IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 2
Service Tax Appeal No. 75446 of 2022

(Arising out of Order-in-Appeal No.83/ST/BBSR-GST/2022 dated 22.04.2022 passed by Commissioner(Appeals) of CGST & C.Ex, Bhubaneshwar)

Mrs.Itishree Devi, **: Appellant**
Flat No.-102, Regal Court, N-2/44,
Nayapalli, Bhubaneswar-751015, Odisha.

VERSUS

Commissioner of CGST &C.Ex., Bhubaneshwar **: Respondent**
Rajaswa Vihar, Bhubaneswar-751 007.

APPEARANCE:

Shri Kishore Kumar Acharya, Advocate for the Appellant

Shri P.Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R.MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 75855/ 2026

DATE OF HEARING:29.06.2026

DATE OF DECISION:08.07.2026

Order : [Per Shri R.Muralidhar]

The appellant, was working as Manager-Corporate Communication with a remuneration of Rs.55,000 per month. On the ground that the appellant was providing service under "Management or Business Consultancy Service", she was directed to pay the Service Tax of Rs.3,60,910. She paid the amount on 30.08.2012. Thereafter on 02.01.2013, she was informed orally that she was required to pay the interest for delayed payment of Service Tax. She sent her reply stating she has paid the Service Tax by mistake which was not payable at all. She filed her refund claim on 30.08.2013 seeking refund of the Service Tax paid by her under mistaken notion. A

Show Cause Notice was issued seeking as to why the refund claim should not be dismissed. The matter finally reached the Tribunal, which remanded the matter to the Adjudicating authority to go through all the documentary evidence and decide the issue. On 18.08.2021, the de-novo proceedings were completed and refund of Rs.3,60,910 was sanctioned without any interest thereon. The appellant filed an appeal before the Commissioner (Appeal) seeking interest, which came to be dismissed. Hence, the appellant is before the Tribunal.

2**.** The Ld Counsel, representing the appellant submits the chronology of the even as per the following Table:

16.09.2008 to 12.03.2012	The Appellant working with M/s Vedanta Aluminium Ltd. (VAL) as Manager-Corporate Communications with remuneration of Rs.55,000/- per month.
03.08.2012	The Jurisdictional Authorities took a view that the Appellant was providing "*Management or Business Consultancy Service*" and called upon the Appellant to pay service tax amounting to Rs.3,60,910/- on the remuneration received by her from VAL.
30.08.2012	Having been perturbed by such allegation of non-payment of tax, the Appellant paid Rs.3,60,910/-.
02.01.2013	The jurisdictional Authorities called upon the Appellant to pay interest on the aforesaid delayed payment of service tax amounting to Rs.3,60,910/-.
08.04.2013	The Appellant explained to the jurisdictional Authorities that she is not liable to pay service tax at all and accordingly requested for refund of Rs.3,60,910/- paid by her "*unknowingly*".
30.08.2013	The Appellant submitted a formal Refund Application in Form-R seeking refund as above.
16.12.2013	The Appellant's refund claim was rejected on ground that the Appellant was not within the threshold limit of Rs.10,00,000/-.

30.10.2017	Appellant's appeal against O-i-O dated 16.12.2013 was rejected by the Commissioner(A), Bhubaneswar.
19.03.2018	This Hon'ble Bench vide Order No.FO/A/76041/2018 allowed the Appellant's Appeal against the O-i-A dated 30.10.2017 by way of remand to the adjudicating Authorities to decide the case *"afresh after considering the evidence submitted by the Appellant and decide the matter in accordance with law'.*
01.03.2021	The Appellant through Advocate requested the jurisdictional Asst. Commr. to kindly complete the de-novo adjudication as early as possible as directed by the Hon'ble Tribunal.
27.04.2021	Vide his e-mail of even date, the jurisdictional Asst. Commissioner requested the Appellant to submit "*the relevant documents pertaining to refund claim (document submitted Originally for refund claim, SCN, OIO, OIA, CESTAT Order, etc.)* to him in hard copies to reconstruct the Appellant's refund case records; since the Departmental file has been mis-placed during re-organisation of the Commissionerate.
03.05.2021	With a *bona fide* intention to help reconstruction of its refund case records, the appellant submitted all relevant documents to the jurisdictional Asst. Commissioner.
23.07.2021	The jurisdictional Asst. Commr. Sanctioned the Appellant's refund claim of Rs.3,60,910/-.
18.08.2021	The above sanctioned refund amount of Rs.3,60,910/- was disbursed to the Appellant.
06.10.2021	The Appellant requested jurisdictional Asst. Commr. to pay interest on refunded amount in light of the Supreme Court's decision in the cases of **Ranbaxi Laboratories Ltd.** [2012 (27) STR 193] and **Manisha Pharmo Plast Pvt. Ltd.** [2020 (374) ELT 145].
02.12.2021	The jurisdictional Asst. Commr. informed the Appellant that the relevant date for computation of interest will be 07.06.2021, when the Appellant submitted the relevant documents to the original Authority.
22.04.2022	The Appellant's appeal against the said communication of the jurisdictional Asst. Commissioner was disposed off by the Commissioner(A) with the finding that the Appellant is entitle to receive interest "*from the date of expiry of three months from the date of receipt of Final Order of Tribunal till date of payment*".

17.06.2022	The Appellant preferred the present appeal challenging the Order-in-Appeal dated 22.04.2022 on the ground that the relevant date for computation interest on delayed refund will be "*three months after the date of receipt of the refund application"* AND not "*from the date of expiry of three months from the date of receipt of Final Order of Tribunal till date of payment"*.

3. He submits that the Service Tax demanded initially was without any authority of law. The appellant was not at all required to pay this amount. Only under severe pressure, she got herself registered with Service Tax Dept. and she paid the same. Subsequently, when the officials started demanding the interest, she consulted the experts in the field and came to know that no Service Tax was payable by her. After this, she has filed her refund claim. As can be seen from the above Table, after a prolonged litigation reaching upto Tribunal, finally the Adjudicating authority has held that no Service Tax was payable by her and accordingly, sanctioned the refund on 18.08.2021.

4. He submits that once it is held that no Service Tax is payable, the collection of the same itself on 30.08.2012 is illegal. The illegally collected amount of Rs.3,60,910 by the Revenue was retained by them till 18.08.2021. Hence, the appellant is required to be granted the interest for the intervening period.

5. The Ld Advocate relies on the following case laws:

(a) Hon'ble Supreme Court in the cases of **Ranbaxy Laboratories Ltd.** [2012 (27) STR 193]

(b) **Manisha Pharmo Plast Pvt. Ltd.** [2020 (374) ELT 145]

(c) **Hamdard (Waqf) Laboratories** [2017 (51) STR 214].

6. In view of the above submissions, it is prayed that the appellant may be granted the interest for the intervening period.

7. The Ld A R, appearing on behalf of the Revenue, reiterates the findings of the lower authorities. He reiterates the findings of the Commissioner (Appeals), who has held that in terms of Section 11BB of the CEA 1944, interest would be payable if the refund is not granted within 3 months from the date of the OIO holding that refund is eligible. In the present case, as the refund has been granted within this period, no interest is payable.

8. Heard both the sides. Perused the appeal papers and other documentary evidence submitted by the appellant.

9. The chronology of the issue is as per the Table reproduced above. Admittedly, the appellant was made to pay the Service Tax on 03.08.2012. After the appellant paid Rs.3,60,910, the appellant was

asked to pay the interest orally. In the normal course, the SCN should have been issued seeking to appropriate this amount and to charge interest and impose penalty. I see from the record, that the Revenue has not issued any SCN to appropriate this amount. It is seen on record that the appellant was not a registered assessee and the amount in question was paid only on the specific direction of the Revenue officials. When the SCN is not issued, the amount sitting with the Revenue is illegal *ab initio,* since it is not appropriated.

10. On the other hand, when the appellant filed her refund claim, it was dismissed on the ground that her remuneration was not below the threshold limit and hence the Service Tax was correctly paid by her. I cannot understand as to how this stand can be taken in respect of the refund claim filed, when no SCN was issued, placing the grounds on which the Service Tax is payable in the first place. Therefore, even the rejection of the refund claim vide the OIO dated 16.12.2013 was void *ab initio*.

11. When the matter came up before the Commissioner (Appeals), he has mechanically dismissed it without even going into the factual verification. If he was vigilant, he should have found the error about non issue of SCN for appropriating the amount paid by the appellant, which has now been found by this Bench at this juncture. He should have gone into the issue as to how the refund can be questioned, when the liability to pay Service Tax itself was not at all raised by way of any SCN?

12. Unfortunately, even when the matter came up before the Tribunal, the issue was not canvassed by the appellant's counsel properly, because of which the matter was remanded to the Adjudicating authority by the Tribunal vide Final Order No.75318/18 dated 19.03.2018.

13. In spite of the remand order dated 19.03.2018, the jurisdictional Asst Commissioner did not find time to take up the de-novo proceedings for the next more than 3 years. The appellant has filed a request letter to do so on 01.03.2021. Finally, the OIO dated 23.07.2021 was passed sanctioning the refund of Rs.3,60,910, which came to be disbursed on 18.08.2021.

14. I have gone through the findings of the Adjudicating authority in the OIO dated 23.07.2021. The relevant portions are reproduced below:

"*4.1. I have carefully gone through the refund calim and the documents submitted along with it as well as after the personal hearing in support of the claim. On perusal of Form 26 AS of the claimant for the relevant period, I find that she has received the following amounts from VAL:*

FY	Amount received (Rs)
2008-09	3,63,750
2009-10	7,86,063

2010-11	9,43,663
2011-12	8,23,098

4.2. Before the relevant period, the claimant has worked as a lecturer in English in Kamala Nehru Women's college, the arrears of which were received by her in FY 2011-12. Since she was employed by the college as an English Lecturer, as evident from the documents submitted (form 26 AS, appointment letter, resignation letter, copy of note sheet approving her resignation, etc), the income received from that profession is not liable to service tax, and therefore, claimant's income from the said college in the year before the relevant period is immaterial to decide the taxability in the relevant period.

4.3. The threshold exemption for service tax liability was revised to Rs. 10 lakh with effect from 01.04.2008, vide Notification 8/2008 dt. 01.03.2008. The letter from this office dated 03.08.2012 has clubbed the income received by the claimant during the four years from FY 2008-09 to FY 2011-12 and has demanded service tax on the same, despite the fact that the income in individual years is within the threshold limit. It must also be seen that the claimant was not registered under service tax earlier and has taken a new registration for payment of Rs. 360910/- after receiving the said letter dated 03.08.2012. However, since her income is less than the threshold limit of Rs. 10 lakh per annum, for all FYs from 2008-09 to 2011-12 as seen in the

table above, I hold that the claimant was not liable to pay service tax in the first place and that the refund of the amount of Rs. 360910/- paid by her is admissible.

15. It is quite interesting to note that the initial demand of Service Tax was made purely based on account of 26AS without any SCN. Thetable containing Form 26AS reproduced above itself reflects that the amounts received is less than Rs.10 lacs threshold limit every year in question, applicable with effect from 1.3.2008. In order to get this Service Tax figure taking the rate of ST @ 12.36 prevailing at that point of time, the total consideration was taken as Rs.28 lacs and Service Tax demand was fixed at Rs.3,60,910. This has been done by simply totalling up all the four years figures, giving a complete go by to the threshold limit available for each of the years 2008-09 to 2011-12. This has been correctly noted in the findings by the judicious Assistant Commissioner passing the OIO.

16. However, this also shows that none of the officials involved right from the person setting up the demand of Rs.3,60,910, to the one asking for the interest thereon, to the one rejecting the refund claim to the one dismissing the Appeal, has ever applied their basic intelligence to go over the factual detail vis-à-vis the statutory provisions about the threshold limit. I am yet to come across such a case of such gross violation of statutory provisions and of principles of natural justice with all the authorities below keeping their eyes fully closed, without even attempting to open it slightly. I take the view that all these officials should be held responsible for

fastening the non-existent Service Tax demand on the appellant. The severity of such a demand is be beyond imagination when it is made on a person earning about Rs.6 lacs per annum [Avg for the four years], during this period. More than 50% of her annual income has been simply usurped by the Revenue officially but illegally.

17. The next icing on the cake arrives in the form of refusal to grant the interest on the illegally earned amount of Rs.3,60,910 by the Revenue. As discussed in the earlier paragraphs, the illegality gets confirmed once the Revenue retains the same without even issuing any SCN seeking to know as to why the Service Tax is not payable and why the amount paid is not liable for appropriation. The Revenue has the audacity to raise the issue of liability of the Service Tax for the first time, when the appellant files the refund claim.

18. Another instance of casualness in the entire proceedings comes when the Revenue has no reason to offer for the delay of more than 3 years to complete the de-novo adjudication proceeding after the matter was remanded by the Tribunal. For all these illegality and delay, the Revenue still wants the appellant to suffer the loss of interest.

19. I have for reference several Supreme Court and High Court judgements on this issue, which is being discussed below:

2006 (196) E.L.T. 257 (S.C.)
SANDVIK ASIA LTD.
Vs COMMISSIONER OF INCOME TAX-I, PUNE
Civil Appeal Nos. 1337-1340 of 2005
decided on 27-1-2006

The Hon'ble Supreme Court framed the following questions :

A. Whether in view of binding decisions of this Court the respondents are estopped from urging that compensation as claimed by the appellant is not payable by them? And therefore whether the Bombay High Court erred in allowing them to urge such a contention in the impugned judgment?

B. Assuming for the sake of argument that there is no provision in the Income-tax Act, 1961 ("the Act") for grant of such compensation, this Court had upheld the view of the Gujarat &Madhya Pradesh High Courts that compensation should be granted (whether called interest or otherwise) and hence the impugned judgment was contrary to a decision of this Court and ought to be reversed?

E. Whether the High Court ought to have held that sections 240 and 244 of the Act refer to 'refund of any amount', which phrase clearly includes any amount (including interest) due by the Income Tax department to the assessee, and hence the appellant was entitled to interest on the delay in the payment of amounts due from the Income-tax department ?

Provisions of Income Tax Act :
243. Interest on delayed refunds.

(1) If the Income-tax Officer does not grant the refund
(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this

Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation : If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

244. Interest on refund where no claim is needed. (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of [three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [twelve] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [three] months aforesaid to the date on which the refund is granted.

We have given our anxious and thoughtful consideration on the elaborate submissions made by counsel appearing on either side. In our opinion, the High Court has failed to notice that in view of the express provisions of the Act an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to the law by the Department for an inordinate long period of up to 17 years.

In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable' withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

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 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.

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.

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.

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.

2012 (27) S.T.R. 193 (S.C.) [21-10-2011]
RANBAXY LABORATORIES LTD.
Vs **UNION OF INDIA**

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in *U.P. Twiga Fiber Glass Ltd.* (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :

"Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of *J.K. Cement Works* v. *Assistant Commissioner of Central Excise & Customs* reported in 2004 (170) E.L.T. 4 vide Para 33 :

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under subsection (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant

claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

The special leave petition is dismissed. No costs."

14. At this stage, reference may be made to the decision of this Court in *Shreeji Colour Chem Industries* (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

2017 (51) S.T.R. 214 (S.C.)

UNION OF INDIA

Vs**HAMDARD (WAQF) LABORATORIES**

21. As far the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming

automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle laid down in *Ranbaxy Laboratories Limited* (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in *Ranbaxy Laboratories Limited* (supra) commends us and we respectfully concur with the same.

2020 (374) E.L.T. 145 (S.C.)
MANISHA PHARMO PLAST PVT. LTD.
Vs**UNION OF INDIA**

3. In light of these facts and the exposition in paragraph 17 in *Ranbaxy Laboratories Ltd*. v. *Union of India & Ors.* [(2011) 10 SCC 292 = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)], it was not open to the Department to deny the relief of statutory interest.

4. The approval of the *dictum* of the Rajasthan High Court [2004 (170) E.L.T. 4 (Raj.)] in paragraph 17 referred to above, directly deals with the claim of the appellant before this Court who had made application for refund on 30-12-1999 and, therefore, the statutory interest ought to commence after non-payment within three months from the date of application, being the starting point envisaged by Section 11BB of the Act. We find no reason to deviate from the view so taken in *Ranbaxy Laboratories Ltd.* (supra).

5. Hence, this appeal should succeed. The claim of the appellant regarding statutory interest under Section 11BB of the Act is allowed in the above terms. The amount be calculated and paid expeditiously and not later than three months from today. The impugned judgment of the High Court

in this regard is set aside. Appeal is allowed in the aforementioned terms. There shall be no order as to costs.

Gujarat High Court
Hindustan Coca-Cola Beverages Private
vs Union Of India
Civil Application No.15012 of 2005
Judgement dated 02.04.2013

1.2 The Petitioner was aggrieved by order dated 11.04.2005 passed by the Commissioner, whereby the claim of the petitioner, for interest on the ground that there was no provision empowering the department to pay interest on the MODVAT/CENVAT claim withheld by the Department s inaction, was rejected.

3. xxxxxxxxx The petitioner replied to the said show cause notice under letter dated 31.03.2005, but the case put forward by the petitioner was rejected and the Commissioner passed order in original on 11.04.2005 and declined to pay any interest on the following grounds:-

> 10. On going through the Central Excise Act and Rules, I find no provision empowering the Department to pay such interest to the assessee.

Reliance was also placed on the decision of the Supreme Court in the case of Sandvik Asia Ltd. v. Commissioner of Income-tax, Pune (2006) 280 ITR 643 (SC) in which it was found that the assessee 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 intervention of the Supreme Court. Interest on delayed payment of refund was not paid to the assessee due to the erroneous view that had been taken by the officials of the revenue. Interest on refund was granted to the assessee after a substantial lapse of time and, hence, it should be entitled to compensation for the period of delay.

5. Having heard learned counsel for the parties and having perused the documents on record, the Court is of the opinion that the respondents are not justified in denying the interest claim of the petitioner. Incidentally, the facts in the present case are not in dispute.

5.2 On an application being made for transfer of unutilized credit to the petitioner on merger, the respondents were duty bound to decide the same within reasonable time by either granting permission to transfer the credit, if it was found that the petitioner had committed no irregularities in any of its claims or ought to have initiated proceedings by issuance of show cause notice calling upon the petitioner as to why such permission to transfer the credit to the petitioner should not be rejected. …….. It was only at the intervention of this Court that the department, ultimately thought it appropriate to grant the transfer of the amount of unutilized MODVAT/CENVAT credit to the petitioner which the Respondent had unlawfully withheld. While doing so, however, no order was made as to interest. A further application made for grant of interest for delayed payment of MODVAT/CENVAT credit was rejected by the respondents. It is really surprisingly that the logic was that there was no statutory provision enabling the department to pay such interest to the petitioner.

5.3 This Court is of the considered opinion that the entire approach is wholly erroneous. …… The only inescapable conclusion that we can reach is that the respondents had no reason to deny the transfer of the unutilized credit to the petitioner on merger. They had no authority to withhold such amount in law. In that view of the matter, it would be highly unjust to permit the respondents to hold on to the petitioner's money for nearly 5 years without any interest at all as it would amount to Revenue taking advantage of its own wrong of withholding the permission for transfer of credit.

8. Under the circumstances, this Court is of the opinion that the order of the Commissioner disentitling the

petitioner of any interest on the amount is required to be set aside. The same is accordingly set aside.

9.1 The department shall also pay 6% simple interest per annum on the interest so quantified as per directions contained in para 9 above. This interest should also be paid within a period of one month from the date of receipt of this judgment and order.

2022 (380) E.L.T. 219 (Tri.-All)
PARLE AGRO PVT. LTD.
Vs COMMISSIONER, CGST, NOIDA

20. This submission of Learned Counsel for the appellant deserves to be accepted. Once a finding was recorded by the Tribunal in the order dated 31-1-2017 that the amount which had been deposited by the appellant during investigation and that deposited pursuant to the interim order passed by the Tribunal was a revenue deposit and not an excise duty deposit and there was no challenge to this finding of the Tribunal, the appellant cannot now, after the Commissioner (Appeals) has allowed the appeal by order dated 28-5-2019, raise this issue by filing the present appeal to assail the order dated 28-5-2019.

21. It also needs to be noted that the revenue had accepted the order dated 31-1-2017 passed by the Tribunal, as is clear from the letter dated 9-10-2017, the relevant paragraph of which is reproduced below :

> 11. The review Branch of CGST Commissioner of Noida Vide their letter C. No. V(15) JUD/CESTAT/FO/PAPL/N-1/238/2017/1856, dated 9-10-2017 informed that the Competent Authority has accepted CESTAT Final Order No. A/70145/2017-EX (DB), dated 31-1-2017 on 6 10-2017.

22. This apart, the Assistant Commissioner, by the order dated 13-10-2018, had also ordered for refund of the amount and this order was also not assailed by the Department.

24. Excise Appeal No. 70628 of 2019 has been filed by the appellant for a relief that interest at the rate of 12% should be granted to the appellant from the date of deposit of the amount instead of 6%, as ordered by the Commissioner (Appeals). In this connection, Learned Counsel for the appellant has placed reliance upon the following decisions :

(i) Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune [2006 (196) E.L.T. 257 (S.C.)

(ii) Pace Marketing Specialities v. Commissioner of Central Excise [2007 (8) S.T.R. 193 (S.C.)]. 2012 (27) S.T.R. 420 (All.)

(iii) Ebiz.Com Pvt. Ltd. v. Commissioner of Central Excise, Customs & S.T. [2011 (274) E.L.T. 13 (All.)]. 2017 (49) S.T.R. 389 (All.)]

(iv) Riba Textiles Ltd. Village Chidana, Tehsil Gohana Distt. Sonepat, Haryana v. Commissioner of Central Excise and Service Tax, Panchkula [2020-TIOL-932-CESTAT-CHD].

39. In this connection reference can also made to the decisions of the Allahabad High Court in Pace Marketing Specialities and Ebiz.Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40. In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41. In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.

> 42. Thus, for the reason stated above, Excise Appeal No. 70628 of 2019 is allowed and the order dated 28-5-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment.

20. I find that for the facts of the present appeal, the cited case are squarely applicable. The decision of the Supreme Court on similar issues in the three cited case laws are binding in nature. The decision of the Delhi Tribunal has also relied in Sandvik Asia - Supreme Court decision and granted the interest. Therefore, applying the same, I set aside the impugned order allow the appeal, granting the interest.

21. I hold that the appellant would be eligible for interest @ 6% from 30.08.2012 [the date on which the Service Tax was paid on the illegal demand of the Revenue], till 18.08.2021, the date on which the refund was granted.

22. As the appellant has been deprived of the basic amount for more than decade and has been made to fight even for the interest for more than 5 years, I hold that the Revenue should calculate the interest and pay the same to the appellant within 8 weeks from the date of communication of this order. The date of uploading of the Final Order of this appeal in the Website would be the date of communication of this order for this purpose.

23. The appeals stands allowed as per the above terms.

(Pronounced in open court on _08.07.2026_)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

RG