

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 11025 of 2021-SM

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-001-APP-021-2021-22 dated 02.12.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

**SPAN KATHWADA COMMERCIAL CO OPERATIVE
SOCIETY LTD**

...Appellant

Plot No 537 Gidc Kathwada,
Opp Pashupatinath Mandir
Ahmedabad,
Gujarat

VERSUS

C.C.E.-AHMEDABAD-I

...Respondent

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

APPEARANCE:

Shri Bishan R. Shah, CA for the Appellant
Shri. Prakash Kumar Singh, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 10069 /2023

DATE OF HEARING:12.01.2023

DATE OF DECISION: 19.01.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for interest on the refund of pre-deposit of Rs. 9 Lakhs.

2. Shri Bishan R. Shah, Learned Chartered Accountant appearing on behalf of the appellant submits that even though the SCN was issued for recovery of Service Tax amount of Rs.26,40,668/-, but during the intervening period, the Department has retained an amount of Service Tax of Rs. 9 Lakhs. During the adjudication process, the appellant was not required to pay any amount,

therefore, the said amount of refund is eligible for interest from the date of deposit till the date of sanction of the refund. He placed reliance on the decision of this Tribunal in the case of M/s Parle Agro Pvt Ltd Vs. The Commissioner of Central Goods And Service Tax, Noida- 2021- TIOL- 306 (CESTAT-.All.)

3. Shri Prakash Kumar Singh, Learned Superintendent (Authorized Representative), appearing for the revenue reiterates the finding of the impugned order. He placed reliance on the following judgments:

- 2019 (366) ELT 139 (Tri.- Ahmd)- Ratnamai Metals & Tubes Ltd Vs. CCE, Ahmedabad-III
- 2015(319) ELT 174 (Tri.- Del)- Gyal M G Gases P Ltd Vs. CCE, Indore
- 2011 (273) ELT 3 (SC)- Ranbaxy Laboratories Ltd Vs. Union of India
- 2020 (374) ELT 145 (SC)- Manisha Pharmo Plast Pvt Ltd Vs. Union of India.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that there is no dispute that the department has collected Rs. 9 Lakhs even though the adjudication process was undergoing. The amount of demand can be recovered only after the same is determined by completing the adjudication process, therefore, before the adjudication process, the amount of tax cannot be recovered. In this case since the amount was recovered which was otherwise not recoverable at the material time. The appellant is entitled for interest from the date of deposit. This amount of Rs. 9 Lakhs at the most can be considered as pre deposit and in case of pre deposit, the assessee is eligible for interest from the date of deposit. Accordingly, I am of the view that the appellant's claim for interest on sanction

of refund is just and legal. Hence the impugned order is set aside. The appeal is allowed.

(Pronounced in the open Court on 19.01.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

PALAK