

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

EXCISE APPEAL NO. 51493 OF 2022

[Arising out of Order-in-Appeal No. 36/2021-22 dated 25.02.2022 passed by the Commissioner (Appeals) Central Tax/ Excise, New Delhi.]

MATTA PAINTS AND HARDWARE STORE

A-789-790, Shastri Nagar
New Delhi 110052.

APPELLANT

Vs.

THE COMMISSIONER

Central Tax, Commissionerate West
UG Floor, EIL Building, Bhikaji Cama Place,
New Delhi 110066.

RESPONDENT

APPEARANCE:

Shri Apoorv Phillips, Advocate for the Appellant

Shri Dibey Sethi, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)

Date of Hearing : November 10, 2022

Date of Decision : 02-12- 2022

FINAL ORDER No. 51128 /2022

PER DR. RACHNA GUPTA

The present appeal is arising out of the order of Commissioner (Appeals) dated 25.2.2022 bearing number 36/2021-22 vide which the appellant is held entitled for interest on delayed payment of refund upon the expiry of three months from the date of receipt of the impugned refund application till the date of refund of such duty. The brief facts giving rise to the present appeal are as follows:

That the premises of the appellants were searched, pursuant to the intelligence against the main noticee M/s. Real

Paint, on 13.09.2011 on the allegations that the appellant is engaged in sale of goods manufactured and clandestinely cleared by said M/s. Real Paint. During said search goods worth Rs.1,01,21,609/- along with an amount of Rs. 12,53,500/- Indian currency (INR) were seized by the Anti Evasion team by seizure memo dated 05.03.2012. The sum so seized was got fixed in a deposit with Syndicate Bank on 05.03.2012 itself. The said currency along with the goods seized were proposed to be confiscated vide common show cause notice No.579 dated 13.3.2012. The said proposal was confirmed vide Order-in-Original No. 13/2018 dated 22.5.2018. The appeal against the said Order was allowed by way of remand vide Order-in-Appeal No. 339/2019 dated 04.02.2019. Pursuant to those directions that a fresh Order-in-Original No. 05/2018-19 was passed on 10.6.2019 again confirming the confiscation of the goods as well as of seized currency (INR). However, the said Order was set aside vide Order-in-Appeal No. 86/19 dated 30.09.2019. Consequent to the said order that the appellant filed a application praying for refund of amount of Indian currency worth Rs.12,53,500/- along with the interest earned thereon. Refund was sanctioned however, without interest vide Order-in-Original No. 13/2020-21 dated 04.03.2021. The said order has been modified by the impugned Order-in-Appeal. The appellant has still challenged the same in the present appeal as his request for sanction of interest earned by the Revenue from the date of seizure/ deposit of aforesaid sum in fixed deposit till the refund was granted to the appellant has not been considered.

2. I have heard Shri Apoorv Phillips, learned Counsel appearing for the Appellant and Shri Dibey Sethi, learned Authorised Representative for the Respondent.

3. It is submitted that findings of Adjudicating Authority while denying the interest to the appellant from the date of deposit or at least from the date it was got fixed with the Bank are

absolutely unreasonable. The decision of Apex Court in the case of **Mafatlal Industries Ltd. vs. Union of India** reported as **[1997 (89) ELT 247 (SC)]** is alleged to have been wrongly interpreted by the authority. It is submitted that present is not at all the case of unjust enrichment. The seized currency in the present case was never deemed to be the duty nor ever it has been adjudicated as being the amount for duty liability. Hence, the amount was absolutely out of scope of section 11B/11BB of the Central Excise Act, 1944. Thus, the finding of Adjudicating Authority that the impugned seized currency was towards the probable Central Excise duty is alleged to be factually erroneous and unsustainable. Learned Counsel further submits that the finding by the authority that the interest earned on the fixed deposit is not liable to be refunded to the appellant are not at all tenable. Learned Counsel submits that the Adjudicating Authority have wrongly relied upon the decision of **M/s. Arun Kumar Chhajar vs Collector of Customs (Prev)** reported as **[1995 (75) ELT 747 (Cal)]**. Learned Counsel has rather relied upon the following decisions while praying that the impugned order to be set aside.:

1. **Commissioner of Sales Tax UP vs Auriaya Chamber of Commerce, Allahabad [1988 (25) ELT 867 (SC)];**
2. **Union of India vs. AIR UK Leasing Ltd. [2016 (331) ELT A187 (SC)]; and**
3. **Union of India vs Tata Chemicals Limited [2014 6 SCC 335].**

4. While rebutting these submissions learned Departmental Representative has impressed upon the correctness of the order where section 11BB of Central excise Act, 1944 has been relied upon. It is submitted that there is no infirmity in the said reliance. Other than section 11B and 11BB of Central Excise Act there otherwise is no provision in the Act to sanction interest

along with the sanction of refund. Hence, the interest after the expiry of three months from the date of refund application till the sanction has rightly been awarded to the appellant. The appeal is accordingly, prayed to be dismissed.

5. Having heard the rival contentions, I observe and hold as follows:

In the present case, it is undisputed fact that the cash amount of Rs.12,53,500/- was seized during the investigations and the sum was deposited by the Revenue in fixed deposit. It is also admitted fact that the proposed confiscation of impugned seized cash and even of the goods seized along therewith, imposition of redemption fine and penalty has been set aside by Commissioner (Appeals). Apparently and admittedly, pursuant to said order that the refund application claiming the refund of the amount of Rs.12,53,500/- along with the interest earned thereupon was filed by the appellant on 20.1.2022. The refund of the principal amount was ordered even by Original Adjudicating Authority. The interest has been granted by the Departmental Appellate Authority, but only on the ground of delay due to sanctioning of refund beyond the period of three months in terms of section 11B/11BB of Central Excise Act, 1944. Hence the interest only from the date of application for refund till the sanction thereof has been awarded. The appellant filed the impugned appeal as to claim interest from the date of deposit of said principal amount or at least from the date the said amount was fixed in a bank deposit by the Department, i.e. from 05.03.2012.

Apparent from the above noticed facts, the moot adjudication is as to whether section 11B/11BB of Central Excise Act, 1944 is applicable in the present facts and circumstances. The issue has earlier been dealt with by this Tribunal, Allahabad Bench in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner,

GST [2021-TIOL-306-CEST-ALL], I also endorse the following findings:

"30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

31. Section 11D of the Excise Act deals with duties of excise collected from the buyer to be deposited with Central Government. It provides that every person who is liable to pay duty and has collected any amount in excess of the duty assessed from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

32. Section 11DD of the Excise Act deals with interest on the amount collected in excess of the duty. It provides that where an amount has been collected in excess of the duty from the buyer of such goods, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent., and not exceeding thirtysix per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded."

6. Hon'ble Apex Court in the case of **Commissioner of Customs (Import), Raigad vs M/s. Finacord Chemicals (P) Ltd.** in Civil Appeal no. 1633-1638 of 2004 as decided on 8.04.2015 reported as **[2015 (319) E.L.T. 616 (S.C.)]** while discussing the liability of the department to pay the interest has referred to Departments' own circular dated 2.1.2002 wherein the

Board clarified that the matters of refund other than the amount of duty would not be covered under the provisions of section 11B of Customs Act or section 35FF of Central Excise Act. It was held by the Hon'ble Apex Court that in such cases of refund even the concept of unjust enrichment is not applicable. Learned Apex Court has relied upon its decision in SLP titled as **Union of India vs Suvidhe Ltd.** in which decision of Bombay High Court in **Suvidhe Ltd. vs Union of India** reported as **[1996 (82) ELT 177]** was challenged. The Bombay High Court has observed that in case of deposits which were not in the form of duty, provisions of 11 B of Customs Act will have no applicability. The deposits made under section 35FF since is not the payment of duty, section 11B will not be applicable.

7. Another circular of department bearing No. 802/35/2004 CX dated 8.12.2004 was also being considered by the Apex Court in its above mentioned judgement dated 8.4.2015. In that circular the Board emphasised that the amounts other than the amount of duty if deposited it should be refunded immediately as non-returning of deposits attract interest that has been granted by the Courts in number of cases. One similar case of Hon'ble Apex Court is the decision of **Sandvik Asia Ltd.** reported as **[2006 (196) ELT 257 (SC)]** wherein it was held that the amount deposited under section 35FF of Central Excise Act as far as the payment of interest is concerned shall be applicable only in the cases for such deposits as have been made under section 35F of the Act. As already observed in the present case, the amount in question is neither the amount of duty nor is the amount of pre deposit, the amount in question is merely a deposit with the Revenue which the Revenue had no authority to retain as the appellant was the owner thereof.

8. As per Article 300A of Constitution of India, also no person shall be deprived of his property, save by authority of law. Once confiscation order about impugned currency get set aside.

It is clear that currency in question has been appellant's property. He cannot be deprived of the same and is entitled for benefits arising out of said property. Hence interest accrued on the amount in question during the period it was in fixed deposit is the property of the owner of the amount i.e. the appellant herein. I draw my support from the decision of Hon'ble High Court of Allahabad in the case of **RHL Profiles Ltd. vs Commissioner of Customs, Ex and Service Tax, Kanpur** reported as **[2017 (352) ELT 349 (All)]** has held that once the confiscation has been set aside, confiscation of seized currency has been set aside and the fact is that the Department has earned interest during the period the currency was retained by it, it was held that payment of interest could not be denied merely for the reason that there is no express statutory provision. Bombay High Court also in the case of **Union of India vs M P Desai** reported as **[2019 (366) ELT 251 (Bom)]** has held that amount seized in cash by the authorities is to be refunded along with the interest. Though in this case the rate of interest was held to be simple at the rate of 8%. However, there already has been decisions of Kerala High Court in the case of **Sony Pictures Networks India Pvt. Ltd vs UOI** reported as **[2017 (353) ELT 179 Ker]** wherein the decision of Hon'ble Apex Court in the case of **Kuil Fireworks Inds. v. Collector** reported as **[1997 (95) ELT 3 (SC)]** is relied and it was held that rate of interest while refunding the amounts has to be 12% of the amount refunded. Hon'ble Apex Court in the case of **CCE Hyderabad vs. ITC Ltd.** **[2005 (179) ELT 15 (S.C)]** has also confined the interest at the rate of 12% and it was further held in that judgement by the Apex Court that any judgement or decision of any court taking contrary view will be no longer the good law.

9. In view of the entire above discussion I hereby hold that since the amount in question was not the amount of pre-deposit as required under section 35F of Central Excise Act, section 35FF

has been wrongly invoked by Commissioner (Appeals). The Commissioner (Appeals) has committed an error while holding that since there is no provision to grant interest on the seized currency notes while refunding the said currency, the interest from the date of seizure cannot be granted. Commissioner (Appeals) is held to have ignored the judicial precedence as discussed above and thus is held to have committed violation of principles of judicial protocol. Since the order of confiscation, the impugned currency stand set aside, the Department had no authority to retain the said amount nor any authority to retain the interest accrued on the said amount. Had the amount in question been fixed by appellant himself, over a period of 9 years, he would have earned a handsome amount of interest. Retention of said interest with the Department will rather be the unjust enrichment of the Department and will amount to deprivation of appellant of his property, currency notes being the property in terms of Article 300 A of the Constitution of India.

10. With these observations, the order under challenge is hereby set aside and appellant is held entitled for refund of interest on the principle amount at the rate of 12% from the date of its seizure. Consequent thereto the appeal stands allowed.

(Pronounced in the open Court on 02-12-2022)

**(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)**

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