IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FIRST APPEAL NO.246 OF 2007

Commissioner of Central Excise,
& Customs, Town Centre, N-5,
CIDCO, Aurangabad ... APPELLANT

VERSUS

M/s Jai Corp. Ltd.,
Sipta Coated Steel Division,
A-3, M.I.D.C., Nanded 431 603 ... RESPONDENT

.....
Shri D.S. Ladda, Advocate for appellant
Shri A.P. Kolte, Advocate for respondent
.....

CORAM: R.D. DHANUKA AND
SUNIL K. KOTWAL, JJ.

DATED: 29th September, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.):

1. By this Appeal, filed under Section 35(G) of the Central Excise and Customs Act, 1994, the appellant has impugned the order dated 31.7.2006, passed by the Tribunal, allowing the Appeal No.A/1125/C-III/SMB/WZB/2006, filed by the assessee and holding that the revenue is liable to pay

interest to the assessee from three months from the date of the order of the Tribunal i.e. from 22/10/1999 up to 17/3/2004.

2. The revenue has imposed a penalty of Rs.5 Lakhs upon the assessee. The Commissioner of Central Excise & Customs, Aurangabad confirmed the said order of penalty of Rs.5 Lakhs by an order dated 7.12.1989. The Tribunal dismissed the appeal filed by the assessee on 5.11.1997 for default. On 5.3.1998, the assessee paid the penalty of Rs.5 Lakhs under protest. The assessee simultaneously filed an application for restoration of the appeal which was dismissed for default. The said appeal was restored by the Tribunal. On 22.7.1999, the appeal filed by the assessee came to be allowed by the Tribunal. The order imposing penalty of Rs.5 Lakhs by the revenue came to be set aside. On 23.12.2003, the assessee made an application for refund of the amount of Rs.5 Lakhs. The revenue refunded the amount of Rs.5 Lakhs on 17.3.2004, without payment of any interest. After receipt of the said refund of Rs.5 Lakhs, the assessee made an application for payment of interest of Rs.3,25,764/- on the said refunded amount of Rs.5 Lakhs. The revenue, however, did not pay the said interest and passed an order on 3.11.2004.

3. The assessee thereafter filed an appeal before the

Commissioner of Central Excise & Customs (Appeals). By an order dated 21.2.2005, the Commissioner of Central Excise & Customs (Appeals) dismissed the said appeal filed by the assessee. Being aggrieved by the said order, the assessee preferred an appeal before the Tribunal. By an order dated 31.7.2006, the Tribunal allowed the said appeal filed by the assessee and held that the assessee would be entitled to interest after expiry of three months from the date of the order of the Tribunal i.e. 22.10.1999. The revenue filed this appeal under Section 35(G) of the Central Excise & Salt Act, 1944.

4. This Court, admitted this First Appeal on 30.4.2007 on following substantial question of law.

> "Whether interest under Section 11-BB can be permitted in favour of the assessee for delayed refund of the penalty imposed under Section 11-AC upon the same being set aside by higher authorities?

5. Mr. Ladda, learned counsel for the revenue invited our attention to the various orders annexed with the appeal and would submit that, the assessee did not make any application for refund of the amount of Rs.5 Lakhs immediately upon the date of

the order of Tribunal allowing the appeal filed by the assessee and directing the revenue to refund the amount of penalty of Rs.5 Lakhs. He submits that, the application for refund of the amount was made for the first time on 23.12.2003. The said application for refund was processed by the revenue and an amount of Rs.5 Lakhs was refunded by the revenue within three months from the date of the said application i.e. on 17.3.2004. He submits that, the assessee thereafter made a separate application for interest which was rightly rejected by the Department. He submits that, since no application for payment of interest was made by the assessee immediately upon the order of the Tribunal allowing the appeal of the revenue, the revenue was not liable to make payment of any interest.

6. Learned counsel for the assessee, on the other hand, without going into the issues raised by the learned counsel for the revenue, would submit that, on 24.11.2006, the revenue has already made payment of interest to the assessee in the sum of Rs.2,30,576/-. He submits that, the claim of interest was for larger amount made by the assessee. However, since the interest allowed by the Tribunal was only for the period between 22.10.1999 and 17.3.2004, the revenue made payment of interest in the sum of Rs.2,30,576/-. He fairly submits that, the

assessee has not disputed the amount of interest paid by the revenue to the assessee on 24.11.2006. It is submitted by the learned counsel that, in view of the revenue already having complied with the order passed by the Tribunal and has released the payment of interest on 25.11.2006, nothing survives in this appeal.

7. It is submitted by the learned counsel that, though he could respond to all the issues raised by the learned counsel for the revenue in this appeal, since the impugned order passed by the Tribunal has been already complied with, the assessee need not answer those questions raised by the Department.

8. Mr. Ladda, learned counsel for the revenue does not dispute that the interest amount has been already paid by the Department on 24.11.2006 in the sum of Rs.2,30,576/- unconditionally. In our view, since the impugned order passed by the Tribunal has been implemented by the revenue, this Court need not go into the other rival contentions raised by the parties.

9. It is, however, made clear that, this Court has not gone into the issue whether the assessee was under any obligation to make an application for refund of the interest thereon immediately upon the date of the order of the Tribunal

thereby setting aside the order imposing penalty. The issue raised by the revenue across the bar before this Court for consideration that liability to pay interest would not have commenced till application for refund of penalty or interest thereon would have been made by the assessee or not need not be gone into by this Court and the said issue is kept open. In our view, the said issue can be considered by the Court in appropriate matter.

10. Since this Court is of the view that the appeal itself has become infructuous in view of the Department having paid the amount of interest unconditionally, we pass the following order:

(a) First Appeal No.246/2007 is dismissed as infructuous.

(b) We, therefore, need not answer the substantial question of law as framed by this Court while admitting the First Appeal.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/