IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/86190/2017

(Arising out of Order-in-Appeal No. SK/67/TH-I passed by the Commissioner of Central Excise (Appeals) Mumbai-I)

Commissioner of Central Excise, Thane-I : **Appellant**

VS

M/s. Sharda Synthetics Pvt. Ltd. : **Respondent**

Appearance

Shri Ajay Kumar, Addl . Commr. (A.R.) for Appellant

Shri Vipin Jain, Advocate for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 15/02/2018
Date of pronouncement: 11/05/2018

ORDER NO. A/86429/2018

The facts of the case are that appellant had filed civil writ petition No. 2447/1990 with Hon'ble Delhi High Court challenging levy of additional duty of excise(goods of special importance) on the goods manufactured and cleared from their factory. The Hon'ble Court passed interim order directing respondent to pay 50% of the disputed duty on clearances and to furnish bank guarantee for the remaining suit. In terms of interim order the respondent during the period August, 1990 to July, 1990 had cleared the goods by paying 50% of the disputed duty and furnished bank guarantee against remaining 50% of total amounting to

Rs.35,44,615/-. By the order dated 9.7.1991 Hon'ble High court dismissed the petition with a direction to pay balance amount of 50% of disputed duty along with interest @ 17.5%. The respondent filed Misc. Civil Appeal, meanwhile the respondent approached the court of Hon'ble Civil judge for an order to restrain the department from encashing the bank guarantee. Ld. Civil judge restrained the department from encashing the bank guarantee till excise duty was assessed, as per the Hon'ble Court judgment in case of Ujjagar Print or final disposal of civil suit. Department filed writ petition with Hon'ble Bombay high court against the order of the Ld. Civil judge. The said writ petition was dismissed for the default in the year 2003.

2. In the intervening time, in the year 1998, the Government of India introduced an amnesty scheme known as Kar Vivad Samadhan Scheme, 1998 (KVSS). The appellant applied for KVSS on 24.12.1998. Vide an order dt.24.02.1999, the department rejected the KVSS application on the grounds that the declaration filed is not against any SCN issued prior to 31.03.1998. The appellant filed a Writ Petition (No. 5412 of 1999) with Hon'ble Bombay High Court against the rejection of their application under KVSS. By a letter dated 15.07.1999, the Assistant Commissioner, Kalyan II Division, called upon the appellant's bankers and en-cashed the Bank Guarantees of Rs.35,44,614.55 on 13.10.2003. The department also worked out an amount of Rs.78,86,595/ as interest payable by the respondent in accordance with the Hon'ble

Delhi High Court Order. The Assistant Commissioner appropriated an amount of Rs.48,05,753/ towards interest liability of Rs. 78,86.595/- out of the refund sanctioned to the appellant by Order-in-Original No. 01/2005-06 dated 04.04.2005. An amount of Rs.30,80,842/- remained recoverable from the appellant. The Hon'ble High Court dismissed the Writ Petition (No. 5412 of 1999) by order dated 29.06.2005. Aggrieved by order of Hon'ble Bombay High Court, the respondent filed a C.A. No. 2819 of 2007 with Hon'ble Supreme Court. The Hon'ble Supreme Court decided this appeal by order dated 08.10.2015 and on basis of which the appellant filed the refund claim for Rs.48,05,753/-. A show cause notice was issued (to the appellant) on 23.02.2016 on the grounds that there were no directions in the order dtd 08.10.2015 of the Hon'ble Supreme Court for refund of any amount; that the directions were 'not to recover any further Interest. Accordingly, the Revenue vide the original order rejected the refund claim filed by the respondent. Being aggrieved by the Order-in-Original, the respondent filed appeal before the Commissioner(Appeals) who in turn after interpreting the Hon’ble Supreme court order allowed the appeal therefore Revenue is before me.

3. Shri Ajay Kumar, Ld. Addl. Commissioner(A.R.) appearing on behalf of the Revenue reiterating the grounds of appeal, submits that Ld. Commissioner(Appeals) has mis-interpreted the Order dated 8-10-2015 of the Supreme Court wherein Hon’ble Supreme court clearly directed that revenue not to recover any further

amount towards interest from the respondent. It clearly shows that direction is only not to recover the balance amount of interest however, there is no direction as regard the interest already recovered by the Revenue, therefore the impugned order has travelled beyond the direction of the Hon'ble Supreme Court. He submits that respondent sought time to obtain clarification from the Hon'ble Supreme Court and keep the refund claim in abeyance and it is for this reason refund claim was returned to them and not decided on merit therefore Ld. Commissioner (Appeals) could not have decided the refund matter on merit therefore order of the Ld. Commissioner(Appeals) is not legal and proper and the same needs to be set aside.

4. On the other hand, Shri Vipin Jain, Ld. Counsel for the appellant submits that even though the respondent requested to seek the clarification from the Hon'ble Supreme Court but the adjudicating authority had decided that refund is not payable by making detailed interpretation of the Supreme Court Order dated 8-10-2015. Therefore it cannot be said that Ld. Commissioner (Appeals) has wrongly decided the merit of the refund matter. He further submits that as against the interpretation made by the adjudicating authority the Ld. Commissioner also given detailed interpretation of the Supreme Court judgment dated 8-10-2015 and came to the conclusion that as per Hon'ble Supreme Court order the entire interest is not payable, accordingly not only that part of interest which was already recovered by way of encashment

of bank guarantee but also balance interest payable therefore the order of the Ld. Commissioner(Appeals) is just and legal which needs to be maintained.

5. I have carefully considered the submissions made by both sides and perused the records.

6. I find that entire case is based on the interpretation of the Hon'ble Supreme Court order in the respondent's case which was passed with reference to application filed under the KVSS 1998. The respondent against demand filed an application under KVSS 1998 for settlement of the dues. Such application was rejected by the Revenue saying that show cause notice as required under such scheme was never issued to the respondent. Against such order the matter was travelled via High Court to the Hon'ble Supreme Court and the Hon'ble Supreme court in civil appeal No.2819 of 2017 passed following order which is reported as 2015 (325) ELT 230 (SC):-

> *"Having regard to the nature of order which we propose to pass, it is not necessary to traverse through the facts in detail. Suffice it is to mention that there was a liability of tax in the sum of Rs. 35,44,614.55/- in respect of which the appellant had furnished the Bank Guarantee as well. There were various litigations pending between the parties and the appellant had also filed civil suit seeking restraint orders against the respondent-Union of India from encashing the Bank Guarantee. At this time, the Kar Vivadh Samadhan Scheme, 1998 (KVSS) scheme was introduced by the Government which entitled the defaulters to pay 50 per cent of the demand and settle their tax disputes.*

2. The appellant applied under the said Scheme but this application was rejected on the ground that the provisions of this scheme did not apply inasmuch as no show cause notice was issued to the appellant which was pending at that time.

3. The writ petition filed by the appellant has also been dismissed by the impugned order.

4. In the meantime, the respondents recovered the entire amount by encashing the Bank Guarantee on 13-10-2003. In view thereof, it is not necessary to go into the issue and we are of the opinion that having regard to the peculiar facts of this case and also that the appellant has some arguable case on merits, interest of justice would be subserved, if no interest is demanded. We, thus, dispose of this appeal with the direction to the respondents not to recover any further amount towards interest from the appellant."

7. From the reading of the above order, I observe that Hon'ble Supreme Court has very consciously held that Revenue recovered the entire amount by encashing bank guarantee on 13-10-2013 in view thereof it is not necessary to go into issue and we are of the opinion that having regard to the peculiar facts of this case and also that the appellant has some arguable case on merit interest of justice would be sub-served if no interest is demanded. With the above order it is clear that in one hand Hon'ble Supreme Court, discussed above, entire amount of duty encashed through bank guarantee and on the other hand it was clearly observed that peculiar facts is involved and case is arguable on merit therefore interest of justice would be sub-served if no interest is demanded. This clearly shows that entire interest amount is not recoverable by the Revenue from the respondent. Revenue is

heavily emphasized the last sentence of the order which reads as " we thus dispose of this appeal with direction to the respondent not to recover any further amount towards interest for the appellant". I am of the clear view this particular direction is limited to the intention that Revenue should not recover balance amount of interest, however as per the above findings entire interest is not demandable. Last sentence of the order does not negate the earlier part of the order which clearly held that no interest is demandable. Ld. Commissioner (Appeals) interpreting the Hon'ble Supreme Court order, has given detailed findings.

8. From the said findings it can be seen that entire operating portion of the order was interepreted and each phrase was explained. The conclusion of the entire findings is that entire demand of interest was set aside. Even if overall circumstances are observed it is seen that whole case is based on the application made in KVSS 1998. As per the KVSS the 50% of duty, interest and penalty are liable to be waived as immunity provided under the scheme. The Hon'ble Supreme Court considering the provision of KVSS though in one hand agreed the rejection of KVSS, but at the same time extended relief exercising inherent power under the civil writ petition and granted waiver of interest. Hon'ble Supreme Court had given settlement between Revenue and the respondent by dropping the demand of interest. The order of the Hon'ble Supreme Court does not negate that only partial interest is waived for the reason that there is no findings as regard to such

interpretation made by the revenue therefore from the order of the Hon'ble Supreme Court it is clear that entire demand of interest is set aside. Hence the respondent is clearly eligible for the refund of interest recovered by the Revenue for Rs. 48,05,753/. As per my above discussion, I concur with the order of the Ld. Commissioner(Appeals) and do not find any infirmity in the impugned order, therefore the same is upheld. Revenue's appeal is dismissed.

(Pronounced in court on 11/05/2018)

(Ramesh Nair)
Member (Judicial)

SM.