CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70728 of 2019

(Arising out of Order-in-Appeal No.182/CE/Alld/2019 dated 21/06/2019 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Jalan Castings Pvt. Ltd., **.....Appellant**
(Moharipur, Gorakhpur, UP-273007)

VERSUS

Commissioner of Central Excise, Varanasi **....Respondent**

(9-Maqbool Alam Road, Varanasi-211001)

APPEARANCE:

Shri Ramji Khare, & Shri S.K. Vishwkarma, Advocates for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70033/2023

DATE OF HEARING : 24 July, 2023
DATE OF PRONOUNCEMENT : 18 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against the order in appeal No 182/CE/Alld/2019, dated 21.06.2019 of the Commissioner (Appeal) CGST & Central Excise, Allahabad. By the impugned order following has been held:-

> *"4.1 I have gone through the records .. It is observed that the adjudicating authority, vide the impugned Order has allowed the refund, in favour of the appellant, in pursuance of aforesaid Final Order No A/71947/2018-EX (DB) dated 07.08.2018 of the Hon'ble CESTAT, Allahabad, wherein the appeal of the appellant was allowed with consequential benefit, holding that the compounded levy scheme is an independent scheme & general provisions are not applicable and excess duty paid under the compounded levy scheme is to be treated as excess deposit. It is further*

observed that the Hon'ble Supreme Court in the case of Shri Bhagwati Steel Rolling Mills vs Commissioner of C. Ex [2015 (326) ELT 209 (SC)], inter alia, held at para 30 to 31, as under.

30. On merits, the matter is no longer res integra. A Constitution Bench decision of this Court in VVS Sugars v. Government of A.P., 1999 (4) SCC 192, has held, following two earlier judgments of this Court, as follows :-

"This Court in India Carbon Ltd. v. State of Assam [(1997) 6 SCC 479] has held, after analysing the Constitution Bench judgment in J.K. Synthetics Ltd. v. CTO [(1994) 4 SCC 276] that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise."

31. Applying the Constitution Bench decision stated above, it will have to be declared that since Section 3A which provides for a separate scheme for availing facilities under a compound levy scheme does not itself provide for the levying of interest, Rules 96ZO, 96ZP and 96ZQ cannot do so and therefore, on this ground the appellant in Shree Bhagwati Steel Rolling Mills has to succeed. On this ground alone therefore, the impugned judgment is set aside. That none of the other provisions of the Central Excise Act can come to the aid of the Revenue in cases like these has been laid down by this Court in Hans Steel Rolling Mill v. CCE, (2011) 3 SCC 748 = 2011 (265) E.L.T. 321 (S.C.) as follows :

"13. On going through the records it is clearly established that the appellants are availing the facilities under the

compound levy scheme, which they themselves opted for and filed declarations furnishing details about the annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of production under Section 3 of the Act and the 1997 Rules is a separate scheme from the normal scheme for collection of Central excise duty on goods manufactured in the country. Under the same, Rule 96-ZP of the Central Excise Rules stipulate the method of payment and Rule 96-ZP contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and the Rules are excluded." (at page 751).

4.2 Thus, I find that the compounded levy scheme is a comprehensive scheme in itself and general provisions of the Central Excise Act, 1944 are excluded and also Section 3A of the Central Excise Act, 1944 does not either provide for levying of interest or paying of interest.

4.3 I also find that the Hon'ble Supreme Court in a number of judicial pronouncements {including the cases of Mafatlal Industries Ltd vs Union of India {1997 (89) ELT 247 (SC)], Collector of C Ex Chandigarh vs Doaba Co-operative Sugar Mills {1988 (37) ELT 478 (SC)], Union of India vs Kirloskar Pneumatics Company [1996 (84) ELT 401 (SC)] etc.}, inter also, held that the Officers & Authorities created & functioning under the Central Excise Act, 1944, cannot go beyond the Act and are bound its provisions.

4.4 Thus, when general provisions of teh Central Excise Act, 19444 are not applicable and there is no provision for payment of interest on refund under compounded levy

scheme, I find that the adjudicating Authority created & functioning under the Central Excise Act, 1944, could not have allowed inertest on refund. Even otherwise, if the general provisions of the Central Excise Act, 1944 are applied, there is no delay in sanctioning the refund, as the refund has been allowed on 19.03.2019 which is within three months of the date of the letter dated 10.01.2019 of the appellant filed along with the aforesaid Final Order dated 07.08.2018 of the Hon'ble Tribunal.

4.5 I also find that the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Gujarat vs Gujarat Fluoro Chemicals [2013 (296) ELT 433 (SC)], clarified their earlier decision in the case of Sandvik Asia Ltd. vs Commissioner [2006 (196) ELT 257 (SC)] as under:

Refund - Interest on delayed refund only when statute provides - Sandvik Asia Ltd. [2006 (196) E.L.T. 257 (S.C.)] - In this case, assessee who was made to wait for refund of interest for decades, was compensated for great prejudice caused to them due to inordinate delay in its payment after lapse of statutory period - It is misinterpretation of this case that Revenue is obliged to pay interest on interest on its failure to refund interest payable within statutory period - It is only interest provided under statute which can be claimed by assessee from Revenue and no other interest on such statutory interest.

4.6 Since in this case, it is not under dispute that there is no provision under the compounded levy scheme to pay interest on refund, the general provisions of the Central excise Act, 1944 are not applicable (even if applied there is no delay in allowing refund) and the Adjudicating Authority functioning under the Central Excise Act, 1944 was bound by the statute, I, thus find that the Adjudicating Authority has rightly not allowed interest on refund. I also find that that in view of the aforesaid judicial pronouncements, the

case laws relied upon by the appellant in their appeal, cannot be applied to this case.

5. In view of the above, I reject the appeal of the appellant."

2. I have heard Shri Ramji Khare & Shri S K Vishkarma, learned Advocates for the appellant and Shri Sandeep Pandey, learned Authorized Representative for the revenue. As directed both the sides have filed written submissions which have been taken on record.

3.1 I have considered the impugned order along with the submissions made in the appeal, during the course of arguments and in the written submissions filed.

3.2 Undisputed facts along with the date chart are stated in the table below:

Date	**Event**
10.09.1997	Appellant filed the declaration for fixing annual production capacity (ACP) under Section 3A of the Central Excise Act, 1944
30.09.1997	Commissioner fixed the ACP provisionally and the appellant started depositing a sum of Rs 20 lakhs against the duty liability to be determined in terms of the provisions of Induction Furnace Annual Capacity Determination Rules, 1997. The amount was deposited pro-rata during the period September 1997 to June 1998.
21.03.1998	Commissioner determined the ACP as 43174.72 MT and Monthly Duty Liability of Rs 22,48,868/-.
22.05.2000	Appellant represented against the fixation order of ACP and MDL. His representation was turned down stating that he has not objected to fixation either at the time of provisional fixation or subsequently prior to final fixation. Hence the matter has

	attained finality.
09.08.2002	Appellant challenged the order date 21.03.1998 before tribunal. Tribunal vide its order set aside the order of Commissioner, and remanded the matter back to Commissioner for redetermination.
29.09.2003	Commissioner in remand proceedings again fixed the same ACP and MDL as was done by the earlier order of 21.03.1998
19.01.2004	Appellant filed appeal to the tribunal which was allowed and the matter was remanded back to commissioner for decision afresh.
29.07.2004	Commissioner directed the Assistant Commissioner to re-determine ACP and MDL
15.09.2004	Assistant Commissioner re-determined the ACP as 32670.848 MT and MDL at Rs 17,01,607/- and requested the Commissioner to issue the order as per Rule 3(4) and 4 of the Induction Furnace Annual capacity Determination Rules, 1997.
28.10.2009	Commissioner re-determined the ACP as 43174.27 MT and MDL as Rs 22,48,868/- as was done earlier vide order of 21.03.1998
25.06.2010	CESTAT remanded the matter back to the Adjudicating Authority for re-determining the ACP and MDL as per order dated 29.07.2004
06.09.2010	**Appellant filed the application for refund claiming Refund of Rs 27,73,130/-**
31.12.2010	Adjudicating Authority determined the ACP as 32670.848 MT and MDL as Rs 17,01,607/-
28.04.2011	Assistant Commissioner allowed the refund but directed the same to be credited to Fund,

	constituted under Section12 C of the Central Excise Act, 1944.
03.01.2012	Commissioner (Appeals) dismissed the appeal filed by the appellant.
07.08.2018	CESTAT allowed the appeal of the appellant along with consequential relief.
10.01.2019	Appellant filed the Final Order of tribunal and requested for the refund due along with interest.
19.03.2019	Assistant Commissioner, allowed the refund of Rs 27,73,130/- under Section 11B and rejected the claim for interest made.
21.06.2019	Commissioner (Appeal) vide the impugned order rejected the appeal filed by the appellant

3.3 From the above I find that Appellant has opted to carry out his operations in terms of Section 3A of the Central Excise Act, 1944 as inserted by the Finance Act, 1997 read along with the Induction Furnace Capacity Determination Rules, 1997 and Rule 96 ZO of the Central Excise Rules, 1944.

3.4 Undisputedly in the present case the application for the refund has been made by the appellant on 06.09.2010. This application for the refund was rejected by the Assistant Commissioner of Central Excise vide his order dated 28.04.2011. Commissioner (Appeal) has vide his order dated 03.01.2012, holding as follows:

> *"7. It is on record and has also been categorically observed by the adjudicating authority that the appellants had given certificate on each invoice that "the particulars regarding Assessable Value of goods & Excise duty thereon are not given separately as under sub-rule (3) of 96 (ZO) of the Central Excise Rules 1944 read with Section 3A of the Central Excise Act, 1944, full and final discharge of duty liability has been made." Accordingly it is evident*

price of each consignment cleared contained proportionate amount of duty. It cannot be said that customers did not pay part duty of value/ price as charged by the appellants. This is also not the case of the appellants that they charged price/ value -excluding central excise duty. Further there is nothing on record to show, if such duty amount included in the refund claim, has been returned back to the respective customers in any manner. Therefore, I find the bar of Unjust enrichment is applicable in the instant case.

7.1 The Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. 205 (181) ELT 328 (SC) held as under:

"The doctrine of 'unjust enrichment', therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity.

……. it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner/appellant to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss."

In the light of above judgement I find there is no case that the appellants have not passed on the burden on consumers and if such relief is not granted, they would suffer loss.

8. The case laws cited in the appeal are distinguished by Hon'ble High Court, Bombay in the case of Commissioner v. Shree ram Textiles & Processing Mills (I) P Ltd reported in 2011 (263) ELT A 140 (Bom), as the CESTAT's Final Order No A/1319/2005-WZB/C-IV dated 30.09.2005 reported at 2006 (193) ELT 485 (Tri) has been set aside with following observations:

" 1. This appeal was admitted on 3-5-2006 on the following question of law :-

"In view of the fact that Rules regarding compounded levy are framed under the Central Excise Act, 1944, whether CESTAT was justified in holding that the provisions of section 11B do not apply to the scheme of compounded levy ?"

2. The larger Bench of the Tribunal in its judgment dated 10-4-2006 in the case of Shivagrico Implements Ltd. v. Commissioner of Central Excise, Jaipur reported in 2006 (199) E.L.T. 55 (Tri.-LB) has held that the provisions of Section 11B applies to the scheme of compounded levy. In this view of the matter, the decision of the Tribunal dated 30-9-2005 in Appeal No. E/2331/03 is quashed and set aside and the matter is restored to the file of the adjudicating authority to decide the question afresh and in accordance with law. The appeal is disposed off accordingly with no order as to costs.""

8.1 It is also observed that the Larger Bench of Tribunal in the case of Shivagrico Implements Ltd. v Commissioner of Central Excise jaipur reported in 2006 (199) ELT 55 (Tri-LB) as referred to above (at 2 .. supra) has followed the judgement of Hon'ble Supreme Court as in the case of

Sahakari Khand Udyog Mandal Ltd. 205 (181) ELT 328 (SC) .. (supra)

9. Further the appellants have contended that they claimed refund of duty paid in excess to the tune of Rs 27,73,130/- which was the total amount paid pursuant to the letter 17.11.98 of jurisdictional Superintendent. This is not correct. It is observed that the amount mentioned in the said letter is rs 23,12,866/- only, which is the differential duty related to the past clearances and price already charged, but it cannot be said that this much amount was not received {being included in the value/ price] from their customers.

10. As regards the Chartered Accountant's certificate (of 03.10.2011 - Exhibit 'C' of written submission)- "e certify that central excise duty paid during compounded levy period was not charged either from the buyer or shown separately in the invoices issued""same is not acceptable because the prices mentioned on invoices were inclusive of central excise duty and neither the appellants nor the Chartered Accountants has adduced any evidence or material to demonstrate as to how the prices at the time of clearance did not include component of Central Excise duty.

14. Therefore in view of above discussion the observations and findings regarding unjust enrichment forming part of the impugned order-in-original dated 28.04.2011 are sustainable.

12. In view of above I find no reason to interfere with the order in original dated 28.04.2011 and therefore refuse to allow the appeal."

3.5 This order of Commissioner (Appeal) was challenged by the appellant before the tribunal and tribunal has vide final order No 71947/2018 dated 07.08.2018 allowed the appeal filed by appellant with consequential relief if any. Tribunal has held as follows:

"2. We find that the larger bench of the Tribunal in the case of Mohinder Stels reported at 2002 (145) ELT 290 (LT) has held that the compounded Levy Scheme is an independent scheme and general provisions are not applicable. the said decision stands followed by the tribunal in the of Commissioner of C Ex Ahmedabad Vs National Ceramic Works reported at 2009 (237) ELT 576 (Tri-Ahmd) laying down that the excess payment made under the Compounded Levy Scheme have to be treated as excess deposits over and above the duty liability under Compounded Levy Scheme and the time limitation of Section 11B is not applicable as the refunds are governed by the provisions of Rule 96 ZB, of erstwhile Central Excise Rules, 1944, which do not provide any time limit of refund.

3. In as much as there is no other dispute about admissibility of the refunds, therefore, we set aside the impugned order and allow the appeal with consequential relief to the appellant."

3.6 This order of Tribunal has not been challenged by revenue before any superior forum and Assistant Commissioner has vide his order dated 19.03.2019 allowed the refund claim stating as follows:

"I hereby sanction the refund of Rs 27,73,130/- (Rs Twenty Seven Lacs Seventy Three Thousands One Hundred and Thirty Only) in favour of M/s Jalan Castings under Section 11B of the Central Excise Act, 1944. The refunded amount i.e. Rs 27,73,130/- is liable to be paid from Consumer welfare Fund of India in accordance with the provisions of Rule 3 of the consumer welfare Rules, 1992 read with instructions laid down under para No 11 of Chapter - 9 (REFUND) of the CBEC's Central Excise Law Manual."

3.7 Commissioner (Appeal) has in the impugned order referred in para 1, dismissed the appeal of the Appellant holding that -

a. Even if the provisions of Section 11BB are applicable, then the refund has been made to the appellant within three months from the date when the request for refund has been made. As the refund has been made within three months the of request letter forwarding the order of tribunal, no interest can be paid to the appellant.

b. The compounded levy scheme in terms of erstwhile Section 3A of the Central Excise Act, 1944 has been held to be comprehensive self contained scheme as per the decision of Hon'ble Supreme Court in case of Shri Bhagwati Steel Rolling Mills [2015 (326) ELT 209 (SC)].

3.8 From the facts as stated above the entire proceedings in the matter are in respect of Application for Refund filed by the appellant under Section 11B of the Central Excise Act, 1944 on 06.09.2010. Revenue has throughout treated the application to be made in under Section 11B and even the order dated 19.03.2019 allowed the refund in favour of appellant holding that the refund is to be sanctioned in favour of the appellant as per the section 11 B of the Central Excise Act, 1944. Undisputedly erstwhile Section 3 A (5) of the Central Excise Act, 1944 read as follows:

> *"(5) Where the Commissioner of Central Excise determines the actual production under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so re-determined and if the duty already paid falls short of, or is in excess of, the duty so re-determined, the assessee shall pay the deficiency or be entitled to refund, as the case may be."*

The present case is not a case for redetermination of duty on the basis of actual production in terms of the Section 3A (4) hence this provision is not applicable for processing the refund application. It is worth noting the tribunal has in order of 07.04.2018, held relying on the decision in the case of National Ceramic Works [2009 (237) ELT 576 (Tri-Ahmd)] held that the refund made under compounded levy scheme will not be governed by the provision of Section 11B. Ahmedabad Bench was dealing with the refund claim made under Rule 96 ZB of the

erstwhile Central Excise Rule, 1944, which is in pari materia with sub section 5 of Section 3A, reproduced above. The present claim for refund has arisen on the account of Finalization of Annual Capacity of Production, in terms of sub-section 2 of Section 3A, which is lower than the provisional capacity fixed by the order 30.09.1997 and 21.03.1998. The Annual Capacity was fixed at 43174.72 MT and the appellant was paying the monthly duty accordingly. After successive round of litigations the capacity as determined by the order dated 21.03.1998 was revised to 32670.848 MT by the order dated 31.12.2010. This refund which has arisen on account of the above revision cannot be said to refund under the provisions of scheme of Section 3A. The order of Commissioner (Appeal) which has been made without taking the note of above facts cannot be upheld. The case of Shri Bhagwati Steel Rolling Mills [2015 (326) ELT 209 (SC)] do not support the findings rendered by the Commissioner (Appeal). A nine judges bench of Hon'ble Supreme Court has in the case of Mafatlal Industries [1997 (89) ELT 247 (SC)] held as follows:

> *" The said enactments including Section 11B of Central Excises and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties, imposed thereunder. Section 11B of the Central Excises and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a*

claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under Proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal - which is not a departmental organ - but to this Court, which is a civil court."

3.9 Adjudicating Authority has in his order in para 2, very categorically sated that the letter dated 10.01.2019 forwarding the decision dated 07.08.2018 of the tribunal was in reference to the refund claim filed by the appellant on 06.09.2010. Section 11BB of the Central Excise Act, 1944 is reproduced below:

"Section 11BB. Interest on delayed refunds. -

If any duty ordered to be refunded under sub-section (2) of section 11B to ***any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :***

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three

months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty."

Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

3.10 From the plain reading of the above it is quite evident that period for computing the interest in respect of delayed payment of refund has to be computed by taking 06.09.2010 as the date of receipt of application. Ahmedabad Bench has in the case of vardhman faberics P Ltd. [2009 (234) ELT 301 (T)] has held as follows:

"6.*It is to be seen that the order for re-determination by the Original Authority and the submission of fresh refund claim consequent to re-determination are in pursuance of orders of the Hon'ble High Court of Gujarat. The Commissioner (Appeals) recorded the following in respect of the claim of interest by the appellant :-*

"Further, for the first time refund claim was filed on 26-12-2000 but the same was rejected by the Dy. Commissioner, Central Excise & Customs, Division-V, Surat-I vide OIO No. SRT-VI/ADJ-808/2001-R dt. 25-1-2002 on the ground that the final capacity determination order No. V/MP/19-62/Final Assessment/Surat-V/2000 dt. 20-2-2001 was not vacated. Therefore, the refund claimed at that time was premature. In terms of provisions of Section 11BB, interest

is payable if any duty ordered to be refunded under Section 11B is not refunded within three months, from the receipt of the application. In the instant case, the appellant has challenged the orders of the Dy. Commissioner and Commissioner (Appeals). The refund has arisen only when the Dy. Commissioner passed the order on the basis of CESTAT order No. A/354/WZB/04-C-II dt. 20-5-2004 vide OIO No. SRT-V/ADJ-44/2004-F.A. dt. 29-10-2004 and re-determined the Annual Capacity of Production by excluding the length of gallery portion. Thereafter, the appellant filed the refund claim on 5-3-2005 which was sanctioned to them. Therefore, the three months period under Section 11BB is upto 4-6-2005."

The fresh claim has been made in pursuance of the directions of the Hon'ble High Court in their order dt. 29-8-2002. The decision of the Commissioner (Appeals) is that the refund become admissible only after finalization of APC and hence the date of the fresh claim submitted by the appellant in pursuance of the order of the Hon'ble High Court shall be relevant date for the purpose of payment of interest. The above decision of the Commissioner (Appeals) and the reasoning adopted are legal and proper and do not warrant any interference."

The present refund claim has been filed only after the Tribunal has set aside the order determining the ACP and remanded the matter back to Commissioner for redetermination on 25.06.2010. Commissioner has then by the order dated 31.12.2010 finalized the annual capacity.

3.11 Board has vide Circular No 1063/2/2018-CX dated 16.02.2018 also clarified as follows:

"26. Decision of the Hon'ble High Court of Gujarat dated 20.07.2015 in Tax Appeal No. 381 of 2015 in the matter of CCE, Rajkot vs M/s Tata Chemicals Ltd., Jamnagar = 2015-TIOL-1800-HC-AHM-CX

26.1 Department has accepted the order of the Hon'ble High Court of Gujarat in Tax Appeal No. 381 of 2015 in the matter of CCE, Rajkot vs M/s Tata Chemicals Ltd. = 2015-TIOL-1800-HC-AHM-CX, Jamnagar where the Hon'ble High Court dismissed the departmental appeal relying on the decision of the Hon'ble Supreme Court in the case of Ranbaxy Pharmaceuticals vs Union of India, (2011) 10 SCC 292 = 2011-TIOL-105-SC-CX.

26.2 In the matter, refund claims of the assessee were rejected by the AC on the grounds that D-3 intimations were not proper. CEGAT in its order dated 13.08.2003 ordered that the D-3 intimations were proper and provisions of Rule 173-L were met, hence there was no deficiency on the part of the assessee. Order of CESTAT was accepted by the department and refund was granted. Assessee claimed interest of Rs. 74 Lakhs from date of filing of refund claim. Tribunal relied upon decision of Apex Court in case of Ranbaxy Pharmaceuticals Limited v. Union of India [2011-TIOL-105-SC-CX] where it has been held that the law to pay the interest commences from the date of expiry of three months from the date of receipt of application and not from the decision. Departmental appeal was therefore dismissed."

3.11 The impugned order to this extent goes contrary to the provisions of Section 11BB and above referred circular of the Board cannot be sustained.

3.12 Appellant has relying on following decisions sought to claim interest from the date of deposit and at the rate of 12%:

(i) ITC Ltd. [2005 (179) ELT 15 (SC)]

(ii) Vikram Ispat [2009 (234) ELT 74 (Bom)]

(iii) Dinesh & Co [2009 (234) ELT 486 (T-Chennai)]

(iv) Madura Coats Pvt Ltd [2012 (285) ELT 188 (Cal)]

(v) Shree Wood Products Pvt Ltd [2016 (340) ELT 79 (P&H)]

(vi) Ebiz.Com Pvt [2017 (49) STR (ALL)]

(vii) Sheela Foam Pvt Ltd [2003 (154) ELT 522 (T-LB)]

3.13 In view of the decision of Hon'ble Apex Court in the case of Mafatlal Industries I do not find any merits in the submissions made by the appellant. It is settled position in law that tribunal being a creature of the statute cannot decided the issues against the express provisions in law. Hon'ble Supreme Court has in the case of Northern Plastics Ltd [1997 (91) E.L.T. 502 (S.C)] held as follows:

> *"8. At the outset it must be kept in view that appeal is a creature of statute. The right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to the conditions regarding the filing of such appeals. We may in this connection usefully refer to a decision of four learned Judges of this Court in the case of The Anant Mills Co. Ltd. etc. etc. v. State of Gujarat & others etc. etc. [AIR 1975 S.C. 1234 = (1975) 2 SCC 175]. In that case Khanna, J., speaking for the Court had to consider the question whether the provision of statutory appeal as per Section 406(2)(e) of the Bombay Provincial Municipal Corporation Act, 1949 which required the appellant to deposit the disputed amount of tax before appeal could be entertained could be said to be in any way violative of Article 14 of the Constitution of India. Repelling the aforesaid challenge to the vires of the*

said provision the following pertinent observations were made in Para 40 of the Report :

"....The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that `.....no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid'. Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of

legislation, and we can discern no contravention of Article 14 in it....”

9. It has also to be noted that the wider concept of locus standi in public interest litigation moved before this Court under Article 32 of the Constitution of India which itself is a fundamental right or under Article 226 before High Courts which also offers a constitutional remedy cannot be imported for deciding the right of appeal under the statutory provisions contained in the Customs Act. Whether any right of appeal is conferred on anyone against the orders passed under the Act in the hierarchy of proceedings before the authorities has to be judged from the statutory settings of the Act and not de hors them. Therefore, in our view, the High Court in the impugned judgment had erred in drawing the analogy from the more elastic concept of locus standi under Article 32 or Article 226 evolved by this Court by its decisions on the subject. It is also to be appreciated that the decision of this Court in Bar Council of Maharashtra v. M.V. Dabholkar etc. etc. [AIR 1975 S.C. 2092] was based on an entirely different statutory scheme. For judging the competence and locus standi of the Union of India or the HPF for moving appeals before CEGAT against the order of Additional Collector of Customs passed under Section 122 of the Act the answer must be found from within the four corners of the Act itself.

10. We have, therefore, to turn to the scheme of the Act providing for appeals. Provision of appeals is found in Chapter XV of the Act. Section 128 deals with `Appeals to Collector (Appeals)’ and Section 128A deals with `Procedure in appeal’. The Appellate Tribunal is constituted as per Section 129 of the Act.

Sub-section (1) thereof lays down that, `the Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act'. It is, therefore, obvious that the Appellate Tribunal CEGAT is a creature of statute and derives its jurisdiction and powers only from the statute creating it and not outside the same...."

3.14 In view of the above decision Tribunal has no jurisdiction to prescribe the rate of interest which is prescribed by the Government of India in terms of Notification issue under Section 11BB. Further I would further refer to the decision of the Hon'ble Apex Court in case of Dipak Babaria & Anr [2014 (3) SCC 502] holding as follows:

"53. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor (1875) 1 Ch D 426,431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

"8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted…." This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad reported in 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka reported in 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited reported in 2008 (4) SCC 755."

3.15 Thus, I am firmly of the view that the request appellant for interest on the refund will have to be considered only in terms of Section 11BB of the Central Excise Act, 1944 and in the manner as prescribed by the said section. Accordingly the appeal filed by the appellant is to be partly allowed to extent of interest due to them in terms of section 11BB taking the date of filing the application for refund as 06.09.2010.

4. The appeal is partly allowed as indicated in para 3.15 above.

(Pronounced in open court on-18/08/2023)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp