

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60432 of 2020

[Arising out of Order-in-Appeal No. 24-CE-CGST-APPEAL-GURUGRAM-SG-2020-21 dated 29.07.2020 passed by the Commissioner of C.E. & S.T. (Appeals), Gurgaon]

Gautam Industries

Plot No. 15, Sarurpur More Sohna Road
Faridabad, Haryana 121004

.....Appellant

VERSUS

Commissioner of C.E. & S.T., Faridabad

Block D, New CGO Complex, NH IV,
NIT Faradabad, Haryana 121001

.....Respondent

with

Excise Appeal No. 60434 of 2020

[Arising out of Order-in-Appeal No. 25-CE-CGST-APPEAL-GURUGRAM-SG-2020-21 dated 29.07.2020 passed by the Commissioner of C.E. & S.T. (Appeals), Gurgaon]

Industrial Casting

Plot No. 12, 13 & 14, Sarurpur More Sohna Road
Faridabad, Haryana 121004

.....Appellant

VERSUS

Commissioner of C.E. & S.T., Faridabad

Block D, New CGO Complex, NH IV,
NIT Faradabad, Haryana 121001

.....Respondent

APPEARANCE:

Present for the Appellant: Sh. N.K. Sharma, Advocate

Present for the Respondent: Sh. Rajeev Gupta, Sh. H. S. Brar, A.R.s

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60014-60015/2022

DATE OF HEARING: 17.12.2021

DATE OF DECISION: 13.01.2022

PER ASHOK JINDAL:

As both the appeals are having a common issue, therefore, both the appeals are decided by a common order.

2. The facts of the case are that intelligence was gathered that M/s Mech-Well Foundry was engaged in evasion of central excise duty by floating various dummy units, so as to avail the benefit of duty free clearances under SSI exemption Notification No. 8/2003-CE dt. 01.03.2003 as amended. On the basis of that intelligence, units of both the appellants were investigated and during the course of investigation, some amount was deposited. Thereafter, show cause notices were issued to demand the duty by denying the benefit of SSI exemption notification and to impose penalty. The matter was adjudicated and the demand along with interest was confirmed. Penalty was also imposed. The said order was challenged before this Tribunal and this Tribunal set aside the adjudication proceedings. Consequent to that, the appellants filed refund claim of the amount deposited during the investigation. The same was refunded, but no interest was paid to the appellants. Therefore, the appellants are before me against the order of denial of interest from the date of deposit till the date of realization @12% p.a.

3. The Id. Counsel for the appellants submits that the appellants have deposited the duty under protest during the investigation and filed retraction also. So, the amount paid during the investigation is under protest, therefore, the interest is admissible on the said amount lying with the Department from the date of deposit till the

date of refund. In support of his claim, he relied on the following judgments:

(i) C.C.E. Coimbatore vs. Pricol Ltd. – 2015 (320) ELT 703 (Mad.)

(ii) C.C.E. Lucknow vs. Eveready Industries India Ltd – 2017 (357) ELT 11 (All.)

(iii) Gujarat Engineering Works vs. CCE Ahmedabad-II - 2013 (292) ELT 547 (Tri. Ahmd.).

He also submitted that the Hon'ble Madras High Court in the case of **CCE Chennai-II vs. UCAL Fuel Systems Ltd – 2014 (306) ELT 26 (Mad.)** has held that the assessee is entitled to payment of interest from the date of deposit till the date of realization. He also submitted that this Tribunal in the case of **Marshall Foundry & Engg. Pvt Ltd vs. CCE Faridabad vide Final Order No. A/61058-61062/2019 dt. 28.11.2019** allowed the interest @12% p.a. from the date of deposit till its realization. Similar view was taken by this Tribunal in the case of **Load Controls India Pvt Ltd vs. CCE Bangalore – 2020-TIOL-39-CESTAT-BANG**. He further relied on the decision of the Principal Bench of this Tribunal in the case of **J.K. Cement Works vs. CCE Udaipur vide Final Order No. A/51052/2021 dt. 02.03.2021**, wherein it was held that the appellant is entitled to claim the interest on delayed refund from the date of deposit till its realization @12% p.a.

4. On the other hand, the Id. A.R. opposed the contention of the appellants and submitted that the case laws relied upon by the appellants have been examined by the various Superior courts and the amount paid by the appellants during adjudication has been

considered by this Tribunal by granting stay vide **Stay Order No. SO/53989-54002/2014-EX[DB] dt. 18.11.2014** as pre-deposit. Therefore, the said amount is not an amount deposited under protest, it is only a pre-deposit and as per the decision of Hon'ble Apex Court in the case of **CCE Hyderabad vs. ITC Ltd – 2005 (179) ELT 15 (SC)**, interest on delayed refund is to be payable after three months from the date of the order of final adjudication by the higher court and the same view was taken by the Id. Commissioner (Appeals) in the impugned orders. The Id. A.R. also relied on the decision of Hon'ble Delhi High Court in the case of **Nino Chaks Pvt Ltd vs. CC (Gen) – 2020 (371) ELT 701 (Del)** to say that claim of interest from the date of payment, paid during investigation, is not sustainable. Further, this Tribunal in the case of **CCE Rohtak vs. Som Flavour Masala Pvt Ltd vide Final Order No. A/60385/2020 dt. 02.03.2020** rejected the claim of interest filed by the assessee after discussing the CBEC Circular No. 802/35/2004-CX dt. 08.12.2004. He further submitted that amount deposited during investigation took the shape of pre-deposit once it was considered by the CESTAT while entertaining the appeal. To support this, he relied on the following decisions:

(a) LSE Securities Ltd. vs. CST Chandigarh – 2015 (320) ELT 350 (P&H)

(b) CC vs. H V Ceramics – 2019 (365) ELT 390 (Guj)

(c) Prempreet Textile Industries Ltd vs. UOI – 2013 (293) ELT 523 (Guj).

He also relied on the decision of Hon'ble Gujarat High Court in the case of **Parle International Ltd vs. UOI – 2001 (127) ELT 329**

(Guj) to say that the amount, deposited during adjudication proceedings, was a deposit which the Department was required to refund and interest is to be paid from the date of CESTAT order. He further submitted that amount was no longer as deposit after confirmation of demand and consideration thereof as part in lieu of pre-deposit. It is a submission that the amount paid by the appellant was pre-deposit as per the Stay Order dt. 18.11.2014. He further submitted that interest cannot be granted on the principle of equity and it is to be paid at the statutory rate of interest prescribed by the statute. He also rebutted the case laws relied upon by the appellants on various grounds.

5. Heard the parties and considered the submissions and case laws relied by both the sides in detail.

6. The main thrust of the Id. A.R. is that the amount deposited by the appellants during the course of investigation has taken the shape of pre-deposit as per the **Stay Order dt. 18.11.2014**. For better appreciation, para 2 of the said order is extracted herein below:

"2. It is seen that out of total duty demand of Rs. 2.61 crores confirmed against the manufacturing units, they have cumulative deposited an amount of Rs. 80,00,000/-. By treating the same as sufficient for the purpose of Section 35, we dispense with the condition of pre-deposit of balance amount of dues and the entire amount of interest and penalties imposed upon all the appellants. All the stay petitions are disposed of in above manner."

Ongoing through the order of this Tribunal, I find that this Tribunal has observed that the amount deposited by the appellant is sufficient for the purpose of Section 35, therefore, this Tribunal dispensed with the condition of pre-deposit of balance amount of dues. From going through the observations of this Tribunal, I find that the observation of the Tribunal does not say that the amount paid during the course of investigation has taken the shape of pre-deposit. This Tribunal only found that it's sufficient for the purpose of Section 35 of the Act. Further from the facts, it is clear from the order-in-original (para 8.12) that the course of investigation, the cheques of Rs. 50 lakhs were tendered on 24.08.2010 was under pressure. The adjudicating authority has held that as they have not filed any complaint for signing the cheques under pressure, it means that they were willingly and concisely paid the amount against their liability. I find that the observation of the adjudicating authority is only on the basis of non-filing the complaint that the said amount was not paid under pressure. Non-filing of the complaint by the appellant does not mean that the amount was not paid under protest. Therefore, I hold that the amount paid during the course of investigation was under protest. The same view was taken by the various High Courts as in the case of **Pricol Ltd.** (supra), wherein the Hon'ble Madras High Court has held that there are also many judgments of various courts, which also reiterative the same principle in case any amount is depositing during the pendency of adjudication proceedings or investigation, the said amount would be in nature of deposit under protest. Further, the same view was taken by Hon'ble

Allahabad High Court in the case of **Eveready Industries India Ltd** (supra). Further, in the case of **UCAL Fuel Systems Ltd** (supra), the Hon'ble Madras High Court has held that the amount in question was not paid towards excise duty but only by way of deposit during investigation and the appellant is entitle for payment of interest @6% p.a. from the date of deposit till the date of payment of first respondent. In the case of **Marshall Foundry & Engg. Pvt Ltd** (supra), this Tribunal has granted interest on deposit made during the course of investigation till its realization.

7, Further, in the case of **Nino Chaks Pvt Ltd** (supra) relied upon by the Id. A.R., the Hon'ble High Court has observed that the amount paid during the investigation is involuntary and under coercion. I have gone through the facts of the said case. In the said case, the amount paid during the course of investigation was on three different dates, therefore, the Hon'ble High Court came to the conclusion that it cannot be said that it was involuntary by the appellant and coercion cannot be said to have been continued from 11.03.1998 to 13.05.1998. As the Hon'ble High Court has held that the assessee has paid the amount on the first instance and thereafter on two occasions also have made the payments which does not mean that the amount paid is under coercion or involuntarily as the same was paid on three different dates. The facts of this case are, however, different as in this case, the amount was paid under pressure; therefore, the facts of said decision are not applicable to this case. Further, the Id. A.R. relied on the case of this Tribunal in the case of **Som Flavour Masala Pvt Ltd** (supra). In the said case also this Tribunal observed

that the amount paid during the course of investigation is still required adjudication of the show cause notice, therefore, the amount paid during adjudication cannot be attained finality and to be refunded to them. In that circumstance, this Tribunal came to the conclusion that the interest is not payable, which is not in the case in hand. Further, in the case of **LSE Securities Ltd.** (supra) relied upon by the Id. A.R., it was not the claim of the appellant that the amount of interest is to be paid from the date of deposit during investigation till its realization; therefore, the said decision cannot be relied upon. Further, the facts of the case of **Prempreet Textile Industries Ltd** (supra) are some of different from the case in hand as in that case, the counsel for the appellant gave an undertaking that they will not pursue for its refund during the pendency of the appeal; therefore, the said decision also cannot be relied upon. Further, the facts of the case of **Parle International Ltd** (supra) are squarely covered the facts of this case as in the said case, the Hon'ble High Court has held that amount paid during the adjudication proceedings is to be regarded as deposit and not duty. Further, I find that this Tribunal in the case of **J.K. Cement Works** (supra) and **M/s Jovex International vs. Commissioner, Central Tax vide Final Order No. A/52002/2021 dated 25.11.2011** again observed as under:

"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 predeposit (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."

8. Therefore, following the latest decision of this Tribunal in the case of ***M/s Jovex International*** (supra), I hold that the appellants are entitled for interest @12% p.a. from the date of deposit till the date of realization of refund of the amount paid during investigation.

9. In view of the above, the appeals are allowed with consequential relief, if any.

(Order pronounced on 13/01/2022)

(ASHOK JINDAL)
MEMBER (JUDICIAL)