IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.8 of 2022 (O&M)
Date of Decision : March 14, 2022

Commissioner of Central Excise, Panchkula

.....Appellant

vs.

M/s Riba Textiles Limited

.....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sourah Goel, Senior Standing Counsel assisted by
Mr. Tej Bahadur, Advocate
for the appellant.

PANKAJ JAIN, J.

This appeal has been filed against the order passed by Customs, Excise & Services Tax Appellate Tribunal, Chandigarh whereby the respondent has been held to be entitled for interest of refund from the date of deposit and the order whereby the application for rectification of mistake filed by the appellant has been dismissed.

2. The respondent/Assessee having its registered office at Sonepat had applied for central excise duty along with interest before the Deputy Commissioner, Central Excise, Division Panipat. The Deputy Commissioner, Central Excise, Division Panipat vide order dated 21st June, 2017 allowed and sanctioned refund of Rs.54.00 lacs to the Assessee however claim w.r.t. interest was rejected.

3. The respondent/Assessee challenged the said order *qua* rejection of interest in appeal before the Commissioner of Central Excise

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(Appeals), Panchkula which was also dismissed vide order dated 18th January, 2018. The Assessee took the matter in appeal before CESTAT, Chandigarh. CESTAT vide order dated 7th January, 2020 held the Assessee entitled for interest on delayed refund from the date of deposit till its realization thereof. The Assessee approached the authorities of Panipat Division for refund on 24th February, 2020. While the application of the Assessee was pending before the Authorities at Panipat Division, the Commissioner of CGST and Central Excise, Panchkula filed rectification of mistakes application before the CESTAT. The said application has also now been dismissed by the CESTAT vide order dated 30th December, 2021. Consequently, the Revenue has come in appeal against the aforesaid orders passed by the Tribunal.

5. Mr. Sourabh Goel, Senior Standing Counsel appearing for the Revenue has primarily raised question w.r.t. the change in jurisdiction of the Authorities after the coming of new CGST regime. He claims that w.e.f. 1st July, 2017 the Central Goods and Services Tax Act, 2017 (for short, 'the Act') has come into force. Keeping in view that the new tax regime has come into force, the erstwhile Central Excise and Customs Commissionerates were re-organised into Central Goods and Services Tax (Central Tax) Commissionerates w.e.f. 22nd June, 2017. The territorial jurisdiction of such Central Tax Commissionerates notified by the Government vide Notification No. 2/2017-Central Tax dated 19th June, 2017 and brought into force w.e.f. 22nd June, 2017. The erstwhile Central Excise

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Commissionerates of Gurgaon-I, Gurgaon-II, Rohtak, Sonipat (Delhi-III), Panchkula, Faridabad-I and Faridabad-II, which earlier were under Delhi Central Excise Zone, were now brought under a newly created Chief Commissioner of CGST and Central Excise Zone, Panchkula and re-organised into Gurugram, Rohtak, Panchkula and Faridabad Central Tax Commissionerates. The Central Excise Commissionerate of Sonepat (Delhi-III) was dissolved and the districts of Panipat and Sonepat in the State of Haryana that comprised it were merged with Panchkula and Rohtak Commissionerate respectively. At the same time, to discharge the functions under the Central Excise Act, 1944 and the legacy matters under the Finance Act, 1994, Central Excise Officers were appointed vide Notification No. 12/2017-Central Excise (NT) dated 9th June, 2017, and their territorial jurisdiction was notified under the Notification No.13/2017 dated 9th June, 2017. These two notifications were also brought into force w.e.f. 22nd June, 2017. For the administrative convenience, the territorial jurisdiction of the Central Tax and the Central Excise Officers has been kept identical. Thus, w.e.f. 22nd June, 2017, the Central Excise Division Panipat, which was earlier under the now dissolved Sonepat (Delhi III) Commissionerate, came under Panchkula Central Excise Commissionerate. Division Sonepat was brought within the jurisdiction of Rohtak Commissionerate. Thus, he claims that the respondent/Assessee impleaded wrong authorities for claim of refund and interest .

6. Secondly, the Counsel has argued that the Tribunal erred in

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granting interest as per the amended provisions of Section 35FF of the Central Excise Act, 1944.

7. Having heard Counsel for the appellant we find that both the arguments raised by him need to be rejected. Claim for refund in the present case was filed on 6th January, 2016 which was returned and again filed on 19th April, 2017. Section 142 of the Act deals with miscellaneous transitional provisions including the claim for refund filed by any person before, on or after the appointed day for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law.

8. Section 142 of the Act when read with Section 2(48) of the Act is a complete answer to the plea raised by the appellant *qua* the issue of jurisdiction. The provision explicitely provides that every claim of refund shall be dealt under the existing law i.e. Central Excise Act, 1944 and not by the provisions of the Act. Thus the plea of transfer of jurisdition due to GST regime is not available to the appellant.

9. While deciding the issue of interest, Ld. Tribunal has relied upon the law laid down by the Apex Court in **Sandvik Asia Ltd vs. CIT, Pune** – 2007 (8) STR 193 (SC) wherein it was held that :-

> *"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the*

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intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

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COMPENSATION:

46. The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

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48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period."

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9. It is not disputed that the provisions of Income Tax Act, 1961 and Central Excise Act, 1944 are *pari materia* and, therefore, law laid down by the Supreme Court in the case of **Sandvik Asia Ltd. (supra)** shall be applicable to the present case.

10. Ld. Counsel for the appellant is not in a position to deny the proposition of law laid down in the case of **Sandvik Asia Ltd. (supra)** and the applicability thereof to the facts of the present case.

11. Consequently, finding no merit in the present case, the instant appeal is hereby dismissed.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

March 14, 2022
Dpr

Whether speaking/reasoned : Yes

Whether reportable : Yes

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