IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.91 of 2009

(Arising out of Order-in-Appeal No.13/Kol.IV/2008 dated 20.10.2008 passed by Commissioner (Appeals) of Central Excise, Kolkata-IV)

M/s Hindustan Motors Ltd.
Birla Building, 10th Floor, 9/1, R.N.Mukherjee Road, Kolkata-700001

Applicant

VERSUS

CCEx., Kolkata IV
15/1 Strand Road, Kolkata 700001

Respondent

APPERANCE :

Ms. Rajashree Sinha Roy, Advocate for the Appellant

Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

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

FINAL ORDER NO.76846/2019

DATE OF HEARING : 26.07.2019
DATE OF DECISION : 26.07.2019

PER P.VENKATA SUBBA RAO :

This appeal is filed against Order-in-Appeal No.13/Kol.IV/2008 dated 20.10.2008.

2. This is second round of litigation after the matter was once remanded by this Tribunal to the original adjudicating authority to calculate the quantum of interest on refund to be paid to the appellant.

3. After hearing both sides and perusing the records, we find that the issue, which falls for consideration, is in a narrow compass as the remaining issues have already been settled.

4. The appellant is engaged in the manufacture of motor vehicles, which were eligible for exemption under a Notification, if they are registered as Taxis. Since the registration of the vehicles, takes place much after the manufacture and sales are completed, the exemption is available by way of refund on production of the evidence that the vehicles have been registered as taxis. They have claimed the refund, which was sanctioned to the appellant, but with delay. Section 11BB of the Central Excise Act,1944, was introduced on 26.05.1995 providing for payment of interest on delayed refunds. The present dispute pertains to eligibility of interest to the appellant for the claim filed prior to 26.05.1995, which has been denied to them by the Department. The appellant claimed interest on refund filed prior to 26.05.1995 also while the Department denied the same.

5. A plain reading of Section 11BB is as follows :

> "***Interest on delayed SECTION 11BB. 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 per cent and not exceeding thirty per cent 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 :*
>
> ***Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant***

interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. *- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."*

6. As can be seen in respect of refund claims, filed prior to 26.05.1995, the claimant is entitled to interest w.e.f. 25.08.1995 i.e. three months after Section 11BB had received presidential assent.

7. In view of the clear legal position, we find that the appellant is entitled to interest only from 25.08.1995 till the date of payment of refund and not before that date.

8. Appeal is allowed as above with consequential relief to the appellant.

(Operative part of the order was pronounced in the open court)

Sd/

(P. K. CHOUDHARY)
Member (Judicial)

Sd/

(P.V.SUBBA RAO)
Member (Technical)

Mm/vrg