IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 1.5.2017

Appeal No. E/2126/2008-SM

(Arising out of Order-in-Appeal No. 108/BPL/08 dated 24th July 2008 passed by the Commissioner of Central Excise (Appeals), Bhopal)

M/s Rewa Fan Industries — Appellant

Vs.

CCE, Bhopal — Respondent

Appearance

Shri Rahul Tangri, C.S. - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53177/2017

Per Ashok K. Arya :

M/s Rewa Fan Industries is in appeal against the Order-in-Appeal No. 108/2008 dated 24th July, 2008 whereunder the claim of interest on refund of pre-deposit made pursuant to the Stay Order No. 371-37592-A dated 27.8.1992 has been denied.

2. The brief facts are that :

(i) On 8.9.1989, the department issued Show Cause Notice to the assessee appellant for determination of the assessable value. The said show cause notice was confirmed vide Order-in-Original No.

7/1992 dated 22.4.1992 passed by Collector, Raipur confirming the demand of Rs.11,85,009/-.

(ii) The appellant assessee filed appeal against the Order-in-Original dated. 22.4.1992 before the Tribunal. The Tribunal vide its Stay order dated 27.8.1992 directed the appellant to deposit Rs. 7 lakhs as pre-deposit. This direction of pre-deposit of Rs. 7 lakhs was complied with by the assessee appellant.

(iii) The Tribunal vide Final Order No. 489-493/1998-A dated 27.3.1998 remanded the matter back to the adjudicating authority for adjudication of the case after receiving reply to the show cause notice and thereafter granting opportunity of personal hearing to the appellant.

(iv) The appellant assessee claims to have made a request vide their letter dated 1.5.1998 for refund of pre-deposit of Rs. 7 lakhs to the department, as the earlier adjudication order was set aside and matter remanded by the Tribunal vide its order dated 27.3.1998; no confirmed demand being there against the appellant assessee.

(v) The Additional Commissioner, Bhopal consequently after remand from Tribunal re-adjudicated the matter vide order No. 3/2005 dated 18.2.2005 confirming the demand of Rs.11,85,009/-.

(vi) The appellant went in appeal against Order No. 3/2015 dated 18.2.2005 before Commissioner (Appeals), Bhopal, who passed Order-in-Appeal No. 35-39/2006 dated 25.1.2006 and gave certain findings for respective period of Jan. 1986 to August, 1987 and Sept. 1987 to Nov. 1988, and ordered for quantification of demand based on the said findings of Commissioner (Appeals). This Order-in-Appeal also imposes a penalty of Rs.50,000/- on the appellant.

(vii) The appellant on 28.9.2006 quantified the demand in terms of Order-in-Original dated 25.1.2006, which came to Rs.4,77,242.50. After taking account of the penalty of Rs.50,000/- imposed by Order-in-Appeal dated 25.1.2006 and of the requantified demand of Rs. 4,77,242.50, the deduction was made from the pre-deposit of Rs. 7 lakhs and appellant quantified its refund amount as Rs.1,72,757.50, which was sanctioned vide Order-in-Original No. 3/2006 dated 15.1.2007. However, no interest was allowed on delayed sanction of refund.

(viii) The appellant's prayer is that they be allowed interest on the pre-deposit of Rs. 7 lakhs from the day of expiry of three months period from the day, when Tribunal had remanded the matter to the adjudicating authority for fresh adjudication. The Tribunal passed said order on 27.3.1998. The appellant is requesting interest from the day of expiry of three months of Tribunal's order; three months period expired on 26.6.1990, thus appellant pleads to be paid interest on delayed payment.

3. With above background, both sides represented by ld. Counsels, Shri Rahul Tangri and Shri G.R. Singh have been heard.

4. The ld. Counsel for the department all along vehemently submits that demand lies against the assessee from the date of Show Cause Notice and it cannot be said that demand is from the day when it was confirmed by the adjudicating authority or Tribunal. Revenue also argues that there is no proof that assessee asked for the refund through a letter dated 1.5.1998 as there is no record in the department and no proof of its despatch with the assessee. Revenue also submits that Tribunal did not give any direction for refund of pre-deposit of Rs. 7 lakhs and when matter was pending for adjudication there is no question of refund.

5. Ld. Counsel for the appellant refers to department's Circular No. 275/37/2K-CX-8A dated 2.1.2002 and another Circular No. 802/35/2004-CX dated 8.12.2004 which is on the subject of return of deposits made in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962.

6. After perusing the facts on record and submissions of both the sides, it appears that the assessee appellant is eligible for the interest on the delayed refund by the department as per instructions/clarifications issued by CBEC and the decisions of higher judicial fora.

6.1 In Circular No. 275/37/2K-CX-8A dated 2.1.2002 (supra) it is observed that:

> *"The issue relating to refund of pre-deposit made during the pendency of appeal was discussed in the Board Meeting. It was decided that since the practice in the Department had all along been to consider such deposits as other than duty, such deposits should be returned in the event the appellant succeeds in appeal or the matter is remanded for fresh adjudication."*
>
> *2....................*
>
> *3. In order to attain uniformity and to regulate such refunds it is clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon. A simple letter from the person who has made order-in-appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank*

guarantees executed in lieu of cash deposits shall also be returned."

6.2 Further Circular No. 802/35/2004-CX dated 8.12.2004 (supra) observes as under:

> *"2. As we are all aware the CESTAT has in a number of such cases awarded interest on pre-deposits where its orders have not been implemented and the Department had challenged this and filed Civil Appeals in the Supreme Court.*
>
> *3. the Board has noted the observations of the Hon'ble Supreme Court in its order dated 21.9.2004 and has decided that pre-deposits shall be returned within a period of three months of the disposal of the appeals in the assessee's favour."*

6.3 The Hon'ble Delhi High Court in the case of *Voltas Ltd. Vs. Union of India* – 1999 (112) ELT 34 (Del.) observes as under:

> **"7.** It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under which the petitioner was required to deposit the amount of Rs. 50 lakhs speaks of `deposit pending appeal'. It is clear that the amount so deposited remains a deposit pending appeal and is thereafter available for appropriation or disbursal consistently with the final order maintaining or setting aside the order of adjudication.
>
> **8.** In this case, the matter has been remanded inasmuch as the Tribunal was of the opinion that the adjudication was not satisfactory and it required a fresh application of mind. In our opinion, once the order of adjudication was set aside, the Tribunal could not have ordered the amount of pre-deposit to be retained awaiting the order of adjudication. There is no provision in the law requiring certain amount to be retained as a pre-deposit pending finalisation of

the adjudication proceedings. As the amount is being withheld without any authority of law, it is liable to be refunded.

6.4 The Hon'ble Delhi High Court in the case of *Nelco Ltd. Vs. Union of India* – 2002 (144) ELT 56 (Bom.) held as under:

> "**5.** We are, therefore, of the view that from 24th January, 1997 there was no justification for the Respondents to hold on to the amount of Rupees Twenty lakhs deposit under Section 35-F of the Act as this amount ought to have been returned to the Petitioner the day the Appeal was disposed of by the authority. In our judgment, a deposit made under Section 35-F of the Act is liable to be adjusted towards the claim for duty, in case the Appeal fails and it needs to be returned to the Appellant, in case the Appeal succeeds, whether fully or partly. In any event, looking at the facts and circumstances of the present case, it appears to us that the Respondents were wrong throughout. They proceeded to demand duty from the Petitioner in a clearly time barred case and because the Department took a wrong view of the matter; we see no reason why the Petitioner should be made to suffer loss of interest on the large amount of Rupees Twenty lakhs for a period of almost three years and more.
>
> **6.** Mr. Jetley made an effort to persuade us that the consequence of the CEGAT's order was that the Petitioner would continue to be liable for the duty demanded initially and that the deposit was legitimately and rightfully withheld by the Respondents. We are unable to accept this contention. The CEGAT's order dated 24th January, 1997 remands the matter for re-adjudication by the adjudicating authority. In other words, the parties were put back to the situation of a show cause notice against the Petitioner being adjudicated by the authority. Mr. Jetley fairly conceded that there is no provision in the Act which requires deposit of any amount at the stage of adjudication and that the only provision which requires deposit is Section 35F of the Act after the adjudication has quantified the liability towards duty. If these are the circumstances, then we

> see no reason how the Respondents were entitled to hold on to the money merely because the adjudication was proceeding on the original show cause notice, that too on demands which were hopelessly time barred, as subsequently pointed out by the Supreme Court."

6.5 In the light of contents of CBEC circulars referred above and the decisions (supra) of Hon'ble Delhi High Court and Bombay High Court, it is held that the appellant is entitled to the interest from the day when three-month period expires from the day of Tribunal's order dated 27.3.1998. The Revenue's submission that no proof regarding application for refund submitted by the assessee is not relevant for the present facts when CBEC in their circular makes a mention that refund in case of pre-deposit is to be made without insisting upon refund applications under Section 11B(1) of Central Excise Act within period of three months from the disposal of the appeal. Further, in this regard Tribunal has given decision in the case of *Ispat Traders Vs. CCE, Jamnagar* – 2011 (263) ELT 305 (Tri.-Ahmd.), where observations have been made as under:

> **"21.** The decisions cited by the learned advocate before me and discussed above and the circulars issued by the Board show clearly that whether the amount was deposited during investigation or paid subsequent to the order confirming the demand or paid as a result of direction of the Tribunal/Court, is required to be refunded with interest at 12% to the appellant when the issue is decided in their favour. Further it is also clear from the precedent decisions that even when a case is remanded to the original adjudicating authority, the amount deposited is required to be refunded.

> **22.** Applying the precedent decisions and the circulars issued by the Board to the facts of this case, it becomes quite clear that as contended by the learned advocate for the appellant, they became eligible for refund of Rs. 4,71,447/- on 20-8-96 **and this amount was to be refunded *suo-motu* or** on a letter filed by the appellant. In this case also appellants have submitted that they have submitted a letter to the Assistant Commissioner to make payment on 9-7-96. Therefore the decision of the lower authorities that appellant is not eligible for refund till the issue was finally decided by the Assistant Commissioner by his order dated 30-6-09 is unsustainable."
>
> (Emphasis supplied)

7. In the light of above discussions and the decisions (supra), the impugned order is set aside and the appeal allowed with consequential relief to the appellant.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM