

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50229 of 2021-SM

(Arising out of order-in-appeal No. 18/Central Tax/ Appl-II/ Delhi/2020 dated 28.09.2020 passed by the Commissioner (Appeals-II), Goods and Service Tax, Delhi).

M/s Jovex International
B-72/1, Wazirpur Industrial Area
New Delhi-110052.

Appellant

VERSUS

Commissioner, Central Tax
Upper Ground Floor, EIL Annexe Building
Bhikaji Cama Place
New Delhi -110066.

Respondent

APPEARANCE:

Shri Anubhav Goel, C. A. for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 52002/2021

DATE OF HEARING: 11.10.2021
DATE OF DECISION: 25.11.2021

ANIL CHOUDHARY:

The issue involved in this appeal is for grant of interest under Section 35FF, from the date of deposit till the date of refund.

2. The appellant – M/s Jovex International is engaged in the manufacture of Ayurvedic Medicinal products falling under chapter 33 of the Central Excise Tariff Act, 1985 and were clearing the product without getting registered with the Department, as they were availing SSI exemption. Pursuant to search on 03.10.2011, wherein some

documents were resumed. Thereafter Department directed the appellant to deposit an amount of Rs. 25 lakhs, which was deposited by cheque dated 25.10.2011. Pursuant to show cause notice, a demand of Rs. 1,09,01,676/- was confirmed, vide order-in-original dated 20.04.2015, and the said amount was appropriated towards payment of duty.

3. Being aggrieved, the appellant appealed before this Tribunal, which was allowed vide Final Order No. 53317 -53320/2018 dated 27.11.2018, and the order-in-original dated 30.04.2015 was set aside with consequential benefits.

4. On being successful in appeal, the appellant filed refund claim vide application dated 16.07.2019, and also annexed the letter of HDFC Bank, confirming payment of Rs. 25 lakhs in the month of October, 2011. The Assistant Commissioner was pleased to pass the order of refund for a sum of Rs. 25 lakhs. So far the interest is concerned, he granted interest @ 6%, for a truncated period of 68 days instead of allowing the interest as per Section 35EE. The appellant carried the matter before the Commissioner (Appeals) for not giving interest for the full period. The Commissioner (Appeals) was pleased to dismiss the appeal, observing that when Department recovers an amount for non justifiable reason or illegal or without authority of law, and then in that situation the Court awards interest. Further observing that the recovery should be held unjustifiable or it should be illegal recovery, in colourable exercise of power, and thus the Court has to look into each of the case, for award of interest. He

further referred to ruling of the Hon'ble High Court in **Tata Iron & Steel Co. Ltd., vs. UoI -2013 (295) ELT 526 (Jhar.)**. He further referred to Section 11BB of the Act and observed that interest as per Section 11BB admittedly stands paid to the appellant, and hence no interference is called for.

5. Being aggrieved, the appellant is before this Tribunal inter alia on the ground that the Commissioner (Appeals) have erred in relying of the provisions of Section 11BB, whereas the applicable provision in the facts of the present, is Section 35FF. Section 35FF provides for grant of interest (as amended and substituted w.e.f. 06.08.2014), which provides that on an amount deposited by the appellant under Section 35F, the same is required to be refunded consequent upon the order of the Appellate Authority, and there shall be paid to the appellant interest at such rate (notified as 6% p.a.) on such amount from the date of payment of the amount, till the date of refund of such amount; provided that the amount deposited under Section 35F prior to 06.08.2014 shall continue to be governed by the provisions of old Section 35FF, as it stood prior to amendment.

6. Learned Counsel also relies on the ruling of this Tribunal in the following cases:-

- i) Marshal Foundry & Engg. Pvt. Ltd., vs. CST- F.O. No. 61058-61062/2019 dt. 28.11.2019.
- ii) Riba Textiles Ltd. (Appeal No. 60446 of 2018)
- iii) Jay Shree Tea & Industries vs. CCE and SS Dye & Chemicals Ltd.,
- iv) Sandvik Asia Limited (S.C.)

- v) Central Excise, Chennai-II vs. UCAL Fuel Systems Ltd.,
- vi) CNH Industrial India Pvt. Ltd., vs. CC, CE & ST Noida (28.12.2018 CESTAT-Allahabad): MANU/CN/0190/2018.

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

8. Having considered the rival contentions, I hold that the applicable section for grant of interest is Section 35FF, which provides for grant of interest on the amount refundable pursuant to order of the Appellate Court. It is further provided in this section that interest should be granted from the date of deposit till the date of refund, without any discrimination. I further take notice that a Division Bench of this Tribunal in **Parle Agro (P) Ltd., vs. Commissioner, CGST-2021-TIOL-306-CESTAT-ALL**, wherein interest on pre-deposit (made during investigation), have been enhanced from 6% to 12%, following the ruling of the Apex Court in **Sandvik Asia Ltd., - 2006 (196) ELT 257 (SC)**. Thus, I direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the date of refund. Such interest should be granted within a period of 45 days from the date of receipt or service of the copy of this order. Thus, the appeal is allowed in the above terms.

(Pronounced on 25.11.2021).

(Anil Choudhary)
Member (Judicial)