

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CEA No.7 of 2018 (O&M)

Date of decision: 25.04.2023

M/s Bata India Ltd.

...Appellant

Vs.

Commissioner Central Excise, Delhi-IV

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Amrinder Singh, Advocate,
and Ms. Gulrukh Kaur Sidhu, Advocate,
for the appellant.

Mr. Anshuman Chopra, Senior Standing Counsel,
and Mr. Deepesh Kakkar, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal, under Section 35G of the Central Excise Act, 1944, has been filed against the final order dated 02.08.2017 (Annexure A-1) passed by the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal'), Regional Bench, Chandigarh, in Appeal No.E/56519/2013.

The brief facts of the case are that the appellant-M/s Bata India Ltd. is registered with the Central Excise Department and is engaged in the manufacture of footwear falling under Tarrif Item 64039120 and 64039920 of the First Schedule to the Central Tarrif Act, 1985. The Commissioner Central Excise, Delhi-II, vide order/notice dated 20.11.1997 had confirmed a demand of Rs.89,77,064/- and imposed a penalty of Rs.1,00,00,000/- on the appellant. The said order was challenged before the Tribunal. The Tribunal, vide order dated 22.05.1998 (Annexure A-2), while disposing of the interim

stay application in the said case, directed the appellant to deposit a pre-deposit of Rs.20,00,000/- under Section 35F of the Act. Later on, the Tribunal, vide order dated 26.05.2010 (Annexure A-3), allowed the appeal and set aside the entire demand made by the respondent-authority. Thereafter, the appellant filed a refund claim on 19.09.2011 (Annexure A-4) as per Section 35FF of the Central Excise Act. The Commissioner issued a show cause notice dated 16.12.2011 (Annexure A-5) proposing to reject the refund claim dated 19.09.2011 on the ground that it had been filed after the expiry of one year from the order dated 26.05.2010 (Annexure A-3). The appellant filed reply to the show cause notice on 23.01.2012 (Annexure A-6). The refund claim was rejected by the adjudicating authority vide order dated 10.04.2012 (Annexure A-7). Appeal against the said order, filed by the appellant, was also dismissed vide order dated 17.12.2012 (Annexure A-9) passed by the Commissioner (Appeals) on the ground of limitation. It was held that the amount of pre-deposit was duty and therefore, the limitation under Section 11B of the Central Excise Act, 1944 would apply. The appellant challenged the said order by filing an appeal before the Tribunal, which was allowed to the extent of refund of pre-deposit of Rs.20,00,000/- on the following ground:-

- (i) The amount deposited under Section 35F is not payment of duty but only a deposit for availing the right of appeal; and
- (ii) That Section 11B does not apply to deposits made under Section 35F. Reference was made to a decision given by the Hon'ble Bombay High Court in the case of

However, the interest was denied on the ground that a show cause notice was issued within three months of the receipt of the refund claim. Aggrieved by the said order, the appellant has filed the present appeal.

Learned counsel for the appellant has referred to a circular dated 16.09.2014 issued by the respondent-authority, which relates to refund of pre-deposit. The said circular provides that the refund claim cannot be rejected unless there is stay by the superior Court. As per this circular, even if, the department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, the refund and interest cannot be withheld. Learned counsel for the appellant has further argued that the Tribunal has relied upon the decision given in the case of **AFCONS Infrastructure Ltd. vs. CCE, Visakhapatnam**, 2006 (204) ELT 333 (Tri. - Del.), which is not applicable to the facts of the present case. He has argued that in that case, the Tribunal's order was dated 14.05.2003 and the refund was granted within three months on 14.08.2003. The assessee, in that case, was seeking the benefit of interest from the dated of pre-deposit. In this context, the Tribunal held that in the absence of a statutory provision dealing with refund of pre-deposits, Section 11B would apply. He has referred to a judgment passed in **CCE vs. ITC Limited**, 2005 (179) E.L.T. 15 (S.C.), wherein Hon'ble the Supreme Court was dealing with the question of pre-deposits and held that interest at the rate of 12% is to be granted, which is greater than the rate prescribed under Section 11B read with Section 11BB. The above said decision of Hon'ble the Supreme Court has been followed by this Court in **Shreewood Products Pvt. Ltd. vs. Commissioner**, 2016 (340)

(320) E.L.T. 350 (P&H). Learned counsel for the appellant has further argued that modalities for claiming refund have been simplified in the circular dated 02.01.2002, wherein it has been provided that even, a simple letter from the person, who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in-appeal or CEGAT order consequent to which, the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6, will be sufficient for the purpose of payment of refund by the competent officer.

Learned counsel for the respondent, on the other hand, has argued that while dismissing the appeal for grant of interest on pre-deposit, judgment passed in **AFCONS Infrastructure Ltd.'s** case (supra), has been rightly applied to the facts of the present case, by the Tribunal.

Heard, learned counsel for the parties.

A perusal of the judgment passed in **AFCONS Infrastructure Ltd.'s** case (supra) shows that therein, payment of interest was being demanded from the date when the refund became due and it was denied on the ground that payment was made within a period of three months when it became due and before three months, the assessee was not entitled to claim any interest.

In the facts of the present case, the Tribunal allowed the appeal vide final order dated 26.05.2010 (Annexure A-3) and had the department returned the pre-deposit within three months i.e. by 26.08.2010, the assessee could not have claimed interest. In this backdrop, the benefit could have been denied to the present appellant itself as per **AFCONS Infrastructure Ltd.'s** case (supra). But, in this case, Rs.20,00,000/-, as pre-deposit, were

after the final order was passed on 26.05.2010 (Annexure A-3). The pre-deposit was lying with the department from 1998 till 2010. The department was bound to allow the refund claim within three months from 26.05.2010. Application for refund was filed on 19.09.2011 (Annexure A-4). Instead of allowing the refund, which became due, a show cause notice was issued to the assessee on 16.12.2011 (Annexure A-5) proposing to reject the refund claim on the ground that it had been filed after the expiry of one year from the date of passing of final order dated 26.05.2010. Finally, the Tribunal allowed the appeal to the extent of refund of Rs.20,00,000/-. However, claim of interest was denied by referring to the decision given in **AFCONS Infrastructure Ltd.'s** case (supra).

The short question for consideration in the appeal is, once the Tribunal has decided to refund the pre-deposit of Rs.20,00,000/-, is the assessee entitled to interest on the delay payment of refund.

This aspect has been considered by this Court in **Shreewood Products Pvt. Ltd.'s** case (supra). In that case, application for refund was made on 22.05.2008. Part of some amount i.e. Rs.76,44,080/- was refunded in the month of January, 2009, whereas the remaining amount of Rs.88,72,686/- was refunded in the month of April, 2009. Reference was made to a circular issued by the Government of India on 02.01.2002, which 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, which can be considered by the competent authority to refund the claim. Since the application, in that case, was made on 22.05.2008, the assessee was entitled to 12% interest per annum for the

order by the Tribunal on 02.05.2008. The High Court of Kerala, in *Sony Pictures Networks India Pvt. Ltd. vs. Union of India*, 2017 (353) E.L.T. 179 (Ker.) was examining a case, where the assessee was liable to pay refund amount on expiry of three months from the date of order dated 18.11.2002 passed by the Appellate Tribunal. It was held that even if the application was submitted late, the circulars dated 02.01.2002 and 08.12.2004 issued in respect of refund/return of deposits do not restrict payment of interest from the date of submission of application. In paras.14 and 15 of the aforesaid judgment, it was observed as under:-

14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) ELT 3 (SC)], the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata - IV [2012 (285) E.L.T. 188 (Cal.)], wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12 % interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 08.12.2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of

[Central Excise v. ITC Ltd](#), which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in [Commissioner of Central Excise v. ITC Ltd](#) (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the directions of this Court in Ext.P12 judgment is fixed at 12% per annum.

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18.11.2002, to the amount of refund already made, within a month from the date of receipt of a copy of this judgment, after adjusting any interest paid. Writ petition is disposed of accordingly.”

Reference can now be made to the circular dated 16.09.2014 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi, whereby procedure for refund has been clarified as under:-

“7.1 A simple letter from the person, who has made such deposit, requesting for return of the said amount, along with a self attested Xerox copy of the order-in-appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case

may be, would suffice for refund of the amount deposited along with interest at the rate specified.

7.2 Record of deposits made under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1952 should be maintained by the Commissionerate so as to facilitate seamless verification of the deposits at the time of processing the refund claims made in case of favourable order from the Appellate Authority.”

In the present case, since the amount was deposited under Section 35F of the Central Excise Act, even a simple application could be made for claiming the refund and the refund was required to be returned along with interest. With respect to the interest, the judgments passed in **Shreewood Products Pvt. Ltd.** and **Sony Pictures Networks India Pvt. Ltd.’s** cases (supra) have clarified that the department is liable to make payment of interest after the expiry of three months from the date the refund becomes due. In the present case also, after the expiry of three months, the interest became due w.e.f. August, 2010.

In view of the above discussion, the appellant is held entitled to payment of interest at the rate of 12% per annum for the period after three months till the refund was granted after passing of the order by the Tribunal on 26.05.2010 (Annexure A-3).

The appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

25.04.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No