# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

**Excise Appeal No. 52366 of 2018 [SM]**

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-527-17-18 dated 22.03.2018 passed by the Commissioner (Appeals), Central Excise & Custom, Raipur]

**M/s.Amarnath Ispat Pvt. Ltd.** **...Appellant**
Ring Road No.2, Village Tendua Hirapur,
Raipur (C.G.)

*VERSUS*

**Commissioner, Central Excise & Customs**
**Raipur** **...Respondent**
Tikrapara, Raipur (C.G.)

**APPEARANCE:**

None appeared for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

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

**FINAL ORDER No.** 51184/2019

DATE OF HEARING : 02.09.2019
DATE OF DECISION: 02.09.2019

**RACHNA GUPTA**

None is present for the appellant today. However, there is a letter, as received from the appellant, dated 22nd January, 2019 on record. Perusal thereof reflects that the appellant has expressed his inability to attend the personal hearing. While annexing the written submission to the aforesaid letter appellant has requested for the disposal of the appeal on merits, granting exemption to the personal appearance of the appellants.

2. In view thereof ld. Departmental Representative has been heard about the impugned appeal and the appeal is decided as follows:-

2.1 The appellant herein is engaged in manufacture of excisable goods. On 4th April 2017 a refund claim of Rs.10,00,000/-was filed by the appellant under the provisions of Section 35 F of Central Excise Act, 1944 (CEA- 1944). The said refund relates to a demand, which was confirmed vide Order-in-Original No.79/2009 dated 30th November, 2009. While filing the appeal against the said order that a pre-deposit of Rs.10,00,000/- vide TR – 6 challan No.CEX/010902 dated 14.02.2011 was deposited. Since the aforesaid appeal was allowed by this Tribunal vide Final Order No.A/54875 dated 2nd November, 2016 that the aforesaid refund was filed. The said refund has been sanctioned vide the order of Assistant Commissioner bearing No.14/2017 dated 31st July, 2017, however, without any interest. Being aggrieved, the impugned appeal has been filed impressing upon Section 35 FF of CEA, 1944.

3. Ld. D.R. while justifying the order has impressed upon para 7 thereof wherein the refund sanctioned is mentioned to have been finalized on 26th May, 2017 i.e. within three months of the filing of refund claim. Impressing upon no infirmity in the order, the order is prayed to be confirmed and appeal is prayed to be dismissed.

4. In view of the above, I observe and hold as follows:-

4.1 Admittedly and apparently the refund claim for Rs. 10,00,000/- (Pre-deposit) was filed by the appellant on 4th July, 2017. Perusal of record shows that the said refund was sanctioned by order of Assistant Commissioner dated 31st July, 2017. Apparently, the refund was sanctioned beyond 3 months of the application. Section 35 F and 35FF as being relevant for the purpose, is reproduced herewith:-

> ***SECTION 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.*** —
>
> *The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal —*
>
> *(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the [Principal Commissioner of Central Excise or Commissioner of Central Excise];*
>
> *(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
>
> *(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against :*
>
> ***Provided*** *that the amount required to be deposited under this section shall not exceed rupees ten crores :*
>
> ***Provided*** *further that the provisions of this section shall not apply to the stay applications and appeals pending before*

*any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.*

***Explanation**. — For the purposes of this section "duty demanded" shall include, —*

*(i) amount determined under section 11D;*

*(ii) amount of erroneous Cenvat credit taken;*

*(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.*

***"Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F. -***

*Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."*

5. The bare perusal makes it clear that where any pre-deposit amount is paid in accordance of Section 35F, it is Section 35FF which is applicable with effect from 06.08.2014 by virtue of the amendment in Section 35F brought by the Finance Act (2) of 2014. No doubt the pre-deposit in the present case was made before the said amendment but the application praying for refund thereof is post amendment i.e. on 04.04.2017. The order of sanctioning the

refund was passed on 31.07.2017. Hence, the amended provision shall squarely cover the present case of refund. It is clear from the observation, as above, that the refund got sanctioned beyond three months, the findings in para 7 of the order are observed as erroneous. The appellant, accordingly, is held entitled for the interest on the impugned refund amount at such rate as is mentioned in Section 35F. Order under challenge is accordingly set aside. Appeal stands allowed.

[Dictated and pronounced in the open Court]

**(RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

Anita