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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 19th January, 2015

\+ **CONT.CAS(C) NO.433/2012**

MUNCH FOOD PRODUCTS LTD. ..... Petitioner

Represented by: Mr.Rajendera Dutt, Advocate.

Versus

SK SHEORAN ..... Respondent

Represented by: Mr.Satish Kumar, Senior Standing Counsel with Ms.Shruti Yadav, Advocate with Respondent in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The grievance of the petitioner is that the order dated 02.03.2012 passed by the Division Bench of this Court has not been complied with in as much as the entire amount of duty alongwith interest payable in terms of the rules has not been actually disbursed to the petitioner. It has also been pointed out that the aforesaid amount was to be paid within six weeks from the date of the order, i.e., 02.03.2012.

2. Vide order dated 22.07.2014, the petitioner was directed to prepare a calculation sheet indicating the amount due and payable

to him by way of duty and interest, if any, and the provisions thereof. The respondent was also directed to check and verify the said calculation sheet and file a response thereto by way of a short affidavit along with their calculation sheet.

3. Further directed that Dr.S.K.Sheoran, Assistant Commissioner, Central Excise, Division-III, shall remain personally present in the Court.

4. Accordingly, the petitioner has filed its calculation sheet, whereby submitted that in terms of Section 11 BB of the Central Excise Act, 1944 (hereinafter to be referred as 'the Act'), interest amount of Rs.3,31,077/- is due towards the respondent Department.

5. The respondent has filed reply thereto along with his affidavit, whereby stated that entitlement of the interest is governed by Sections 11B and 11 BB of the Act and while applying the provisions thereof to the facts of the present case, the duty becomes refundable pursuant to final order dated 27.03.2002 passed by the Custom Excise & Service Tax Appellate Tribunal, (for short 'CESTAT'), New Delhi, therefore, as per Section 11B(1) of the Act, the relevant date for the purpose of refund in the instant case is 27.03.2002. The petitioner had filed application dated 18.02.2003 claiming refund of Rs.2,86,074/-. In terms of provisions of Section 11BB of the Act, interest becomes due for the period beyond three months from the date of filing of refund application by the petitioner. So the interest in the present case becomes payable with effect from 18.05.2003.

6. The fact remains that in compliance of the order dated 02.03.2012 passed by this Court, the respondent Department had sanctioned refund of Rs.4,40,742/- including interest amount of Rs.1,54,668/- to the petitioner vide Order-in-Original dated 12.04.2012. As per the respondent, the correct interest amount on the date of sanctioning of refund on 12.04.2012 comes to Rs.1,54,668/-.

7. Moreover, in compliance of the order dated 02.03.2012, the sanctioned amount was adjusted towards the confirmed demand of the petitioner in compliance of mandate of Section 11 of the Act, as there was no stay against the confirmed demand at the time of adjustment and recovery of confirmed demand was free from any restraints. The demand of Government dues, against which the refunded amount adjusted, was confirmed against them vide Order-in-Original dated 18.12.2002 and again on 14.05.2004 and 11.11.2011 in a *de novo* proceedings. The learned CESTAT vide final order dated 02.04.2014 has set aside the order in appeal dated 11.11.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I and thus, allowed the appeal of the petitioner with consequential relief.

8. Initially the respondent Department issued the Cheque No.706200 dated 01.07.2014 for an amount of Rs.5,02,227/- in favour of the petitioner, however, the same was cancelled and thereafter, a fresh cheque bearing No.559226 dated 01.10.2014 for the aforementioned amount was issued, which has been encashed

by the petitioner. Thereafter, the petitioner had challenged the Order-in-Original dated 01.07.2014 before the First Appellate Authority, i.e., Commissioner (Appeals), which has been allowed in favour of the petitioner by recording that the petitioner is entitled for interest with effect from 30.10.1995.

9. Learned counsel appearing on behalf of the respondent, on instructions from Dr. S.K. Sheoran, Deputy Director, submits that the said order is under examination before the respondent Department.

10. In view of the facts recorded above, since the respondent Department is duty bound to pay the interest amount in favour of the petitioner, therefore, three months time is granted to the respondent Department to comply with the order passed by the Commissioner (Appeals), failing which the petitioner shall be entitled for an amount of Rs.50,000/- in addition to the interest due.

11. In view of the above, the petition is disposed of.

12. A copy of this order be given *dasti* to the learned counsel for the parties.

SURESH KAIT
(JUDGE)

JANUARY 19, 2015
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