

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10626 of 2020-SM

(Arising out of OIA-AHM-EXCUS-001-APP-126-2019-20 Dated- 03/06/2020 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-I)

OMEGA ELEVATORS

5c Archana Ind. Estate Opp. Ajit Mill
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.E.-AHMEDABAD-I

C. Ex Bhavan, Nr Panjrapole & Polytechnic,
Ambavadi, Ahmedabad, Gujarat-380015

.....Respondent

APPEARANCE:

Shri. Bishan R Shah, Chartered Accountant for the Appellant

Shri. Kalpesh P Shah, Superintendent (AR), for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 12240 / 2022

DATE OF HEARING: 13.10.2022

DATE OF DECISION: 22.12.2022

RAMESH NAIR

This appeal is filed against the Order-in-Appeal No. AHM-EXCUS-001-APP-126-2019-20 dated 23.03.2020 passed by the Commissioner (Appeals), Ahmedabad.

2. The facts of the case are that the appellant had filed refund claim of Rs. 91,23,906/- (Rs. 51,16,092/- towards service tax paid and Rs. 40,07,815/- towards interest of Service tax paid) on account of appeal allowed in their favour by CESTAT. The background of the said claim is that the appellant were providing service under the category of "Erection, Commissioning or Installation Service". As it appeared to the department that the appellant has failed to pay service tax on said services rendered during the period from 01.07.2003 to 31.03.2015, a show cause notice was issued demanding service tax along with interest and imposition of penalty. However during the investigation appellant paid the service tax amounting to Rs. 51,16,092/-. The matter was adjudicated and the demand was confirmed. Thereafter, the matter travelled up to this Tribunal and Tribunal

vide Final Order dated 04-04-2019 held that the appellant is not liable to pay service tax. Thereafter, the appellant claimed the refund from the department. The refund claim was sanctioned to the appellant but interest on account of delayed refund was not given to the appellant on the ground that there was no delay in sanctioning of refund amount as per Section 11BB of the Central Excise Act, 1944. On appeal, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, and held that interest liability would arise only after 3 months from the date of filing of refund application. Ld. Commissioner contended that since in this case, the refund application was filed only on 11-06-2019 and the refund sanctioning authority has sanctioned the refund claim on 11.09.2019 i.e, within three months from date of refund application, no interest is payable.

3. Being aggrieved, against the said impugned order, the appellant is before me.

4. Shri. Bishan R Shah, learned Chartered Accountant for the appellant argued that appellant actually was not liable to pay service tax on installation of Lift prior to 16.06.2005. However service tax department insisted to pay service tax considering this activity liable for payment of service tax under Erection Commissioning or Installation Service. When refund is granted of any tax illegally collected, without authority of law is eligible to interest from the date of payment of duty to the date of actually payment of refund. He placed reliance on following decisions.

- Ebiz.Com Pvt. Ltd. Vs. Commissioner of Central Excise- 2017(49)STR 389 (All)
- Binjrajka Steel Tubes Ltd. Vs. Commissioner of Central Excise, Hyderabad-III 2007(218)ELT 563 (Tri. Bang)
- AmidharaTexturising (P) Ltd. Vs. Commissioner of Central Excise, Surat 2012(278) ELT 257 (Tri. Ahmd)

5. Learned. Authorized Representative for the department relies upon the impugned orders.

6. Heard both sides.

7. On careful consideration of submissions made by both the sides, I find that it is an amount paid by the appellant as service tax during the course of investigation. This fact is not in dispute. When any amount paid during the

investigation, it is only a predeposit made by the appellant. On succeeding in the appeal, the predeposit made in connection to the said appeal is liable to be refunded with interest. The order of Tribunal has attained finality. In that circumstance, the appellant is entitled to claim interest from the date of deposit till its realization. Further, the issue is no longer *res integra* as the Division Bench of this Tribunal in *Parle Agro (P) Ltd. v. Commissioner, CGST - 2021-TIOL-306-CESTAT-ALL*, following the ruling of the Apex Court in *Sandvik Asia Ltd. - 2006 (196) E.L.T. 257 (S.C.) = 2007 (8) S.T.R. 193 (S.C.)* have held that such amount deposited during investigation and/or pending litigation is *ipso facto* pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund. Therefore, I am of the view that impugned order is not sustainable in the eyes of law.

8. Accordingly, the impugned order is set aside and the appeal is allowed.

(Pronounced in the open court on 22.12.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)