CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60744 of 2023

[Arising out of Order-in-Appeal No. 88/ST/CGST-GURUGRAM/SKS/2023-24 dated 14.09.2023 passed by the Commissioner (Appeals), CGST, Gurugram]

M/s Indus Towers Limited ......**Appellant**
4th Floor, Building No. 10,
Tower A, DLF Cyber City,
Gurugram, Haryana 122002

VERSUS

Commissioner of Central Excise, Central Goods and Service Tax, Gurugram ......**Respondent**
Plot No. 36-37, Sector 32,
Gurugram, Haryana 122001

APPEARANCE:

Shri Samyak Jain and Shri Yas Varmani, Advocates for the Appellant

Shri R. P. Sharma, Special Counsel (AR) for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60101/2025

DATE OF HEARING: 26.09.2024
DATE OF DECISION: 24.01.2025

S. S. GARG:

The present appeal is directed against impugned order dated 14.09.2023 passed by the Commissioner (Appeals), CGST, Gurugram.

2.1 Briefly stated facts of the present case are that the appellant is registered with the Department of Telecommunication as a service provider for the provision of passive infrastructure support services to various telecom companies such as Vodafone, Bharti Airtel etc. For providing such services, the appellant had purchased various capital goods namely lead acid batteries, electric generator sets, air conditioners, power interface unit, Switch Mode Power Systems, battery banks etc and had availed CENVAT Credit of the excise duties paid thereon in terms of the Cenvat Credit Rules, 2004.

2.2 In year 2014, investigation proceedings were initiated by the Directorate General of Central Excise Intelligence (in short 'DGCEI') with respect to the clearance of capital goods as waste and scrap by the appellant without payment/reversal of the amount during the periods from 01.03.2011 to 16.03.2012 and 27.09.2013 to 31.03.2015. During the course of the investigation, the appellant, without admitting liability, deposited an amount of Rs.12,00,00,000/- under protest. Further, the dispute was decided by the Division Bench of the CESTAT, New Delhi in favour of the appellant vide Final Order No. 50932/2022 dated 26.09.2022.

2.3 Pursuant to the said final order, the appellant had filed a refund application dated 29.09.2022 before the Assistant Commissioner, CGST Division East-I, Gurugram for claiming the refund of Rs.12,00,00,000/- deposited during the DGCEI investigation conducted against them in year 2014 alongwith applicable interest. The learned Assistant Commissioner vide Order-in-Original dated 02.01.2023 partially sanctioned the refund of Rs.11,35,26,369/- to the appellant after adjusting the demand of Rs.64,73,631/- separately confirmed against erstwhile M/s Bharti Infratel Ltd and this demand was subsequently dropped vide Order-in-Appeal dated 13.03.2023 (hereinafter referred to as 'Bharti OIA'). Further, the Assistant Commissioner held that no interest was payable to the appellant as the refund claim of the appellant has been processed within three months of the receipt of CESTAT's Order dated 26.09.2022. Pursuant to the Order-in-Original, the appellant received the refund of refund of Rs.11,35,26,369/- on 16.01.2023.

2.4 Not satisfied with the Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) and the learned Commissioner (Appeals) vide the impugned order, has held that interest @6% per annum is payable to the appellant, computable from the expiry of three months from the receipt of the CESTAT Order dated 26.09.2022 till the date of refund. Further, the learned Commissioner (Appeals) has failed to provide any finding in respect of adjustment of the amount of Rs.64,73,631/- made by the Assistant Commissioner vide the Order-in-Original. Hence, the present appeal has been preferred by the appellant claiming the interest on the amount of Rs.12,00,00,000/- @12% per annum from the date of deposit of such amount by the appellant till the actual date of payment of refund. The appellant has also prayed for the refund of the amount of Rs.64,73,631/-, which was adjusted by the Assistant Commissioner vide the Order-in-Original.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law and binding judicial precedents.

4.2 As regards **the entitlement of interest on the amount of Rs.12,00,00,000/- from the date of deposit till the date of refund**, the learned Counsel submits that the finding of the learned Commissioner (Appeals) is contrary to the settled law that amounts paid during the investigation stage under protest are refundable from the date of deposit till the date of refund upon determination of dispute in the favour of the taxpayer. In this regard reliance is placed on the decision of the Hon'ble Apex Court in the case of **Sandvik Asia Limited vs. Commissioner of Income Tax - 2006 (2) SCC 508**, wherein the Hon'ble Supreme Court has laid down the principle that where an amount was due to an assessee from the department, such amount is required to be refunded to the assessee with applicable interest for the entire period from the date of deposit till the date of refund. The Hon'ble Supreme Court has further held that this interest is in the form of compensation to the assessee for retaining the deposited amounts for extended periods of time without the authority of law, causing financial difficulties for the assessee, the liability to pay such interest arises from the provisions of the Income Tax Act, 1961. In this regard, he also relies on the decision of the Hon'ble Punjab & Haryana High Court in the case of **CCE, Panchkula vs. Riba Textiles Limited - 2022 (62) G.S.T.L. 136 (P&H)**, wherein the Hon'ble High Court by relying on the decision of the Hon'ble Supreme Court in the case of **Sandvik Asia Limited** (supra) has upheld the order of the Tribunal granting interest on refund to the assessee computable from the date of payment till the date of refund. The review application filed against this judgment has also been rejected by the Hon'ble Punjab & Haryana High Court as reported at **2022 (5) TMI 1531 - PUNJAB & HARYANA HIGH COURT**. He further submits that the decision of Hon'ble Punjab & Haryana High Court in the case of **Riba Textiles Limited** (supra) was further followed by the Hon'ble High Court in the case of **Sunrise Immigration Consultants Private Limited vs. Union of India - 2023 (6) TMI 411 PUNJAB & HARYANA HIGH COURT** wherein the Hon'ble High Court has re-affirmed that the petitioner was entitled to refund of the amount deposited during investigation along with interest computable from the date of deposit of the amount till the date of refund. He also relies on the decision of the Hon'ble Delhi High Court in the case of **Team HR Services Private Limited vs. Union of India - 2020 (38) G.S.T.L. 457 (Del.)**, wherein the Hon'ble Delhi High Court has held that the petitioner was entitled to interest on the amount deposited under protest during investigation from the date of deposit till the date of refund. Besides this, he also relies on the following case-laws wherein it has been held that interest on the amount paid during investigation is payable from the date of deposit till the date of refund:

- **Fujikawa Power vs. CCE & ST, Chandigarh-I - 2019 (11) TMI 1197 CESTAT CHANDIGARH**
- **Impressive Management Solutions Pvt. Ltd. vs. CGST, Chandigarh - 2023 (4) TMI 433 CESTAT CHANDIGARH**
- **Sunrise Immigration Consultants Private Limited vs. CGST, Chandigarh - 2023 (4) TMI 504 CESTAT CHANDIGARH**
- **M/s Marshall Foundry & Engg Pvt. Ltd. vs. Commissioner of CGST, Faridabad - 2019 (11) TMI 1269**
- **M/s Marshall Foundry Works Pvt. Ltd. vs. Commissioner of CE & ST, Faridabad - 2022 (3) TMI 801**

He also submits that the entitlement of interest from the date of deposit has been upheld by the same Commissioner (Appeals) in the Bharti OIA dated 13.03.2023.

4.3 As regards **<u>the rate at which the interest is to be computed</u>**, the learned Counsel submits that in the impugned order, the Commissioner (Appeals) has ruled that the interest on the refund of Rs.12,00,00,000/- would be applicable @6% per annum, and not 12% per annum, as sought by the appellant. He further submits that various High Courts and benches of the Tribunal consistently have held that interest on refund of deposits made during investigations is required to be computed @12% per annum. He further submits that in the cases of **Riba Textiles Limited** (supra) and **Sunrise Immigration Consultants Private Limited** (supra), the jurisdictional High Court of Punjab & Haryana has already held that the rate of interest applicable in such cases is @12% per annum. He further submits that the decision of the jurisdictional High Court of Punjab & Haryana in the case of **Riba Textiles Limited** (supra) has been followed by this Tribunal in the cases of **Sunrise Immigration Consultants Private Limited vs. CGST, Chandigarh - 2023 (4) TMI 504 - CESTAT CHANDIGARH** and **Impressive Management Solutions Pvt. Ltd. vs. CGST, Chandigarh - 2023 (4) TMI 433 CESTAT CHANDIGARH**. Besides this, he also relies on the following case-laws to support his argument that the interest computed should be @12% per annum:

- **CCE, Hyderabad vs. ITC Ltd. - 2004 (12) TMI 90 - Supreme Court**
- **Nelco Limited vs. Union of India - 2002 (144) E.L.T. 56 (Bom.)**
- **Sony Picture Network India Pvt. Ltd vs. UOI - 2017 (5) TMI 864 - Kerala High Court**
- **Commissioner of Customs (Preventive) vs. Ghaziabad Ship Breakers Pvt. Ltd - 2010 (10) TMI 151 - Gujrat High Court**
- **Ghaziabad Ship Breakers Pvt. Ltd. vs. Commissioner of Customs 2010 (9) TMI 400 - CESTAT Ahmedabad**
- **Vikas Sabharwal Proprietor vs. Commissioner of Central Tax & GST, New Delhi - 2023 (4) TMI 5 - CESTAT New Delhi**
- **Shri Rathi Steel Ltd. vs. Commissioner of CGST, Noida - 2024 (6) TMI 377 - CESTAT Allahabad**
- **Kukreti Steels Ltd. vs. Commissioner of CGST, Dehradun - 2021 (8) TMI 751 - CESTAT New Delhi**
- **Indore Treasure Market City Pvt. Ltd. vs. Commissioner of CGST & CE, Indore - 2024 (2) TMI 372 - CESTAT New Delhi**
- **Raghuveer Metal Industries Ltd. vs. Commissioner of CGST, Jaipur-I - 2023 (12) TMI 371 - CESTAT New Delhi**
- **Elegant Developers vs. Commissioner, CE & CGST, Delhi South - 2022 (3) TMI 751 - CESTAT NEW DELHI**

4.4 As regards **<u>the amount adjusted from the total refund sanctioned to the appellant</u>**, the learned Counsel submits that the Commissioner (Appeals) has not rendered any finding in respect of the partial refund of Rs.11,35,26,369/- granted by the Assistant Commissioner to the appellant, after adjusting the amount deposited by the appellant in this matter against the confirmed demand of Rs.64,73,631/- in a different case (covered by the Bharti OIO) despite specific submissions made by the appellant in this regard. In this regard, he places reliance on the **Circular No. 13/92-CX dated 04.11.1992**, wherein the CBEC has clarified that "*<u>Refund amounts due to an assessee should be appropriated by proper officers against confirmed demands, only when the time limit for filing appeal against such confirmed demands has expired</u>*." He also relies on the decision of the Delhi Bench of the Tribunal in the case of **Kisan Irrigations & Infrastructure Ltd. vs. CCE & ST, Indore - 2016 (339) ELT 583 (Tri. Del.)**, wherein it was held that adjustment of refund against a confirmed demand during the pendency of an appeal amounts to coercive recovery and is not permissible under law. He further submits that the same view has been taken in the case of **Voltas Limited vs. CCE, Hyderabad-II - 2006 (5) TMI 232 - CESTAT BANGALORE**. He further submits that the adjustment of the demand confirmed vide the Bharti OIO against the refund due to the appellant could not have been made prior to the Bharti OIO attaining finality. Besides this, he also relies on the following decisions, wherein it has been held that Section 11 of the Central Excise Act, 1944 does not contemplate the adjustment of refund amount due to the assessee towards any amount due to the Revenue:

- **CCE, Bangalore-III vs. Stella Rubber Works (Unit-II) - 2012 (275) ELT 404 (Kar.)**
- **CCE, Mumbai-I vs. Johnson & Johnson Ltd. - 2016 (335) ELT 163 (Tri. - Mumbai)**
- **Central Arecanut and Cocoa Marketing and Processing Co Operative Ltd vs. CCE & ST, Mysore - 2017 (3) TMI 931 - CESTAT BANGALORE**

He also prays that the refund of Rs.64,73,631/- retained by the tax authorities should be refunded to the appellant along with interest @12% per annum computed from the date of deposit till the date of refund.

5.1 On the other hand, the learned Special Counsel for the Revenue reiterates the findings of the impugned order. Further, he submits that as regards the prayer of the appellant that they are entitled to refund of the amount deposited during investigation, the relevant provisions to deal with the issue are Section 35F and Section 35FF of the Central Excise Act, 1944 which are applicable to service tax by virtue of Section 83 of the Finance Act, 1994. He further submits that Section 35F specifies the mandatory payment of pre-deposit amount of 7.5% or 10% as a pre-condition for hearing an appeal, it does not elaborate whether the amount paid by the appellant during investigation can be considered as pre-deposit or not. On this point, a clarification is provided by the CBEC by way of the Circular dated 16.09.2014 as per which the amount paid/deposited by an assessee during the investigation will also be treated as pre-deposit for the purpose of Section 35F. He further submits that in the instant case, the appellant has availed the benefit of clarification extended by the CBEC and the condition of pre-deposit was satisfied by adjusting the amount of Rs.12,00,00,000/- paid during investigation. But for the above circular, the appellant could not utilize the said amount paid during investigation to pay pre-deposit as stipulated in section 35F. He also submits that since pre-deposit is directly linked with filing of appeal before Commissioner (Appeal) or the Tribunal, the date of pre-deposit as per section 35F, paid by fresh payment of money or by utilizing the amount already paid during investigation, will be the date of filing of the appeal.

5.2 The learned Special Counsel further submits that the learned Commissioner (Appeals) has rightly granted the interest @6% from the expiry of three months of the date of decision of the CESTAT.

5.3 In support of his submissions, the learned Special Counsel relies on the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Willwood Chemicals Pvt Ltd – 2022 (60) GSTL 3 (SC)** wherein the Hon'ble Supreme Court has held that the interest on refund of unutilized Input Tax Credit is required to be paid as per the prescribed rules. He also cites the decisions of Hon'ble Apex Court in the cases of **Commissioner of Income Tax, Gujarat vs. Gujarat Fluoro Chemicals – 2017 (51) STR 236 (SC)** and **Union of India vs. Cosmo Films Limited– MANU/SC/0488/2023**.

6. We have considered the submissions made by both the parties and perused the material on record as well as various decisions relied upon by both sides as cited above.

7.1 Regarding **<u>the entitlement of interest on the amount of Rs.12,00,00,000/- from the date of deposit till the date of refund</u>**, we find that this issue is no more *res integra* as the same has been decided by the Hon'ble Apex Court in the case of **Sandvik Asia Limited vs. Commissioner of Income Tax** (surpa), which has been followed by the jurisdictional High Court of Punjab & Haryana in the case of **Riba Textiles Limited** (supra), wherein the Hon'ble High Court has upheld the order of the Tribunal granting interest on refund to the assessee computable from the date of payment till the date of refund @12% per annum. It is pertinent to note that the review application filed by the Revenue against this judgment has also been rejected by the Hon'ble Punjab & Haryana High Court as reported at **2022 (5) TMI 1531 - PUNJAB & HARYANA HIGH COURT**.

7.2 We also note that the Hon'ble Punjab & Haryana High Court in the case of **Sunrise Immigration Consultants Private Limited vs. Union of India –** (supra), after relying upon the decision in the case of **Riba Textiles Limited** (supra), has re-affirmed that the petitioner was entitled to refund of the amount deposited during investigation along with interest @12% computable from the date of deposit of the amount till the date of refund.

8.1 Regarding **<u>the rate at which the interest is to be computed</u>**, we find that the Tribunal as well as various Courts in catena of decisions (as cited above in para 4.3) have consistently held that interest is payable from the date of deposit till the date of refund @12% per annum. In this regard, we may refer to the decision of the Tribunal in the case of **Indore Treasure Market City Pvt Ltd** (supra) wherein the Tribunal after considering the various decisions of the Courts, has held that the assessee is entitled for interest on the amount of refund sanctioned @12% to be calculated from the date of payment till the date of disbursement. This decision of the Tribunal was challenged by the Revenue before the Hon'ble Madhya Pradesh High Court and the Hon'ble High Court vide its order dated 22.04.2024 reported as **CGST & CE vs. Indore Treasure Market City Pvt Ltd - 2024 (5) TMI 367 - MADHYA PRADESH HIGH COURT**, has dismissed the Revenue's appeal and has held in para 14 as under :

> **"14.** In view of the aforesaid discussions and the rival submissions made by learned counsel for the parties, the issues raised in the present appeal is covered by the judgments in the case of M/s Green Valley Industries Pvt. Ltd. (Supra) and M/s Riba Textiles Ltd. (Supra), therefore, this Court is of the considered opinion that no substantial question of law arises for consideration in the present appeal. The appeal *sans merit* and is hereby dismissed."

8.2 We also find that this issue was also decided by the Hon'ble Meghalaya High Court in the case of **CGST vs. M/s Green Valliey**

Industries Pvt Ltd – 2023 (7) TMI 1176 – MEGHALAYA HIGH COURT, wherein the Hon'ble High Court vide its order dated 26.07.2023 has upheld the order of the Tribunal granting interest from the date of deposit @12% per annum till the refund is made. The relevant findings of the Hon'ble High Court in para 11 of its order is reproduced herein below :

> "**11**. The Tribunal has given adequate reasons in both the orders impugned, including the order by which the Department's application for correction or modification was rejected. According to the Tribunal, the deposit was made at a time when no quantified claim had been made on the assessee. On such basis, the Tribunal found that the deposit had not been made on account of any duty or interest which would attract the implied bar under Section 11B of the Act. It was a possible view taken on the set of facts that presented themselves before the Tribunal and, in this appellate jurisdiction, such interpretation does not call for any interference. Further, as to the quantum of interest awarded, the Tribunal, which is a specialised body dealing in matters pertaining to excise duty, took into account the previous judgments of the Supreme Court, High Courts and the Tribunal itself to justify that the rate of 12 per cent per annum would apply in the facts of the present case. Again, since there is some basis to the award of interest by the Appellate Tribunal, the same does not call for any interdiction."

8.3 We also find that in the case of **Raghuveer Metal Industries Ltd** (supra), the Tribunal has held that the appellant is entitled to receive interest at the rate of 12% from the date of deposit of the amount till the date of refund thereof.

8.4 In view of the decisions cited supra, we are of the considered view that the appellant is entitled to receive interest on the amount deposited during investigation from the date of deposit of the amount till the date of its refund at the rate of 12% per annum.

9.1 Regarding **the adjustment of the amount Rs.64,73,631/- from the total refund sanctioned to the appellant**, we find that the Adjudicating Authority has committed an error because the said demand was not confirmed by the Appellate Authority rather the said demand was set aside by the Appellate Authority in the case of Bharti Infratel Ltd. We also find that in the case of **Kisan Irrigations & Infrastructure Ltd** (supra), the Tribunal has held that adjustment of refund against a confirmed demand during the pendency of an appeal amounts to coercive recovery and is not permissible under the law. Further, adjustment of demand confirmed by the Bharti OIO against the refund due to the appellant could not have been made prior to the Bharti OIO attaining finality. Further, we find that the demand confirmed against Bharti Infratel Ltd was subsequently dropped vide Bharti OIA dated 13.03.2023; copy of the same has also been placed in the appeal paper-book.

9.2 In view of various decisions on this issue as cited above, we hold that the amount adjusted from the total refund sanctioned to the appellant is refundable to the appellant at the rate of 12% per annum computed from the date of deposit till the date of its refund.

10. In view of our discussion above and by relying upon the ratios of the various decisions (cited supra) on the issues involved in the present case, we are of the considered opinion that the impugned order is not sustainable in law; accordingly, we set aside the impugned order and allow the appeal of the appellant on above terms.

(Order pronounced in the open court on 24.01.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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