

2012 (25) S.T.R. 506 (Tri. - Mumbai)
IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
S/Shri P.G. Chacko, Member (J) and Sahab Singh, Member (T)
COMMISSIONER OF C. EX., MUMBAI - I
Versus
INTERS CAPE

Misc. Order No. M/190/2011-WZB/C-II/(EB), dated 21-1-2011 in Application No. E/ROM/1245/2010 in Appeal No. E/1047/2001

REPRESENTED BY : Shri Manish Mohan, SDR, for the Appellant.
Shri R.D. Waglay, Advocate, for the Respondent.

[Order per: P.G. Chacko, Member (J)]. - This application filed by the Revenue seeks modification of our Order No. M/780/WZB/2010/EB/CII dated 21-5-2010, wherein we directed the Commissioner to return the pre-deposit amount to the respondent within a period of 30 days from the date of receipt of a certified copy of the order alongwith interest thereon @ 12% p.a. from 20-10-2005 to the date of actual refund. Moving this application, the learned SDR submits that, as per case law, the respondent can claim interest only from the date after expiry of three months from the 'date of receipt of the remand order' by the jurisdictional Commissioner and not from the date after three months 'from the date of the remand order'. It is submitted that the remand order dated 19-7-2005 of this Tribunal was received by the Commissioner on 30-8-2005 and, therefore, the period for the purpose of payment of interest should be reckoned with reference to this date (30-8-2005). The learned SDR further submits that this Tribunal has no power to determine any rate of interest on equitable principles, over and above what is statutorily prescribed. It is submitted that the rate of interest prescribed by the Central Government under Section 11BB of the Central Excise Act is @ 6% p.a. only for the material period and, therefore, the above order of this Bench should be appropriately modified.

2. The learned counsel for the appellant submits that Section 35FF of the Central Excise Act referred to in the 'ROM' Application of the department came into force only on 10-5-2008 and, therefore, its benefit cannot be claimed by the applicant. It is further submitted that Section 11BB of the Act is not applicable to a case of return of deposit like the present case and, therefore, it is open to this Tribunal to determine a reasonable rate of interest to be paid by the department on the amount of pre-deposit. According to him 12% is reasonable.

3. After considering the submissions, we have found substance in the objection raised by the learned counsel with reference to Section 35FF of the Central Excise Act. This provision came into force only on 10-5-2008 and hence cannot be made applicable to the instant case inasmuch as the remand order of this Tribunal was passed on 19-7-2005. It is also pertinent to note that the date (30-8-2005) of receipt of the remand order by the Commissioner was not brought on record by the department. This date was not indicated when the order was passed on 21-5-2010. It is being mentioned for the first time in the present application. This is another reason why any modification of the date which we determined as the commencing date of the period for payment of interest cannot be allowed. However, the plea for modification of the rate of interest is well-founded. Section 35FF of the Act governs return of deposits made under Section 35F. It provides for payment of interest at the rate specified under

Section 11BB. Hence the contention raised by the learned counsel that Section 11BB is not applicable to a case of return of deposit cannot be accepted. As rightly submitted by the learned SDR, the rate of interest notified by the Central Government under Section 11BB of the Act is @ 6% p.a. *vide* Notification No. 67/2003-C.E. (N.T.), dated 12-9-2003. The Commissioner is liable to pay interest only at this rate to the party. With this limited modification of Order No. M/780/2010 dated 21-5-2010, this application is disposed of.

(Pronounced in Court)
