(2022) 01 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 50431 Of 2021

M/s Batra Henlay Cables — APPELLANT

Vs

Commissioner Of Goods And Service Tax And Central Excise — RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Central Excise Act, 1944 — Section 11B, 35F, 35FF

Citation : (2022) 01 CESTAT CK 0007

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue involved in this appeal is whether the appellant is entitled to interest on the amount deposited by it during the investigation, consequent to dropping of the entire demand, the details are as under:-

Amount deposited on 27.05.98 & 02.09.98

Date of show cause notice

Date of Tribunal F.O. on merits dropping the entire demand

Date of order-in-original granting refund (without interest)

Date of O-I-A rejecting interest

Rs.25,00,000/- in 1998 (during investigation)

27.09.1999 (Batra Ent.) & 04.04.2001 (Batra Henlay)

05.10.2018

08.10.2020

19.02.2021

2. In the instant case, the challenge before the Commissioner (Appeals) was to

the order-in-original on the limited issue that the adjudicating authority while allowing the refund claim of the appellant to the tune of Rs. 25,00,000/-, had erred in not granting interest on the said amount, deposited by the appellant during the course of investigation. It is the case of the appellant that the interest was payable to them @ 12% p.a. from the date of deposit till the actual date of payment or refund. Despite the fact that the appellant has specifically requested for grant of interest in its refund application, the Adjudicating Authority while allowing the refund of the original amount deposited by the appellant, had erroneously not granted interest on the said amount. The appellate authority has held against the appellant vide the impugned order, by erroneously holding that the appellant is entitled to interest only after lapse of three months from the date of filing an application for refund.

3. It is submitted that the appellant is entitled to interest on the amount so deposited during investigation under Section 35FF as:

(i) It is urged that the action on the part of the respondent authorities in not sanctioning interest on the amount of Rs. 25,00,000/- from the date of deposit till the date of grant of refund is perverse, illegal and contrary to the scheme of the Central Excise Act, 1944 and various binding judgments of Courts and the Tribunal from time to time, in this regard.

(ii) It is also submitted that the amount deposited by the appellant during investigation was not excise duty, inasmuch as at the time of making the said deposit there was neither any determination of excise duty payable by the appellant, nor was there any liability of the appellant to pay any such excise duty. Therefore, the question of the aforesaid amount deposited during investigation under protest, cannot partake the character of excise duty.

(iii) Further, urged that it is settled by several judgments that the amount deposited during the course of investigation is deemed to be under protest, ipso facto.

(iv) It is also urged that under the provisions of Section 11B read with Section 11BB, read with Section 35F and 35FF, the appellant is entitled to interest from the date on which the amount was deposited till the date of grant of refund. The amount of pre-deposit was made admittedly, on the dispute raised by the Department. As the appellant had been successful on merits vide final order dated 05.10.2018 of the Tribunal, the said amounts were never payable.

(v) It is also submitted that the above issue has been settled by this Tribunal in a catena of judgements, including in the case of J. K. Cement Works vs. Commissioner (F. O. No. 51052/2021 dated 02.03.2021 and M/s Hitesh Industries and Ors. vs. Commissioner of CGST (F. O. No. 51631-51633/2020 dated 07.12.2020). In both the aforesaid judgements, this Tribunal was pleased to rely on the judgement of a coordinate bench, in the case of Fujikawa Power & Anr vs. CCE&ST, Chandigarh while allowing the appeals of the assessee seeking interest. The operative part of order in M/s Hitesh Industries (supra) is as under:-

“11. Agreeing with the findings of the Coordinate Bench in the case of Fujikawa Power & Anr. (supra), I allow the appeals and set aside the impugned order so far interest have been disallowed. The adjudicating authority is directed to grant interest from the date of deposit till the date of grant of refund @ 12% per annum. Such interest on refund should be granted within a period of sixty (60) days from the date of receipt of service or a copy of this order.”

4. Learned Counsel for the appellant further urges that in view of the ruling of the Division Bench of Tribunal in Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL, interest may be granted @ 12% p.a. from the date of deposit till date of realisation/ refund i.e. from 27.05.1998 on Rs. 15 lakh and from 30.09.1998 on Rs. 10 lakh upto 08.10.2020.

5. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

6. Having considered the rival contentions, I find that in similar facts and circumstances, Division Bench of this Tribunal in Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL, following the ruling of the Apex Court in Sandvik Asia Ltd., - 2006 (196) ELT 257 (SC). has been pleased to grant interest @ 12% p.a. from the date of deposit till the date of grant of refund, with reference to Section 35FF of the Central Excise Act. The Court below is directed to disburse the interest on refund @ 12% p.a. from the date of deposit till the date of refund within a period of 45 days from the date of receipt or service of the copy of this order.

7. Thus, the appeal is allowed.

(Pronounced on 05.01.2022)

