

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO.III**

**Excise Appeal No.50455 of 2019 with Excise  
Miscellaneous Application No.50455 of 2024**

[(Arising out of Order-in-Appeal No.1306(CRM)CE/JDR/2018 dated 29.11.2018 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

**M/s.Dinesh Tobacco Industries (Unit-II)** **Appellant**  
32, Industrial Area,  
Jodhpur (Rajasthan)-342 003.

VERSUS

**Commissioner of Central Goods** **Respondent**  
**and Service Tax, Customs and**  
**Central Excise, Jodhpur-I.**

**AND**

**Excise Appeal No.50697 of 2019 with  
Excise Miscellaneous Application No.50454 of 2024**

[(Arising out of Order-in-Appeal No.16(CRM)CE/JDR/2019 dated 02.01.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jodhpur]

**M/s.Dinesh Tobacco Industries (Unit-I)** **Appellant**  
29, Industrial Area,  
Jodhpur (Rajasthan)-342 003.

VERSUS

**Commissioner of Central Goods** **Respondent**  
**and Service Tax, Customs and**  
**Central Excise, Jodhpur-I.**

**APPEARANCE:**

Shri Om P. Agarwal, Chartered Accountant for the appellant  
Shri Bhagwat Dayal, Authorised Representative for the respondent

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**  
**HON'BLE MR. P.V.SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NOS.57990-57991/2024****DATE OF HEARING: 01.08.2024****DATE OF DECISION: 09.08.2024****BINU TAMTA:**

1. Two separate appeals have been filed by M/s.Dinesh Tobacco Industries Ltd. (Unit-I and Unit-II) <sup>1</sup> challenging the order-in-appeal no.1306-CRM-CE-JDR-2018 dated 29.11.2018 and order-in-appeal no.16(CRM)CE/JDR/2019 dated 02.01.2019, whereby the interest on the refund amount has been affirmed @6% instead of 12%, as claimed by the appellant.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Pan Masala and Gutkha. The refund application was filed by the appellant on 26.12.2008 claiming refund of central excise duty paid under compounded levy scheme on the goods, which were exported and hence were entitled for rebate of duty paid on the goods exported by them. Both the Competent Authority and the Appellate Authority rejected the refund claims, which were then challenged by the appellant. The Tribunal vide order dated 09.11.2017 remanded the matter as the same was squarely covered by the earlier order of the Tribunal in the case of the assessee itself. Consequently, the Competent Authority allowed the refund application vide order dated 26.02.2018. However, no interest was allowed on the said amount, as according to the Revenue, the refund was sanctioned within the period of 3 months from the date of filing the refund application. The appellant claimed the interest on the original amount of refund for the period from 01.11.2009 to 05.09.2017 i.e. after 3

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<sup>1</sup> The Appellant

months from the date of application for claiming the refund was submitted, relying on the decision of the Supreme Court in the case of **Ranbaxy Laboratories Ltd. Vs. Union of India** <sup>2</sup>.

3. The Adjudicating Authority vide order-in-original dated 07.12.2017 rejected the refund claim of interest amounting to Rs.2,65,54,112/-, after issuance of the show cause notice dated 27.11.2017 to the appellant. The appeal filed by the appellant was rejected by the Commissioner (Appeals) by the impugned order. Hence, the present appeals have been filed before this Tribunal.

4. Heard Shri Om P. Agarwal, Chartered Accountant, learned counsel for the appellant and Shri Bhagwat Dayal, Authorised Representative for the respondent.

5. Learned counsel for the appellant relying on the decisions of the Supreme Court in the case of **CCE Vs. I.T.C. Ltd.** <sup>3</sup> and of the Allahabad High Court in the case of **M/s.Govind Mills Ltd. Vs. CCE, Allahabad** <sup>4</sup> claimed the interest @12% for the delayed payment. The contention of the learned counsel for the appellant is that the amount in question was revenue deposit and not duty and, therefore, provisions of Section 11BB would not apply. He further argued that the show cause notices were issued for rejection of the refund of interest on merits and there was no notice for restricting the interest to 6%p.a.

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<sup>2</sup> 2011-TIOL-105-SC-CX

<sup>3</sup> 2005 (179) ELT 15 (SC)

<sup>4</sup> 2014-TIOL 677 (HC) =2014(35)STR 444 (All.)

as per Section 11 BB of the Central Excise Act, 1944 <sup>5</sup> and hence, the impugned order restricting the interest to 6% is beyond the scope of the show cause notice. Learned counsel has also referred to the decision in the case of **Parle Agro Pvt. Ltd.** <sup>6</sup>, where the Tribunal allowed the interest @12% on the ground that the amount in question was revenue deposit and not duty and, therefore, the provisions of Section 11 BB would not apply.

6. Learned Authorised Representative for the respondent has reiterated the findings of the Authorities below and relying on the provisions of the Notification No.67/2003-CE (N.T.) issued under Section 11BB, which restricted the rate of the interest @6% in case of delayed refund. He further, relied on the decisions of the High Court of Madras in **C. Padmini Chinnadurai Vs. Assistant Commissioner, Central Excise, Tirunelveli** <sup>7</sup> and Karnataka High Court in the case of **Commissioner of Central Excise, Bangalore Vs. Hindustan Granites** <sup>8</sup>, which two decisions have been followed by the Single Member Bench of this Tribunal in the latest decision in **M/s.Devendra Udyog Vs. Commissioner, CGST, Jodhpur** <sup>9</sup>

7. The issue involved is whether :-

**“Whether rate of interest on delayed refunds, which vary within the range @5% to 30% as per Section 11BB of Central Excise Act, 1944 can be given @ 12% per annum as claimed by the appellant, or as per the Notification No.67/2003-CE (N.T.) issued under Section**

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<sup>5</sup> CEA

<sup>6</sup> Final Order Nos.70180-70181/2021 in Excise Appeals Nos.70628 & 70674/19 dated 25.05.2021

<sup>7</sup> 2010 (257) ELT 538 (Madras)

<sup>8</sup> 2015 (323) ELT 708 (Karnataka)

<sup>9</sup> 2020(372) ELT 385 (Tri.-Delhi)

**11BB** which restricts the rate of interest at 6% in case of delayed refund.”

8. The issue is no longer *res integra* and has been considered and settled by the two High Courts. In the case of **C. Padmini Chinnadurai (supra)**, the Division Bench rejected the contention of the appellant that since it is ‘pre-deposit’ and not ‘central excise duty’, therefore, the notification no.67/2023 would not apply, observing as under:-

“**16.** Unless it has been established that “Pre-Deposit” is not with reference to the “Central Excise Duty”, but “Pre-Deposit” can be made in respect of other payment also, the argument advanced by the learned Standing Counsel has to be accepted. That is to say even if the term “Pre-Deposit” is used, if the deposit is towards “Central Excise Duty”, then as far as the payment of interest is concerned, the provisions of Section 11-BB of the Central Excise Act alone is having its application. Under such provision, Notifications have been issued, determining the rate of interest. As per the Notifications, the rate of interest to be paid is 8% from 2-9-2003 to 11-9-2003 and 6% from 12-9-2003 to till date. So, in considered our view, since it is not established that the payment is not made towards “Central Excise Duty”, but towards other payment, the argument advanced by the learned counsel for the appellants will not hold good. Consequently, as far as the order of the learned Single Judge dated 11-9-2007 in W.P. (MD) Nos. 3167 and 3168 of 2006 with regard to the payment of interest to the tune of 14% is concerned, it is set aside and the respondent is directed to pay interest at the rate of 8% from 2-9-2003 to 11-9-2003 and 6% from 12-9-2003 to till the date of payment. The respondent is directed to make the payment within a period of thirty days from the date of receipt of a copy of this order.”

9. Similarly, the Karnataka High Court in **Commissioner of Central Excise, Bangalore Vs. Hindustan Granites (supra)** considered the said notification, which was issued in exercise of the powers conferred by Section 11BB of CEA fixing the rate of interest

@6% p.a. for the purpose of said section and holding that interest payable in terms of Section 11BB of the Act, which in turn is with reference to the notification referred above, the rate of interest was reduced from 9% to 6%.

10. Learned Single Member of this Tribunal in **Devendra Udyog (supra)** considered all the aforesaid decisions relied on by the appellant as well as by the Revenue and observed that:-

"7. In Section 11BB, to clarify the rate of interest in the range of 5% to 30%, the statute itself has empowered the Central Government to fix any rate of interest for the time being by way of a notification. This clarifies that once there is a notification of Central Government fixing 6% as the rate of interest same has to be followed as having power of statute."

11. Lastly, we may refer to the order of the Delhi High Court in the case of **Commissioner of Customs Vs. M/s. D.D. International Pvt. Ltd.**<sup>10</sup>, where the notification issued in exercise of the powers under Section 129EE of the Customs Act, 1962 (which is in *pari materia* to Section 11BB of the Act) was in issue and the learned Division Bench accordingly, directed that the interest shall be computed and paid @ 6%p.a. in terms of the notification dated 12.08.2014 issued by the Union Government prescribing the interest on refund to be fixed @ 6% p.a.

12. The contention raised by the learned counsel for the appellant and the decisions relied on by them in support of their contentions have been rejected by the learned Single Member in the case of

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<sup>10</sup> CUSAA 69/2023 & CM Appl.48489/2023(Stay) dated 05.12.2023

**Devendra Udyog (supra)** and we agree with the views taken therein. We would like to clarify that the decision of the Supreme Court in **I.T.C. Ltd. (supra)** is distinguishable and is, therefore, not applicable in the present case. The issue involved before the Apex Court was for the period prior to the issuance of the notification in question. Moreover, the observations of the Apex Court that, "in view of this order, any judgement of any High Court holding to the contrary will no longer be good law", is with respect to the issue whether the 'pre-deposit' made as a pre-condition for the hearing of the appeal under the Act was refundable on the assessee being ultimately successful. We find that the Apex Court had also relied on the draft Circular issued by the CBEC for payment of interest on all such pre-deposits, a draft copy of which was placed before the Court, which is evident from the order itself, as quoted below:-

"Having referred to the contents of the draft Circular, we direct compliance with the final order impugned before us and payment of interest in terms of the draft Circular. The draft Circular shall be appended to and the contents form part of this order."

13. Section 11BB specifies that interest shall be paid to the applicant at such rate not below 5% and not exceeding 30% p.a., which may be fixed by the Central Government by issuing the notification on such duty and, therefore, the notification no.67/2003 has been issued fixing the interest @ 6% p.a. on the delayed payment of refund and hence, the same has been rightly allowed to the appellant. Merely because the appellant has claimed interest @12% mis-interpreting the earlier decisions, does not entitle him to the said rate. The contention of the appellant that the order has been passed beyond the scope of the

show cause notice is not sustainable as the same has been passed in consonance with the notification, which has been validly issued under the provisions of Section 11BB of the Act.

14. We do not find any reason to interfere with the impugned orders and hence, the same are affirmed. The present appeals are dismissed. The miscellaneous applications are allowed.

[Order pronounced on 9<sup>th</sup> August, 2024]

**(Binu Tamta)**  
**Member (Judicial)**

**(P. V. Subba Rao)**  
**Member (Technical)**

Ckp.