Serial No. 2
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (Central Excise Ap.) No. 1/2023 in
Central Excise Ap.No.4/2023

Date of order: 26.07.2023

The Principal Commissioner of Central Goods and Service Tax	vs.	M/s Green Valliey Industries Pvt Ltd

Coram:
Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Applicant/Appellant : Dr. N. Mozika, DSG with Ms. K. Gurung, Adv

For the Respondent : Mr. A. Kanodia, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The facts have been recorded in detail in the previous order of July 11, 2023 and may not warrant repetition. However, since the appeal is proposed to be disposed of by this order, the salient facts are reiterated.

2. At the outset, the delays of about 243 days against the main order and 43 days against the subsequent order are condoned in view of the good grounds shown.

3. The legal issue that has arisen here is as to whether the respondent assessee was entitled to any interest on the delayed refund

made by the Department. There is no doubt that Section 11B of the Central Excise Act, 1944 does not provide for any payment of interest for refund of duty or interest. However, the moot question here is whether the refund that the respondent assessee was found liable to be was on account of excess duty or interest paid.

4. Since it is the unarguable position that the refund that the assessee was found entitled to was neither on account of excess duty nor on account of interest previously paid, the Appellate Tribunal held that the implied embargo on interest in Section 11B of the Act would not be applicable.

5. The Department initiated an investigation against the assessee on the ground that the assessee had claimed excess cenvat credit. However, even before a show-cause notice or any demand was issued, the assessee deposited a sum of Rs.94 lakh under protest. Indeed, the deposit was made by reversing a further cenvat credit to such extent, which amounted to almost payment in cash. A show-cause notice and a subsequent order-in-original followed. The assessee was found liable to refund cenvat credit to the extent of Rs.97 lakh. The assessee challenged the order before the Tribunal and the Tribunal found that the demand for excess cenvat credit was good for about Rs.16 lakh. After providing for interest and penalty on the excess amount of cenvat credit availed, the Tribunal found that a sum of approximately Rs.78 lakh was liable to

be refunded by the Department to the assessee out of the deposit of about Rs.94 lakh that had been previously made by the assessee.

6. It appears that the Department had no quarrel with the quantum of refund as directed to be made by the Tribunal. It is also the admitted position that the amount has been refunded. The assessee, however, contended that since the excess amount, that had been deposited under protest, was retained by the Department for a considerable period of time and such deposit was neither on account of any cenvat credit demand or on account of any claim for penalty or interest, the refund that the assessee was found entitled to, ought to carry interest.

7. The Department refused to pay any interest as the Customs, Excise and Service Tax Appellate Tribunal had not provided for any interest in the appellate order. The assessee again knocked at the doors of the Appellate Tribunal to claim that the refund that the assessee had received ought to have been paid with interest. The legal issue urged was that the possible embargo that is read into the payment of interest on account of refund of duty or refund of interest or the like in Section 11B of the Act would not apply when the initial deposit had not been made on account of any interest or duty, but had been made purely as a deposit and under protest.

8. In course of the appeal before the CESTAT, several judgments were looked into. By the order impugned dated April 11, 2022, the

Tribunal recorded its satisfaction that the refund in this case was not of any duty or interest on duty. Accordingly, the Tribunal found that the assessee was entitled to interest. On the quantum of interest, the Tribunal relied on several Supreme Court, High Court and its own judgments to arrive at a figure of 12 per cent per annum.

9. The Department sought a review or a correction of the relevant order and, as it stands today, the interest amount required to be paid by the order dated April 11, 2022 still remains outstanding.

10. The Department claims that since the initial deposit had been made in anticipation of a claim for excess cenvat credit availed of, such deposit must be understood to have been made on account of duty and, accordingly, the bar under Section 11B of the Act would apply. The second ground urged by the Department is that in similar circumstances, the Delhi High Court has awarded interest at the rate of 6 per cent per annum and notifications that were relevant for the purpose of assessing the quantum of interest also provided for interest at or about the rate of 6 per cent per annum.

11. The Tribunal has given adequate reasons in both the orders impugned, including the order by which the Department's application for correction or modification was rejected. According to the Tribunal, the deposit was made at a time when no quantified claim had been made on the assessee. On such basis, the Tribunal found that the deposit had

not been made on account of any duty or interest which would attract the implied bar under Section 11B of the Act. It was a possible view taken on the set of facts that presented themselves before the Tribunal and, in this appellate jurisdiction, such interpretation does not call for any interference. Further, as to the quantum of interest awarded, the Tribunal, which is a specialised body dealing in matters pertaining to excise duty, took into account the previous judgments of the Supreme Court, High Courts and the Tribunal itself to justify that the rate of 12 per cent per annum would apply in the facts of the present case. Again, since there is some basis to the award of interest by the Appellate Tribunal, the same does not call for any interdiction.

12. A further contention has been raised by the Department, possibly, in the light of the discussion on such aspect in the immediate previous order of this Court of July 11, 2023, that at any rate, interest on interest would not be payable. However, there is no question of going into such area at this stage since it may not be relevant. Suffice it to say that since interest is a mode of compensation, it may not always pass muster to delay the payment that is due and claim that notwithstanding the reasons for the delay or the extent of delay, no interest on interest can ever be payable. Be that as it may.

13. Accordingly, the judgment and orders impugned dated April 11, 2022 and October 28, 2022 are allowed to hold the field as they do not call for any interference.

14. MC (Central Excise Ap.) No.1 of 2023 is disposed of.

15. Central Excise Ap.No.4 of 2023 is dismissed.

16. After this order is pronounced, the assessee says that if a direction is issued to the Department for immediate repayment of the amount due from the date of deposit, no claim for interest on interest will be made.

17. Without going into the question as to whether any claim for interest on interest can be legally pursued, the Department would do well to make the payment of the interest due within four weeks from date. If the payment is made within such time, there will be no further claim of the assessee in respect of this matter. Otherwise, the assessee will be entitled to pursue any further remedy available in accordance with law.

18. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
26.07.2023
Lam DR-PS