CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH – COURT NO – I

Service Tax Appeal No. 30885 of 2018

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-026-18-19), dated 27.04.2018 passed by Commissioner of Central Excise & Customs (Appeals), Visakhapatnam)

M/s PIYUSH ENTERPRISES
C/o K Prasada Rao,
D.No. 10-148-2A,
Plot No. 213, Visalkshinagar,
Visakhapatnam 530043 **Appellant**

VERSUS

Commissioner of Central Excise.
3rd Floor, Central Excise Building, Port Area,
Visakhapatnam **Respondent**

Appearance

Shri N.V. Ramana Rao, Advocate for the Appellant.
Shri P. S Reddy Authorised Representative for the Respondent.

CORAM: HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.30450/2019

DATE OF HEARING: 04.04.2019
DATE OF DECISION: 04.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

Heard both sides and perused the records. The facts of the case in brief are that the appellant had submitted an application on 31.07.2014 seeking refund of Rs 13,01,727/- of service tax paid by them which was rejected by the Original Authority as well as by the First Appellate Authority. On an appeal, CESTAT vide Final Order No. A/30425-30428/2017 dated 22.03.2017 ruled in favour of the appellant and held that they were entitled to refund. While consequently sanctioning the refund, the lower authority has not paid them interest on refund under Section 11BB. Aggrieved, the appellant appealed before the First Appellate Authority who, vide the impugned order, rejected the appeal holding that since the refund was paid within three months from the date of order passed by the Tribunal, no interest is payable. Hence this appeal.

2. Section 11 BB was introduced by Finance Act 1995 in the Central Excise Act 1944. It has also been made applicable to service tax by Section 83 of the Finance Act 1994. According to this Section, 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, the applicant shall be paid interest.

3. The explanation to this section states that where any order of refund is made by Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court then such order shall be deemed to be an order passed under Sub-section -2 of Section 11B.

4. In the impugned order, Commissioner (Appeals) held that since the Final Order was passed by the CESTAT sanctioning refund, it should be treated as order under Section 11B(2). Three months has to be reckoned from this date and not from the date of application. This interpretation is not correct. Section 11B (1) deals with an application being made by any person claiming refund of duty while Section 11B(2) deals with sanction of refund made in pursuance of the application. Section 11BB requires the refund to be made within "three months from the date of receipt of application under Section 11B(1)" and not within three months from the date of order under Section 11B(2). Therefore, refund has to be paid within three months from the date of application not within three months from the date of sanction of refund as held by the 1st Appellate Authority. In

view of the above, I hold that appellant is entitled to interest after three months from the date of his application for refund.

5. Appeal is allowed and the impugned order is set aside.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Neela reddy