IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 65 OF 2015

Commissioner of Central Excise } **Appellant**
versus
M/s. Thermax Limited } **Respondent**

Mr. Swapnil Bangur with Mr. Vipul A. Bajpayee for the appellant.

Mr. Prakash Shah with Mr. Jas Sanghavi i/b M/s. PDS Legal for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 10, 2016

P.C. :-

1. After having heard Mr. Bangur at some length and perusing the order under challenge, we are of the view that the respondent/assessee accepted the order-in-original dated 7th November, 1997. The demand under that order was restricted to Rs.72,84,929/-. Penalty was also imposed.

2. The demand in the show cause notice was Rs.1,41,52,531. That was not entirely confirmed, but restricted as above. On the basis of these findings and conclusions in the order-in-original, a refund claim was filed. That was earlier rejected by the Assistant Commissioner only on the ground of limitation. The said order

was challenged before the Commissioner (Appeals) on 21st November, 2001 and that was allowed. The assessee did not derive any refund, but the amount was adjusted against arrears of Rs.87,34,160/-. The respondent/assessee filed a claim for interest of Rs.18,77,109/- on the extra amount of Rs.35,25,090/- (refund sum claimed) beyond 90 days for the period from March, 1998 to February, 2002. Meaning thereby, until the adjustment was made by the order dated 19th February, 2002, copy of which is at Annexure 'B'. That having been denied, the assessee preferred an appeal before the Commissioner (Appeals). That was dismissed on 26th July, 2005. However, when the assessee approached the tribunal, the tribunal allowed it on the basis of a view taken by the tribunal that on coming into force of section 11-BB of the Central Excise Act, 1944, the interest is payable on delayed refund. Such was also a view taken earlier by the tribunal.

3. Mr. Bangur would submit that we must see para 4 of the impugned order and since the pre-deposit was made in the year 1995 prior to 26th May, 1995, the provisions of section 11-BB cannot be applied.

4. We do not see any substance in this contention for what the governing words are “if any duty ordered to be refunded under

sub-section (2) of section 11-B to any applicant is not refunded .....". Therefore, if that duty ordered to be refunded is not refunded within three months from the date of receipt of application under sub-section (1) of section 11-B, then, the liability to pay interest arises. We find that the order to refund duty was passed well after section 11-BB was brought on the statute book.

5. It is in these circumstances that we do not find any substance in the contention of Mr. Bangur. We do not see how the order of the tribunal raises any substantial question of law. The appeal is devoid of merits and it is dismissed.

6. In any event, we do not think that the questions of law as proposed at page 6 of the paper book arise at all from the order of the tribunal. A distinct point is argued before the tribunal and the questions as proposed at page 6 are not in tune with those contentions and points raised before the tribunal. This is one more reason why we are disinclined to entertain the appeal.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)