

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Excise Appeal Nos. E/53148/2018 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-225-APP-18-19 dated 16/07/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Ujjain]

Caparo Engineering India Ltd ...Appellant
Vs.
CGST, C.C. & C.E., Ujjain ...Respondent

Excise Appeal Nos. E/53149/2018 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-224-APP-18-19 dated 16/07/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Ujjain]

Caparo Engineering India Ltd ...Appellant
Vs.
CGST, C.C. & C.E., Ujjain ...Respondent

Present for the Appellant : Mr. Manish Saharan, Advocate

Present for the Respondent: Ms. Tamana Alam &
Mr. K. Poddar, DRs

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 06.12.2018

FINAL ORDER NO. 53399-53400 / 2018

PER: RACHNA GUPTA

Present order disposes of two Appeals for the issue being common. The appellant herein initially pays an adjudication proposing the demand of Central Excise duty of Rs. 74,89,162/- which was confirmed vide the Order-in-Original dated 22.09.2009 alongwith the interest and the penalties. However when the matter was appealed before this Tribunal, vide stay Order dated 28.04.2011, appellant was directed to deposit the entire demand of the aforesaid duty. In a writ petition No. 5314/2011 challenging the said stay order before the Hon'ble High Court of Madhya Pradesh,

Indore, this Tribunal vide Order dated 22.11.2011 was directed to decide the Application for stay dispensing with the requirements of pre-deposit. Subsequently, vide Order dated 05.12.2012, to the Miscellaneous Application Tribunal directed the appellant to make the pre-deposit of Rs. 40 lakhs within 4 weeks of the said Order. Further, vide Final Order of this Tribunal dated 24.01.2017, the Appeal against the recovery of aforesaid Central Excise duty was allowed in favour of the appellant thereby setting aside the adjudicating order of Commissioner, Indore dated 22.09.2009. It is thereafter that an application to seek the refund of the said pre-deposit amount of Rs. 40,00,000/- was moved by the appellant on 15.03.2017. The refund claim was sanctioned on 03.04.2018. However, the sanctioning thereof being beyond three months the interest at the rate of 12% i.e. to an amount of Rs. 4,64,219/- with effect from 24.04.2017 to 11.04.2018 was not granted on the sanctioned refund amount of Rs. 40 lakhs. Being aggrieved the appellant is before this Tribunal.

2. I have heard Mr. Manish Saharan, Ld. Advocate for the appellant and Ms. Tamana Alam, Ld DR for the Department.

3. Ld. Counsel for appellant has paid reliance upon Circular No. 802/35/2004 dated 08.12.2004 impressing upon that it is mandate upon the Department that in case the refund is not sanctioned within three months the Department is liable to sanction the same alongwith the interest. The statutory provision i.e. Section 11B of the Customs Act is also emphasised. It is submitted that grounds of rejecting the contention praying for interest alongwith the amount of refund has been rejected on unreasonable grounds as that of the want of the copy of the Final Order of this Tribunal. It is submitted

that irrespective the appellant himself provided the copy as demanded on 04.01.2018 that the same was available with the Department. Otherwise also, the Department had to ask for the deficiency, if any, within two days thereof. Decision of the Hon'ble Apex Court in the case **Union of India Vs. Hamdard (WAQF) Laboratories 2016 (333) E.L.T. 193 (S.C.)** has been impressed upon. Finally praying for date of application to be considered as 15.03.2018, the Appeal in hand is prayed to be allowed.

4. While rebutting these arguments it is submitted by the Department that though the application for refund was filed on 15.03.2017 but it was an incomplete application for want of documents as that of the copy of Final Order of this Tribunal entitling the appellant for refund of his pre-deposit amount. In addition, the appellant was also required to furnish the cenvat credit details alongwith the said application. These copies were also required to be the self attested copies. It is submitted that since the appellant provided the said requisite copies only on 04.01.2018 and the refund claim has been sanctioned on 03.04.2018, same is well within the stipulated time limit of three months as prescribed by law. Explanation in custom refund application (from Regulation 1995) is being impressed upon wherein it has been clarified that for the purpose of payment of interest under Section 27A of the Act the application shall be deemed to have been received on the date on which a complete application as acknowledged by the proper officer has been made. Finally justifying the Order of Commissioner(Appeals) bearing No. 1492 dated 16.07.2018 Appeal in hand is prayed to be dismissed.

5. After hearing both the parties, the only question to be adjudicated herein is as to whether the date of refund application as required in Section 11B of the Customs Act has to be the date of application on which it has been filed or it has to be the date on which the deficiencies in the application got corrected. For the purpose, Section 11BB is relevant to be looked into, it reads as follows:

"11BB. 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 percent and not exceeding thirty percent 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:"

It makes it clear when even read with Section 11BB of Central Excise Act that for the payment of interest after three months from the date of receipt of refund application, the applicant shall be entitled for the interest at the rate as prescribed. The provision is nowhere expressing about "application" to be called so only in case it is supported by the requisite documents. The law has been settled that the fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision. There is nothing to be read in or nothing to be implied and there is no room for any intentment as it was held by Hon'ble Apex Court in the case **Ajmera Housing Corporation and other Vs. Commissioner of Income Tax 2010 (8) SCC 739**. If at this stage, the plea of Department is looked into still the deficiency of application does not entitle the Department to get an extension of the period of 3 months as has been statutorily provided. Further, there is a Notification as impressed upon by the appellant. Perusal thereof shows that it is a clarificatory decision specifically with respect to the refund of pre-

deposit requiring such pre-deposits to be made within three months from the date of the Tribunal Orders. As mentioned in para 4 of the Circular, the word used therein is that such pre-deposit must be returned within three months rather from the date of the Order passed by the appellate Tribunal. The date of the said Order is 24.01.2017. The Department was well representing before the Tribunal for the said Appeal.

6. It is also apparent from record that the deficiency, whatever, noticed in the application was informed to the applicant after 15 days. It is Department's acknowledged case that the application was filed on 15.03.2017 and the copy of the Final Order was asked from the applicant vide the Department's letter dated 30.03.2017. The Hon'ble Apex Court in the case of Hamdard (WAQF) Laboratories (supra) has clarified that it is obligatory on the part of the revenue to inform deficiencies and defects in the refund application within two days of the receipt thereof. To my opinion, the statute is not making any distinction in the date of receipt of application from that of the receipt of the application complete in all respect. The explanation as relied upon by Commissioner(Appeals) of some Custom Refund Regulations cannot supersede the statute and the mandate thereof in the Section 11B and 11BB of the Central Excise Act, 1944. In view of the entire above discussion, the Order in hand is set aside; Appeal stands allowed. Consequential benefits to follow.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.