

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

E-Hearing
REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70059 of 2023

(Arising out of Order-in-Appeal No.981-ST/APPL/LKO/2022 dated 07.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s Anand Engineering Ltd.,Appellant
(Formerly Bajaj Infrastructure Development
Co. Ltd. Unit Khambarkhera
District-Lakhimpur, U.P.)

VERSUS
Commissioner of Central Excise &
CGST, LucknowRespondent
(GST Bhawan, 7A Ashok Marg,
Lucknow-226001)

WITH

Service Tax Appeal No.70024 of 2023

(Arising out of Order-in-Appeal No.982-ST/APPL/LKO/2022 dated 07.11.2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s Anand Engineering Ltd.,Appellant
(Formerly Bajaj Infrastructure Development
Co. Ltd. Unit Maqsoodpur
District-Shahjahanpur, U.P.)

VERSUS
Commissioner of Central Excise &
CGST, LucknowRespondent
(GST Bhawan, 7A Ashok Marg,
Lucknow-226001)

APPEARANCE:

Shri Jitendra Singh, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NOs.- 70771-70772/2025

DATE OF HEARING : 10.07.2025
DATE OF PRONOUNCEMENT : 03.11.2025

In both the appeals, the issue being the same, are taken up together for decision. M/s Anand Engineering Ltd. have filed these appeals to assail the Order-in-Appeal No.981-ST/APPL/LKO/2022 dated 07.11.2022 and Order-in-Appeal No.982-ST/APPL/LKO/2022 dated 07.11.2022 both passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow, wherein Commissioner (Appeals) has allowed both the Departmental Appeal against the order passed by Order-in-Original No.04/AC/ST/RFD/STP/Anand-Bidco/2021-22 dated 23.11.2021 and Order-in-Original No.03/AC/ST/RFD/STP/Anand-Bidco/2021-22 dated 23.11.2021.

2. The sequence of events of Appeal No. **ST/70059/2023** are taken for the purpose of clarity as under:-

- On 30.05.2013 Appellant, during the course of investigation deposited an amount of ₹32,77,968/- as Service Tax and Rs.14,83,707/- as interest under protest vide Challan No.00788.
- On 07.05.2014 Commissioner, Central Excise and Service Tax issued Show Cause Notice¹ proposing demand and recovery of Service Tax amounting to ₹ 4,23,51,595/-.
- On 30.03.2016 Learned Commissioner, Lucknow passed Order-in-Original confirming service tax demand of ₹1,26,25,532/-.
- On 16.05.2019 Tribunal vide Final Order set aside the entire service tax demand of ₹ 1,26,25,532/-.
- On 14.06.2019 Appellant filed refund of pre-deposit of ₹47,61,675/- (₹ 32,77,968/- + ₹ 14,83,707/-).
- On 15.01.2020 Assistant Commissioner, Sitapur vide Order-in-Original No.02/ST/Refund/AC/STP/2020 sanctioned refund of service tax of ₹ 32,77,968/- only.
- On 31.08.2020 Commissioner (Appeals), Lucknow, vide Order-in-Appeal No.158-ST/APPL/LKO/2020 ordered as under:-

¹ SCN

"As the Order of Commissioner has been set aside by CESTAT in entirety, all amounts deposited during investigation is refundable, holding back the said amount is without authority of law."

- Further, the Adjudicating Authority has held that the amended Section 35FF would not apply to the case as pre-deposit amount was paid before amendment in the said Section. This finding is erroneous. As the Appeal in Tribunal was filed after amendment in Section 35FF, the same is applicable to the case. Hence, in respect of the amount treated by Tribunal as pre-deposit under Section 35FF, interest is admissible in terms of amended Section 35FF of the Act. In respect of the remaining amount, Appellant will be entitled to interest in terms of Section 11BB of the said Act. The above Order of Commissioner (Appeals) has attained finality as no Appeal has been filed.
- On 23.11.2021 Assistant Commissioner, Sitapur vide Order-in-Original No.04/AC/ST/RFD/STP/Anand-Bidco/2021-22, in compliance of the Order dated 31.08.2020, allowed refund of the following :-
 - a) ₹ 1,93,898/- interest on interest.
 - b) ₹ 6,90,259/- interest on Rs. 32,77,968/- for the period 13.07.2016 to 15.01.2020.
- On 22.03.2022 Department, vide Review Order No.06 (Annexure A-5), filed an Appeal No.107-ST/2022 before Commissioner (Appeals), Lucknow against the Order dated 23.11.2021, contending that Assistant Commissioner, in his Order, has granted refund as under:-
 - a) ₹1,93,898/- interest on interest as there is no provision under Section 11BB for granting interest on interest.
 - b) ₹ 1,86,230/- (while granting refund of ₹ 6,90,259/- interest on ₹ 32,77,968/- for the period 13.07.2016 to 25.01.2020) on the ground that -

"Thus, though the party had deposited ₹ 32,77,968/- as tax at the time of investigation and the same was treated

as pre-deposit (the refund of which has already been granted) for the purpose of interest calculation, only 7.5% will be treated as pre-deposit. Hence, interest was to be calculated only on 7.5% of the amount deposited and on the rest of the amount, interest was to be calculated as per Section 11BB of the Central Excise Act. ₹ 1,26,25,532/- @ 7.5% is equal to ₹ 9,46,915/-. Therefore, interest should be calculated on ₹ 9,46,915/- and not on Rs. 32,77,968/ Interest on ₹ 9,46,915/- @ 6% for 1281 days comes to ₹ 1,99,396/- (from the date of pre-deposit i.e. date of filing Appeal in CESTAT i.e. 18.07.2016 to 15.01.2020 i.e. the date on which refund was sanctioned). On rest of the amount of ₹ 23,31,053/-, interest was to be calculated @ 6% for 795 days (for the period 20.09.2019 i.e. three months after filing of refund to 23.11.2021) comes to ₹ 3,04,633/-."

- Thus, the total interest payable to the party comes to ₹5,04,029/- (₹ 1,99,396/- + ₹ 3,04,633/-) against this the refund sanctioned is ₹6,90,259/-. Difference is ₹ 1,86,230/- which has been erroneously refunded to the party. Thus, the excess refund to the party comes to ₹ 3,80,128/- (₹ 1,93,898/- + ₹ 1,86,230/-).
- Learned Commissioner (Appeals) vide Order-in-Appeal No.981-ST/APPL/LKO/2022, allowed the Departmental Appeal returning the finding that interest on deposit during investigation is payable only on the amount of 7.5% of the demand and on rest amount interest can be paid only from the date after 03 months of filing refund application and that there is no legal provision for refund of interest on delayed payment of interest in the facts and circumstances of the case.

3. The sequence of events of Appeal No. **ST/70024/2023** are also taken for the purpose of clarity as under:-

- On 30.05.2013 Appellant, during the course of investigation deposited an amount of ₹35,02,129/- as

Service Tax and Rs.15,85,169/- as interest under protest vide Challan No.00727.

- On 07.05.2014 Commissioner, Central Excise and Service Tax issued SCN proposing demand and recovery of Service Tax amounting to ₹ 3,62,52,553/-.
- On 30.03.2016 Learned Commissioner, Lucknow passed Order-in-Original confirming service tax demand of ₹1,06,38,201/-.
- On 16.05.2019 Tribunal vide Final Order set aside the entire service tax demand of ₹1,06,38,201/-.
- On 14.06.2019 Appellant filed refund of pre-deposit of ₹50,87,298/- (₹ 35,02,129/- + ₹ 15,85,169/-).
- On 15.01.2020 Assistant Commissioner, Sitapur vide Order-in-Original No.01/ST/Refund/AC/STP/2020 sanctioned refund of service tax of ₹ 35,02,129/- only.
- On 31.08.2020 Commissioner (Appeals), Lucknow, vide Order-in-Appeal No.157-ST/APPL/LKO/2020 ordered as under:-

"As the Order of Commissioner has been set aside by CESTAT in entirety, all amounts deposited during investigation is refundable, holding back the said amount is without authority of law."

Further, the Adjudicating Authority has held that the amended Section 35FF would not apply to the case as pre-deposit amount was paid before amendment in the said Section. This finding is erroneous. As the Appeal in Tribunal was filed after amendment in Section 35FF, the same is applicable to the case. Hence, in respect of the amount treated by Tribunal as pre-deposit under Section 35FF, interest is admissible in terms of amended Section 35FF of the Act. In respect of the remaining amount, Appellant will be entitled to interest in terms of Section 11BB of the said Act. The above Order of Commissioner (Appeals) has attained finality as no Appeal has been filed.

- On 23.11.2021 Assistant Commissioner, Sitapur vide Order-in-Original No.03/AC/ST/RFD/STP/Anand-

Bidco/2021-22, in compliance of the Order dated 31.08.2020, allowed refund of the following :-

- a) ₹ 2,07,158/- interest on interest.
- b) ₹ 7,37,462/- interest on Rs. 35,02,129/- for the period 13.07.2016 to 15.01.2020.

➤ On 22.03.2022 Department, vide Review Order No.05 (Annexure A-5), filed an Appeal No.108-ST/2022 before Commissioner (Appeals), Lucknow against the Order dated 23.11.2021, contending that Assistant Commissioner, in his Order, has granted refund as under:-

- a) ₹2,07,158/- interest on interest as there is no provision under Section 11BB for granting interest on interest.
- b) ₹2,16,044/- (while granting refund of ₹ 7,37,462/- interest on ₹ 35,02,129/- for the period 13.07.2016 to 25.01.2020) on the ground that -

"Thus, though the party had deposited ₹ 35,02,129/- as tax at the time of investigation and the same was treated as pre-deposit (the refund of which has already been granted) for the purpose of interest calculation, only 7.5% will be treated as pre-deposit. Hence, interest was to be calculated only on 7.5% of the amount deposited and on the rest of the amount, interest was to be calculated as per Section 11BB of the Central Excise Act. ₹ 1,06,38,201/- @ 7.5% is equal to ₹ 7,97,865/-. Therefore, interest should be calculated on ₹ 7,97,865/- and not on Rs. 35,02,129/- Interest on ₹ 7,97,865/- @ 6% for 1281 days comes to ₹ 1,68,011/- (from the date of pre-deposit i.e. date of filing Appeal in CESTAT i.e. 13.07.2016 to 15.01.2020 i.e. the date on which refund was sanctioned). On rest of the amount of ₹ 27,04,264/-, interest was to be calculated @ 6% for 795 days (for the period 20.09.2019 i.e. three months after filing of refund to 23.11.2021) comes to ₹ 3,53,407/-."

➤ Thus, the total interest payable to the party comes to ₹5,21,418/- (₹ 1,68,011/- + ₹ 3,53,407/-) against this the refund sanctioned is ₹7,37,462/-. Difference is ₹ 2,16,044/-

which has been erroneously refunded to the party. Thus, the excess refund to the party comes to ₹ 4,23,202/- (₹ 2,07,158/- + ₹ 2,16,044/-).

➤ Learned Commissioner (Appeals) vide Order-in-Appeal No.982-ST/APPL/LKO/2022, allowed the Departmental Appeal returning the finding that interest on deposit during investigation is payable only on the amount of 7.5% of the demand and on rest amount interest can be paid only from the date after 03 months of filing refund application and that there is no legal provision for refund of interest on delayed payment of interest in the facts and circumstances of the case.

4. The learned Counsel appearing on behalf of Appellant has submitted that the Orders passed are violative of the principles of judicial discipline propounded by Hon'ble Supreme Court in the matter of UOI Vs. Kamlakshi Finance – 1991 (55) E.L.T. 423 (SC) holding as under :-

"Precedent principles of judicial discipline - orders passed by Collector (Appeals) and Tribunal binding on all adjudicating and appellate authorities within their respective jurisdictions."

"It cannot be too vehemently emphasized that it is of utmost importance that in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the Appellate Authorities."

5. Assistant Commissioner, Sitapur had thus rightly passed Order-in-Original dated 23.11.2021 following the Order-in-Appeal dated 31.08.2020 on the finding '*As the Order of Commissioner has been set aside by CESTAT in entirety, all amounts deposited during investigation is refundable, holding back the said amount is without authority of law*'. As against the Order of Commissioner (Appeals), Lucknow, no appeal has been filed by the Department. Therefore, the said Order became binding on the Assistant Commissioner, Sitapur, who has made

no error in following the Order passed by Commissioner (Appeals).

6. Appellant, in support of his contention that the amount deposited during investigation of the case is not the amount of tax but only the amount remaining deposited with the Department and therefore, provisions of Section 11B of the Central Excise Act, 1944 for grant of refund are not applicable, respectfully relied on the following judgments :-

- (i) Ebiz.com (P) Ltd. VS. CCE – MAN/UP/3167/2016 (All.)
- (ii) CCE Vs. Pricol Ltd. - MANU/TN/1261/2015 (Mad.)
- (iii) Coca Cola Beverages (P) Ltd. Vs. UOI - MANU/GJ/0126/2013 (Guj.)
- (iv) M/s Fuikawa Power & Ors. - Final Order No.61041-61042/2019 dated 26.11.2019 (Tri.).

7. Learned Departmental Authorized Representative, on the other hand, supported the Order-in-Appeal passed by Commissioner (Appeals).

8. Considering the rival submissions and on perusal of the records of Appeal, I find merit in Appellant's submission that the payment of interest on interest cannot be denied to Appellant on the ground that there is no provision under Section 11BB for payment of interest on interest. It is settled through various decisions of higher judiciary including the case laws relied by Appellant that when as assessee is compelled during investigation/ adjudication to make deposit of certain sum of money, whether as duty or interest, which deposit of money or interest is later, during adjudication/ appeal, is found to be not liable to be legally deposited, the amount no longer remains a duty or interest, it becomes merely a deposit of money unauthorisedly held by the Department and for refund of these sums, legal provisions of Section 11BB does not apply. The Tribunal in the matter of M/s BSL Ltd. Vs. Commissioner of C. Ex. & CGST, Udaipur, in Final Order No.50699/2019 dated 17.05.2019, has considered the issue of payment of interest on interest and relied on various judgments on the issue, including in the matter of M/s Kerala Chemicals & Proteins Ltd. Vs. CCE,

Cochin – 2007 (2011) E.L.T. 259 (Tri. – Bang.), the para 3 of which, reads as under :-

"3.Appellants have also relied on high Court of Judicature for Rajasthan's judgment (rendered in the case of J.K. Cement Works V. ACC - 2004(170) E.L.T. 4 (Raj.) which has upheld the grant of interest. They have also relied on Larger Bench judgment rendered in the case of Jayanta Glass Ltd. V. CCE, Kolkata - 2004(165) E.L.T. 516 (Tri. - L.B.) wherein it has been held that interest due to applicant has to be calculated on basis of application filed by them. In view of these judgments, the prayer of appellant for grant of interest as well as interest on interest is allowed. The original authority shall calculate the interest as well as interest on interest on interest and make the payment within one month from the receipt of this Order. Appeal is allowed on the above terms."

9. Interest on deposit of duty can also not be restricted to the amount of 7.5% (to the extent of pre-deposit) of the duty demand in dispute in the appeal on the same settled principle that the deposit having been made under compulsion, was not of duty but of the amount remaining deposited with Department. Hon'ble High Court of Madras, in the case of 3E Infotech Vs. CESTAT, Chennai – 2018 (18) G.S.T.L. 410 (Mad.), has held that:-

"Refund – Limitation – Service Tax paid under mistake of law – Refund admissible irrespective of period covered by refund application – Further, refusing to return the amount would go against the mandate of Article 265 of Constitution of India".

10. Therefore, I find no merit in both the Orders passed by the Commissioner (Appeals), which need to be set aside and I do so. Both the Appeals filed by the Appellant are allowed with consequential relief.

(Order pronounced in open court on - **03.11.2025**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS