, DISTT.- DHAR (M.P.)

2. Adv. / Consult SH. S. YADAV, ADV, C/O
K. K. ANAND, ADV,
A-5, BASEMENT,
LAJPATNAGAR-III, N.DELHI-24

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8.Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT,

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision:7.4.2011

Central Excise Appeal No.507 of 2007

Arising out of the order in appeal No.IND-I/367/2006 dated 12.12.2006 passed by the Customs & Central Excise, Indore, (M.P.).

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 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. & C. Ex., Indore .. Appellant

Vs.

M/s Man Industries (India) Ltd. .. Respondents

Appearance:

Shri Nitin Anand, Authorised Departmental Representative (DR) for the Revenue
Shri S. Yadav, Advocate for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 382/2011-EX.

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and the Advocate for the respondents. This appeal arises from the order dated 12.12.2006 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has held that the respondents are entitled for interest on the refund amount with effect from27.5.1997 till the date of refund i.e. 20.1.2006. Earlier the adjudicating authority had refused to ~~pay~~ grant any interest on the refund amount.

2. The facts of the case relevant for the decision are that the respondents were engaged in the manufacture of aluminium profile, bars & rods, tubes & pipes etc. classifiable under Chapter 76 of the Central Excise Tariff Act, 1985 and had imported LDPE granules under DEEC (Duty Free) Scheme in the year 1985-86. The import has obviously fulfilled certain condition which could have been found not complied with and therefore, the Department insisted for payment of duty and accordingly, the respondents deposited an amount of Rs.25,69,245/- on 31.8.96 and a sum of Rs.3,81,617/- on 25.10.96. Subsequently, after fulfilling the export obligation in terms of the said Scheme, the respondents filed refund claim for Rs.27,09,506/- on 27.2.97. The adjudicating authority by its order dated 3.7.97 rejected the claim of the respondents on the ground that the product was imported at Bombay Port in violation of the condition of licence and therefore, the jurisdiction vests in the Excise authorities at Bombay Port and therefore, the demand for refund can be made before the said authority. Being aggrieved, the respondents preferred an appeal which was disposed of by order dated 12.3.99 of Commissioner (Appeals), Bhopal who set aside the order of the Assistant Commissioner of Customs and remanded the matter to decide the same in accordance with the provisions of law. Consequently, a show cause notice dated 3.6.99 came to be issued to the respondents on the ground that the respondents had diverted the imported goods in violation of the said Scheme under which the goods were imported and that the respondents had failed to pay the total duty amount payable in relation to the said goods. Though the matter was contested by the respondents, the adjudicating authority by its order dated 1.5.2000 rejected the claim on the ground that the amount involved in the matter was the subject matter of two show cause notices issued by the Commissioner of Customs, Nhava Sheva and Commissioner of Customs (Export Promotion), Mumbai and that the quantum of duty liability would be decided in those proceedings and, therefore, the refund claim was premature. Being aggrieved, the respondents again filed appeal before

the Commissioner (Appeals), Bhopal. Meanwhile, the respondents approached the Settlement Commission, Mumbai and in the proceeding before the Settlement Commission, the total duty liability of the respondents was accepted as Rs.4,80,737.40 + interest amounting to Rs.3,50,045/-. It was also decided that after adjusting the amount already paid, the respondents were required to pay the balance amount of Rs.1,71,375/- within 30 days. Taking into consideration the said order of the Settlement Commission dated 29.11.2004, the appeal filed by the respondents was disposed of by the Commissioner (Appeals), Bhopal on 24.12.2004 holding that in view of the findings of the Settlement Commission, the respondents would be entitled for refund but the details to be verified for granting correct amount of refund and therefore, the matter was remanded to the adjudicating authority to quantity the amount of refund. Consequent to the order passed by the Commissioner (Appeals), the respondents submitted the details of the refund claim to the Deputy Commissioner, Pithampur on 12.12.05 and 3.1.06. On remand of the matter, the Deputy Commissioner , Pithampur by its order dated 20.1.06 granted the refund amounting to Rs.26,00,815/-. However, no interest was paid to the respondents. Thereupon, the respondents under their letter dated 2.6.06 again requested for grant of interest on the refund of Rs.26,00,815/- for the period from 26.5.997 till 20.1.06. The Deputy Commissioner by his order dated 31.7.06 held that since the amount was sanctioned within three months from the date of the application dated 3.1.06 of the respondents, no interest was due payable. The said order was challenged by the respondents before the Commissioner (Appeals) which came to be allowed by his order dated 12.12.06 directing payment of interest from 27.5.97 instead of 26.5.97 as claimed by the respondents till the date of the refund i.e. 20.1.06.

3. In background of the above undisputed facts, the DR has sought to assail the impugned order while contending that the refund claim for all purposes having been made on 12.12.05 and 3.1.06 and the refund having been made on 26.1.06 considering the provisions of Section 11BB of the Central Excise Act, 1944, no interest could have been ordered to be paid by the Commissioner (Appeals).

According to the Department, since the duty liability having been determined in terms of the order of the Settlement Commission dated 29.11.04 and thereafter, in accordance with the direction issued by the Commissioner (Appeals) in his order dated 24.12.04, the respondents having approached the Department for refund claim with all the necessary details in that regard by 3.1.06 and the amount having been refunded on 20.1.06, there was no liability to pay any interest in the matter. Reliance is placed in the decision in the matter of **Indian Thermoplastics (P) Ltd. vs. C.C., Kolkata** reported in 2004 (164) ELT 156, **C.C.E., Hyderabad vs. I.T.C. Ltd.** reported in 2005 (179) ELT 15 (SC).

4. On the other hand, the learned Advocate for the respondents placing reliance in the decision in the matter of **Rama Vision Limited vs. C.C.E., Meerut** reported in 2004 (170) ELT 13 , **J.K. Cement Works vs. Asstt. Commissioner of Central Excise & Customs** reported in 2004 (170) ELT 4 (Raj.), **Plas Pack Industries vs. C.C.E., Ahmedabad III** reported in 2009 (243) ELT 741 and **Consolidated Photo & Finvest Ltd vs. Commissioner** reported in 2004 (168) ELT A 163 (SC) submitted that the refund claim was filed by the respondents on 27.2.97 and therefore, in view of non-refund of the amount within three months therefrom, the interest was rightly held as payable from 27.5.97 and hence the impugned order does not call for any interference. He further submitted that merely because the decision about the duty liability has been made subsequent to the application once it is clarified by the said decision that there was overpayment and certain amount of money belonging to the assessee was already with the Government, it would unjust to deny the interest to the respondents. Mere submission of further details in terms of the order dated 24.12.2004 would not result in filing of fresh application as such but the same would be in continuation of the earlier application. He also submitted that in view of the decision of the Supreme Court in **Consolidated Photo & Finvest Ltd.**, the decision of the Tribunal in **Indian Thermoplastics (P) Ltd.** cannot be held to be a good law.

5. As already seen above, the fact that in terms of the order dated 1.5.2000 passed by the adjudicating authority, the claim for refund was rejected on

the ground that it was premature and that claim can be entertained only after determination of the duty liability which was the subject matter of the decision by the Commissionerate at Mumbai pursuant to the two show cause notices issued by the same are not in dispute. Though the said order was sought to be challenged by the respondents, meanwhile, the respondents preferred to approach the Settlement Commission for finalization of the duty liability in relation to the goods in question and accordingly , the Settlement Commission decided the same under order dated 29.11.2004. The Commissioner (Appeals) while dealing with the appeal filed by the respondents against the order dated 1.5.2000 specifically observed that the Settlement Commission in its order had specifically observed that they were refraining from giving any order as to how the Revenue should deal with the deposit in excess of the amount settled by them, with a further observation that the respondent was free to pursue the cause of excess deposit at the appropriate forum refrained from setting aside any of the findings given by the adjudicating authority in its order dated 1.5.2000. Commissioner (Appeals) merely held that in terms of the finding of the Settlement Commission in its final order, the respondents would be entitled for refund but the details were required to be verified to ascertain the correct amount refundable and for that purpose, direction was issued to the adjudicating authority. It is undisputed fact that the respondents did not challenge the said order. There are no cross-objections filed by the respondents in the present appeal. Being so, the finding which was arrived at by the adjudicating authority in its order dated 1.5.2000 regarding the fact that respondent's claim dated 27.2.97 was premature has attained finality for all purposes.

6. Apart from the above fact, it is also matter of record that pursuant to the order dated 24.12.2004 by the Commissioner (Appeals), in terms of the said order which had directed appropriate verification of the necessary details to ascertain the quantum of refund, the respondents submitted the necessary details by 3.1.2006.

7. The third aspect of the matter is that the respondent himself referred the matter to the Settlement Commission for determining the duty liability. Accordingly, the same was determined by the Settlement Commission on 29.11.04 and the same was accepted by the respondents.

8. The above three facts clearly reveal that the respondents did not react against the finding of the authority that his refund claim under the application dated 27.2.07 was premature till 29.11.06 as the quantum of duty liability of the respondents was not determined. The required details for the refund claim were submitted by the respondents by 3.1.2006 and consequently, the refund was made on 20.1.06. Considering the provisions of Section 11 BB of the said Act as rightly pointed out by the learned DR, there is no scope for payment of any interest in the above facts. The Commissioner (Appeals) had not considered this aspect in the impugned order at all.

9. The decision of the Tribunal in **Rama Vision Limited** case was in a totally different set off facts. That was on the point that the law requires the interest to be paid from the date immediately after expiry of three months from the date of receipt of the application till the date of refund. In the case in hand, since the original application was already declared as premature and that finding has attained finality and the quantum for refund having been claimed by the respondents in terms of the order dated 24.12.2004 by filing of details by 3.1.2006, the refund having been made on 20.1.06, it was within the period of three months from the date of application and hence no interest was payable.

10. In **J.K. Cement Works** case, the application for refund was filed on 3rd January and 21st April, 1989, both the applications were pending being involved in the long drawn litigation and in that context, the Rajasthan High Court had made various observations bearing in mind the provisions of Sections 11B and 11BB of the said Act. Apparently that was in peculiar facts and circumstances of the case.

11. **Plas Pack Industries** case is essentially on the issue as to whether the interest was payable in relation to the amount which was compelled to be paid towards duty inspite of the fact that the assessee had sufficient modvat credit in its account which could have been utilized towards payment of duty.

12. The order passed in **Consolidated Photo & Finvest Ltd.** case is merely for issuance of notice and directing the matter to be tagged with SLP. Such an order does not amount to stay of the order passed by the lower authority.

13. In the facts and circumstances of the case as discussed above, we find that the Commissioner (Appeals) could not have directed payment of interest and to that extent, the impugned order is not sustainable and is liable to be quashed and is set aside. Accordingly, the appeal succeeds. The impugned order directing the payment of any interest is hereby quashed and set aside.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/