(2021) 07 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 51418 Of 2018

Vidhya Cylinders P. Ltd. APPELLANT

Vs

Commissioner Of Central Goods And Service Tax, Excise And Customs, Bhopal RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:
Central Excise Act, 1944 — Section 11BB, 35FF

Citation : (2021) 07 CESTAT CK 0031

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Rajesh Chhibber, P. Juneja

Final Decision : Allowed

Judgement

1. The issue in this appeal is whether the appellant is entitled to interest under Section 35FF for the amount deposited by way of pre-deposit as per the

stay order of this Tribunal on being successfully in appeal.

2. The brief facts are that the demand of excise duty of Rs. 19,62,211/- was imposed on the allegation of removal of scrap clandestinely including Rs.

3,571/- on sale of scrap collected from the buyers. As per stay order No. 687/2009-Ex. dated 10 July, 2009, the appellant deposited the amount of duty

of Rs.19,26,211/- on 13.10.2009. Thereafter, the appellant succeeded in appeal which was disposed of vide Final Order No. A/54975/2017-SM (BR)

dated 30 June, 2017. Accordingly, the appellant filed refund claim for the amount of pre-deposit of Rs. 19,26,211/- with interest by application dated

31.7.2017. Vide the impugned order, the Commissioner (Appeals) held that under Section 11BB interest is leviable if refund is not paid within three

months from the date of application. Accordingly, denied the payment of interest as the refund was granted vide order in original dated 22 August,

2017 i.e. within three months of the date of final order of this Tribunal.

3. Being aggrieved, the appellant is before this Tribunal.

4. The learned Counsel for the appellant, Shri Rajesh Chhibber urges that the learned Commissioner (Appeals) have mis-directed himself and passed

the wrong order by relying on Section 11BB. In the facts of the present case interest is payable to the assessee under Section 35FF of the Central

Excise Act, which provides that interest shall be granted to an assessee on being successfully in appeal at the prescribed rate on such amount of pre-

deposit from the date of payment of the amount till the date of refund of such amount. Proviso further states that for the amounts deposited prior to

commencement of Finance Act No. 2/2014 (with effect from 6 August, 2014) shall continue to be governed by the provisions of Section 35FF as it is

stood before the commencement of the said Act.

5. Learned Counsel further urges that the issue is no longer res integra in view of the ruling of the Honâ??ble Supreme Court in the case of Sandvik

Asia Ltd. Vs. Commissioner of Income Tax, Pune - 2006 (196) ELT 257 (SC), wherein it was provided that interest is by way of compensation for

depriving the assessee of its money resulting in financial loss suffered and accordingly interest has to be paid @ 12% from the date of deposit till the

date of refund of any amount found to have been collected or retained by Revenue illegally or without authority of law. Following the ruling of the

Apex Court in Sandvik Asia Ltd. (supra), this Tribunal Division Bench have held in case of Parle Agro Pvt. Ltd., being Final Order No. 70180-

70181/2021 dated 24 March, 2021, that interest is payable @ 12% from the date of deposit till the date of refund.

6. Learned Departmental Representative relies on the impugned order and also relies on the Single Member Bench ruling of this Tribunal in the case

of Hindustan Agro Insecticides (SMB-Hyd.) â?" 2019 (367) ELT 699 and the Division Bench ruling in the case of Riba Textile Ltd. Vs. CCE, Final

Order No. 60015/2020 dated 7.1.2020 where the Division Bench ruling of this Tribunal in Juhu Beach Resort Ltd. â?" 2020 (371) ELT 622 (Tri.-DB)

have been considered.

7. Having considered the rival contentions, I hold that the Commissioner (Appeals) have erred in making reference to Section 11BB instead of the

correct Section 35FF, and have passed erroneous order. Thus, the impugned order is set aside and I further hold that following the ruling of Supreme

Court in Sandvik Asia Ltd. (supra) and CCE Vs. ITC Ltd. â?" 2005 (179) ELT 15 (SC), the appellant is entitled to interest @ 12% per annum from

the date of deposit till the date of refund. I further direct the adjudicating authority to grant interest as directed within a period of 45 days from the date

of receipt on service of copy of this order.

8. Appeal is allowed.

(Pronounced in Court on 28.07.2021)

