

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Excise Appeal No.70194 of 2021**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1028-2020-21 dated 25.02.2021 passed by Commissioner (Appeals) CGST, Noida)

**M/s Shri Rathi Steel Ltd.,**

**.....Appellant**

(Plot 'E' Phase-III, UPSIDC Industrial Area,  
Masuri-Gulawathi Road, Hapur)

*VERSUS*

**Commissioner of CGST, Noida**

**....Respondent**

(Noida)

**APPEARANCE:**

Shri Bipin Garg, Advocate, Ms. Stuti Saggi, Advocate & Shri Jwaria Kainaat, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.- 70338/2024**

DATE OF HEARING : 16 May, 2024

DATE OF DECISION : 07 June, 2024

**P. K. CHOUDHARY:**

The Appellant is engaged in the manufacture of MS Bars and Rods falling under Chapter 72. They were availing facility of Cenvat Credit on various inputs and capital goods.

2. The case of the Department was that the Appellant had taken Cenvat credit on the basis of fake invoices issued by traders. During investigation, due to pressure of the Department, they reversed the Cenvat credit amounting to Rs.39,22,715/- along with interest of Rs.18,07,904/- in March, 2009.

3. A Show Cause Notice<sup>1</sup> dated 13.04.2009 was issued for wrong availment of Cenvat Credit on Inputs. Adjudicating Authority confirmed the demand along with interest and imposed penalty vide Order-in-Original dated 16.01.2010 and appropriated the amount

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<sup>1</sup> SCN

deposited by the Appellant. In appeal, the learned Commissioner (Appeals) vide Order-in-Appeal dated 27.08.2010 rejected the appeal.

4. In appeal before this Tribunal, the Tribunal allowed the appeal vide its Final Order No. A/70454/2017-SM (DR) dated 16.02.2017 and set aside the Order-in-Appeal dated 27.08.2010. The Appellant filed a letter requesting for refund of amount of Rs.57,30,616/- (39,22,715 + 18,07,904) deposited by them during investigation, along with interest. The Assistant Commissioner CGST vide Order-in-Original No.133/Refund/AC/HPR/2017/18 dated 28.07.2017 sanctioned the refund amounting to Rs.57,30,616/- (39,22,715 + 18,07,904). He however did not pay the interest accrued on Rs.57,30,616/-. The Commissioner (Appeals) vide impugned Order-in-Appeal dated 18.05.2018 also rejected the appeal.

5. The Appellant filed appeal before Tribunal against Order-in-Appeal dated 18.05.2018. Tribunal remanded the matter to Original Adjudicating Authority vide F.O. No. A/70095/2020-EX(DB) dated 14.01.2020 with the direction to decide the Appellant's claim of interest. The Adjudicating Authority did not agree with the submissions of the Appellant and rejected the claim of interest vide Order-in-Original dated 12.06.2020. The Commissioner (Appeals) considering the submissions made by the Appellant and agreed that the Appellant is entitled to interest on Rs.39,22,715/- from the date of deposit to the date of refund vide order dated 25.02.2021. However, he did not allow interest on Rs.18,07,904/-.

6. It was submitted by the Appellant that they had deposited the Cenvat credit amount along with interest amounting to Rs.18,07,904/- under pressure of the Investigating Officers though they were not liable to pay.

7. That the Commissioner (Appeals) allowed interest on Rs.39,22,715/-. He, however denied the interest on Rs.18,07,914/- with the observation that there is no provision for payment of compensatory interest on interest. The Appellant submitted that they had paid total amount of Rs.57,30,616/-. This amount is amount deposited whether for duty or interest on duty. The Government has taken benefit of this amount whereas the Appellant had suffered it

and prayed that the Appellants are entitled to get interest on Rs.18,07,914/- @ of 12% from the date of deposit. The Appellant relied upon the following decisions in this regard:-

- (i) Indore Treasure Market City Pvt. Ltd. Vs Commr. CGST [F.O. No.50125/2024 dt. 11.01.2024]
- (ii) Impressive Management Solution Pvt. Ltd. Vs. C.G & S.T [F.O. No.60090/2023 dt. 06.04.2023]
- (iii) Kumawat Contractors. Vs. Commr. CGST & S.T [F.O. No.FO/A/54503/2024-ST (SM) dt. 16.01.2024]
- (iv) Raghuvver Metal Industries Ltd. Vs. Commr. CGST [F.O. No.51621-51624/2023 dt. 07.12.2023]
- (v) Shree Rajasthan Syntex Ltd. Vs. Commr. CGST [F.O. No.50949-50950/2023 dt. 20.07.2023]
- (vi) Matta Paints And Hardware Store Vs. The Commr. [F.O. No.51128/2022 dt. 02.12.2022]
- (vii) Parle Agro Pvt. Ltd. Vs. CCE [2021-TIOL-306-Tri.-All]
- (viii) Riba Textile Ltd. Vs. CCE [2020-TIOL-932-(Tri.-CHD)]
- (ix) CCE Vs. Riba Textile Ltd. [2022-TIOL-382-HC-P & H]
- (x) Fujikawa Power Vs. CCE [2019-TIOL-3661-(Tri.-CHD)]
- (xi) Hindustan Perfumers Vs. CCE [2022-TIOL-145-(Tri.-Del.)]
- (xii) Hitesh Industries Vs. Commr. CGST [F.O. No.51631-51633/2020 dt. 07.12.2020]
- (xiii) CBEC Circular No.984/8/2014-CX dt. 16.09.2014

8. The Authorized Representative reiterates the findings of impugned order.

9. I have carefully considered the submissions made by both the sides and perused the appeal records.

10. The learned counsel on behalf of the Appellant submitted that they had deposited during investigation total amount of Rs.57,30,616/- (39,22,715 + 18,07,904). The learned Commissioner (Appeals) allowed interest on Rs.39,22,715/-. He however denied the interest on Rs.18,07,914/- with the observation that there is no provision for payment of compensatory interest on interest. It was the submission of the Appellant that they had paid total amount of Rs.57,30,616/-. This amount is amount deposited whether for duty or interest on duty. The Government has taken benefit of this amount whereas the Appellant had suffered it.

11. I agree with the contention of the Appellant that the amount deposited during investigation will be entitled to refund along with interest. Such amount deposited is neither duty nor interest. I find that CBEC vide Circular No.984/8/2014-CX dated 16.09.2014 issued clarification as under:-

**"5. Refund of pre-deposit:**

*5.1 Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.*

*5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.*

*5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.*

*5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.*

*5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.*

*5.6 It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra."*

12. In view of the discussions made here-in-above, the impugned order passed by the learned Commissioner (Appeals) is set aside as far as denying the interest on Rs.18,07,914/- and appeal is allowed. The Adjudicating Authority is directed to grant interest upon the said amount, from the date of deposit till the date of grant of Rs.18,07,914/- @ of 12% per annum. Such interest should be given to the Appellant within a period of Ninety days from the date of receipt of copy of this order.

(Order pronounced in open court on – **07<sup>th</sup> June, 2024**)

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

LKS