

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

**E-Hearing
SERVICE TAX APPEAL NO. 55434 OF 2023**

M/s. Indore Treasure Market City Pvt Ltd.

Appellant

Vs.

**COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX AND CENTRAL EXCISE, INDORE**

Respondent

Appearance:

Present for the Appellant : Shri Bharat Raichandani, Advocate

Present for the Respondent: Ms Jaya Kumari, Authorised Representative

CORAM:

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

HON'BLE Ms. HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

DATE OF HEARING/DECISION : 11/01/2024

FINAL ORDER NO. 50125/2024

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No. 47/2023-24 dated 23.05.2023. The facts in brief relevant for the purpose are that the appellants are engaged in the business of setting up and managing shopping centres, family entertainment centres, multiplexes, popularly known as 'Malls' etc. Department initially observed that the appellants have wrongly availed the Cenvat Credit of service tax paid amounting to Rs.10,21,04,601/-. The said observations and demand of reversal of said amount was confirmed vide Order-in-Original No. 01/COMMR/IND/ST/22 dated 03.01.2022. Appeal against the said order was allowed by this Tribunal vide Final Order No. 51784/2021 dated 01.09.2021 allowing the appellant

eligible for Cenvat Credit availed for the period prior to 01.04.2011 directing the department to quantify the same.

2. Subsequent to the said Final order and order quantifying the demand, the appellant filed the refund claim for an amount of Rs.7,15,09,643/- on 04.01.2022. The said refund was sanctioned vide Order-in-Original No. 339/AC/ST/REFUND/Div.V/Indore/2020-21 dated 02.02.2022, however, without any interest on the said amount. Resultantly, the order under challenge was assailed before Commissioner (Appeals). However, Commissioner (Appeals) has opted to not to interfere in the order passed by the Original Adjudicating Authority and rejected the appeal vide the order under challenge. Being aggrieved the appellant is before this Tribunal.

3 We have heard Shri Bharat Raichandani, learned Counsel for the appellant and Ms Jaya Kumari, learned Authorised Representative for the department. Learned Counsel for the appellant has relied upon a catena of decisions as below to impress upon that the issue of grant of interest on the amount sanctioned as refund to the appellant of the amount was deposited during the investigation is no more res integra. Following are those decisions:

- (1) **Parle Agro (P) Ltd vs. Commissioner CGST, Noida.**
[2022 (380) ELT 219 (Tri. - All.)];
- (2) **Team HR Services Pvt. Ltd. v. Union of India**
[2020 (38) G.S.T.L. 457 (Del.)];
- (3) **Continental Engines Pvt. Ltd. v. Commissioner (Appeals),**
[2022 (382) E.L.T. 522 (Tri. - Del.)];
- (4) **Rattanindia Power Ltd. v. Commr. of Cus., C. EX. & CGST, Delhi**
[2022 (65) G.S.T.L. 122 (Tri. - Del.)];
- (5) **Dinesh Tobacco Industries v. Commissioner of CGST, Jodhpur**
[2020 (371) E.L.T. 303 (Tri. - Del.)];

- (6) **Riba Textiles Ltd vs Commissioner of Central Excise and Service Tax, Panchkula [2020-TIOL-932-CESTAT-CHD]**
- (7) **Commissioner of Central Excise, Panchkula vs. Riba Textiles Ltd. [2022 (62) G.S.T.L. 136 (P & H)]**

Learned Counsel has brought to the notice that there is no denial that the impugned claim was filed within the permissible time limit and that the clause of unjust enrichment is not applicable to the impugned amount. In addition to these submissions learned counsel has prayed that the interest at the rate of 12% may be sanctioned on the amount refunded to be awarded from the date of deposit. In the view of the submissions above the impugned order be set aside and appeal be allowed.

3. Learned Authorised Representative while making her submissions has cited the decision of Hon'ble Bombay High Court in the case of **Nino Chaks vs. Commissioner of Custom (General) [2020 (371) ELT 701-Delhi High Court]** and Nine-Member Constitutional Bench decision of Supreme Court in the case of **Mafatlal Industries [1997 (89) ELT 247 (SC)]** has also been relied upon. Finally impressing upon the findings in the order under challenge and even the findings of order in original, learned Departmental Representative prays for appeal to be dismissed.

4. After hearing the rival contentions and perusing the record of the present appeal, following are the observed as the admitted facts:

(1) the refund claim in question has been filed pursuant to the final order of this Tribunal dated 01.09.2021.

(2) the refund claim of amount mentioned in the refund claim is the amount which was deposited by the appellant during investigation under protest.

(3) The refund claim is not hit by time bar.

(4) The instant case being in respect of reversal of Cenvat credit under protest does not have barring clause of unjust enrichment.

These admitted facts are sufficient for us to hold that findings of the Hon'ble Apex court in the case of Mafatlal (supra) are not applicable to the given set of circumstances.

5. We observe that the Adjudicating Authority while denying the entitlement for interest invoked section 11B/11BB of Central Excise Act. From the bare reading of the above section, it is clear that the provision refers to the claim of refund of duty of excise only, it does not refer to any other amount collected without authority of law. In the case on hand, admittedly, the amount sought for as refund was the amount paid during investigation is held to not to be the liability of the appellant.

6. In the given circumstances, we find that there is lack of authority to collect such service tax by the appellant. It would not give the Department an authority to retain the amount paid which otherwise was not payable by the appellant. Nothing may act as an embark on the right of the appellant to demand refund of payment made by them under the mistaken notion. The Hon'ble Supreme Court in the case of **Mafatlal Industries v. Union of India** rather has held that one has to see whether the amount claimed is unconstitutional and outside the provisions of Section 11B of the Act.

7. For the present case, we need not to devolve into said issue as the refund amount has already been sanctioned. The point to be adjudicated here is of narrow scope that is, as to whether the appellant is entitled for interest on delayed payment of refund. If yes, at what rate to be calculated from what date. The said issue has been examined by this Tribunal in the case of Tribunal in the case **M/s. Fujikawa Power and other vs. CCE, Chandigarh-I** vide **Final Order No. 61041-61042/2019 dt.26.11.2019** wherein this Tribunal has observed as under:-

14. I have gone through the decision in the case of Sandvik Asia Limited (supra), wherein the section 243 dealt with situation of interest on delayed refund.

15. For better appreciation, section 243 of the Income Tax Act, 1961 reproduced as under:-

“243. Interest on delayed refunds- (1) if the Income tax officer does not grant refund-

(a) In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) In any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.”

16. Section 35FF of the Central Excise Act, 1944 deals with the situation in hand, the same is extracted below:-

"Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F- Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority) under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

17. On-going through the provisions of both Income Tax Act, 1961 and Central Excise Act, 1944, the interest on delayed refund is payable after expiry of 3 months from the date of granting refund or from the date of communication of order of the appellate authority, which are parimateria. Therefore, the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) is law of land, in terms of Article 14 of the Constitution of India which is to be followed by me, wherein the Hon"ble Apex has observed as under:-

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled 5 Excise Appeal No. 60446 of 2018 to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and

then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. RamanathaAiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; 6 Excise Appeal No. 60446 of 2018 remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or

duty; remuneration or wages given to an employee or officer."

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded off to Rs.40,84,900) simple interest @ 9% p.a. 7 Excise Appeal No. 60446 of 2018 from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period."

18. As the Hon“ble Apex Court has answered the issue holding that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund. Therefore, I hold that the appellants are entitled to claim the interest on delayed refund from the date of deposit till its realization.

19. Further, the interest on the refund shall be payable @ 12% per annum as held by Hon“ble Kerala High Court in the case of Sony Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.) wherein it has held as under:-

“14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in *Kuil Fire Works Industries v. Collector of Central of Excise* [1997 (95) E.L.T. 3 (S.C.)], the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in *Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV* [2012 (285) E.L.T. 188 (Cal.)], wherein the peremptory directions of the Apex Court in the judgment of *ITC Ltd. (supra)* was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of *Commissioner of Central Excise v. ITC Ltd.*, which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in *Commissioner of Central Excise v. ITC Ltd. (supra)* rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the 8 Excise Appeal No. 60446 of 2018 directions of this Court in Ext. P12 judgment is fixed at 12% per annum. 15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11- 2002, to the amount of refund already made, within a month

from the date of receipt of a copy of this judgment, after adjusting any interest paid.”

20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri.Ahmd.), wherein this Tribunal observed as under:-

“5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Hon’ble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon’ble Supreme Court in October 2004. In July 2005, the Hon’ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment to the appellants.”

21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are parimateria. Therefore, following the decision of Hon’ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt. Ltd. (supra)” I hold that the 9 Excise Appeal No. 60446 of 2018 appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum.”

8. In view of the entire above discussion, the appellant is held entitled for the interest on the amount of refund sanctioned at the

rate of 12% to be calculated from the date of payment till the date of disbursement.

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

**(HEMAMBIKA R PRIYA)
MEMBER (TECHNICAL)**

SS