IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Central Excise Appeal No. 37 of 2015 (O&M)
Date of decision: 27.7.2016

**M/s Shreewood Products Pvt. Ltd.**

**.. Appellant**

**v.**

**Commissioner of Central Excise**

**.. Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Jagmohan Bansal, Advocate for the appellant.
Mr. Tajender K. Joshi, Advocate for the respondent.

Rajesh Bindal J.

The present appeal was filed by the assessee arising out of Final Order No. A/50039/2015-EX (DB) dated 14.1.2015, passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') raising the following substantial questions of law:

> "(i) Whether the appellant is entitled to interest w.e.f. 21.8.2008 ?
>
> (ii) Whether the appellant is entitled to interest @ 12% or 6% in terms of Section 11BB of the Act ?
>
> (iii) Whether the findings of learned Tribunal are perverse and contrary to the record ?"

Learned counsel for the appellant submitted that the appellant is engaged in the manufacture of plywood, block boards, flush doors and penal doors. The respondent issued show cause notice to the appellant on 24.2.1997 proposing to levy excise duty and penalty for the period from March, 1992 to March, 1996. The adjudicating authority, vide Order-in-Original dated 11.11.2005 confirmed the amount of duty amounting to ₹ 99.22 lacs. In addition, penalty of ₹ 98.72 lacs was also imposed. Aggrieved against the order, the appellant preferred appeal before the Tribunal along with application for exemption from pre-deposit. As the appellant could not comply with the stay order, the Tribunal vide order dated 20.7.2006 dismissed the appeal of the appellant. Thereafter, the appellant disposed of its factory and deposited the entire amount of duty, interest and penalty amounting to ₹ 1,92,95,372/-. On deposit thereof, the appeal of the appellant was restored by the Tribunal and heard on merits. Vide order dated 2.5.2008, the appeal preferred by the appellant was allowed by the Tribunal. The demand was set aside and the matter was remitted back to be disposed of in terms of the directions issued. As the order was set aside, the appellant became entitled to refund of the amount deposited by it. A request to that effect was made by the appellant vide letter dated 22.5.2008, however, the same was not acceded to. Even the reminders sent subsequently were also not responded to. Even though the remand proceedings were decided by the adjudicating authority vide order dated 17.10.2008 and finally demand of merely ₹ 11,89,303/- was confirmed against the appellant with equivalent penalty. Partially the refund was granted to the appellant on 13.1.2009, whereas partially the same was granted on 17.4.2009. The appellant claimed interest on delayed refund of the amount. The application for refund of the amount along with interest thereon was dealt with by the Assistant Commissioner by passing the Order-in-Appeal on 13.1.2009 after appropriating part of the amount against demand raised vide order dated 17.10.2008. ₹ 88,72,686/- were directed to be credited to Consumer Welfare Fund and refund of ₹ 76,44,080/- was directed. The appellant preferred appeal. The Commissioner (Appeals), vide order dated 17.3.2009 accepted the appeal filed by the appellant and directed even refund of ₹ 88,72,686/- opining that the same was not hit by bar of unjust enrichment. In pursuance thereof, the aforesaid amount was paid to the appellant on 17.4.2009. As the claim of the appellant for payment of interest was declined on the ground that the amount was refunded within three months from the claim of refund on 21.10.2008 and partially the amount was refunded within three months of the passing of the order. Aggrieved against the order, the appellant preferred appeal before the Tribunal, which was dismissed vide order dated 14.1.2015 declining the relief of interest.

Learned counsel for the appellant submitted that the issue regarding entitlement of interest on the amount of pre-deposit made by the assessee after decision of the case came up for consideration before Hon'ble the Supreme Court in Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd., 2005 (179) ELT 15 (SC). The appeals were disposed of by Hon'ble the Supreme Court taking into consideration a circular issued by the Government of India, Ministry of Finance No. 275/37/2K-CX.8A dated 2.1.2002. However, in one of the cases before Hon'ble the Supreme Court, the rate of interest was reduced from 15% to 12% per annum. The circular of the Government of India provided that formal application for refund was not required. A simple letter from the person is sufficient along with copy of the order, on the basis of which the refund became due. He further relied upon a Division Bench judgment of this court in CWP No. 22541 of 2012—M/s LSE Securities Ltd. v. Assistant Commissioner, Service Tax Division, Chandigarh, decided on 6.5.2014, where interest @ 15% per annum was directed to be paid for the period after three months from the date the refund became due. Reference was also made to another Division Bench judgment of this Court in CWP No. 16213 of 2014—Haryana Vanaspati & General Mill v. The State of Haryana and another, decided on 7.8.2015, where under the Haryana General Sales Tax Act, 1973, this court directed for payment of interest @ 12% per annum on the amount deposited from the date the deposits were made as finally the assessee succeeded in litigation. The submission is that after the Tribunal set aside the demand against the appellant on 2.5.2008, it became entitled to the refund of amount deposited. The application for refund was made immediately thereafter on 22.5.2008. As the amount was refunded in January and April, 2009, the appellant was entitled to interest for the period beyond three months from the date of passing of the order of the Tribunal @ 12% per annum, as awarded by Hon'ble the Supreme Court in I.T.C. Ltd.'s case (supra).

On the other hand, learned counsel for the respondent submitted that as is evident from the order passed by the Tribunal, the application for refund was filed on 21.10.2008 and partially the amount was refunded within three months thereof, as for part of the amount there was dispute. When the same was settled, the amount was immediately refunded, hence, the appellant is not entitled to any interest. He further submitted that even if interest for any part of the period is to be paid, the same should not be at a rate more than 6% per annum.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that demand of duty of ₹ 99.22 lacs was raised against the appellant vide Order-in-Original dated 11.11.2005. In addition, penalty of ₹ 98.72 lacs was also imposed. The appellant deposited ₹ 1,92,95,372/-. The appeal was heard by the Tribunal, which was allowed vide order dated 2.5.2008 and the demand was set aside. Part of the amount, i.e., ₹ 76,44,080/- was refunded to the appellant in January, 2009, whereas remaining part of the amount, i.e., ₹ 88,72,686/- was refunded in April, 2009. As per the circular of the Government of India, Ministry of Finance, as referred to above, in case the amount is not refunded within three months from the date of passing of the order, the assessee is entitled to interest. No formal application is required to be filed. A simple letter is sufficient for the same. The application in the present case was filed by the appellant on 22.5.2008. There is error in the date noticed in the order passed by the authority for filing the application as 21.10.2008. Hon'ble the Supreme Court in I.T.C. Ltd.'s case (supra) allowed the refund along with interest @ 12% per annum.

Keeping in view the aforesaid facts and circumstances, in our opinion, the appellant herein is entitled to payment of interest @ 12% per annum for the period after three months till the refund was granted after passing of the order by the Tribunal on 2.5.2008. The questions, referred to above, are answered accordingly.

The appeal stands disposed of.

(Rajesh Bindal)

Judge

(Harinder Singh Sidhu)
Judge

27.7.2016
mk

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No