## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

**PRINCIPAL BENCH - COURT NO. 4**

**CUSTOMS APPEAL NO. 51647 OF 2025**

(Arising out of Order-in-Appeal No. CC(A)CUS/D-11/PREV/24/2024-25 dated 30.04.2025 passed by the Commissioner of Customs (Appeals), New Delhi)

**Sanjeev Ratra** **...... Appellant**
Direcotr, M/s Savi Vision Pvt Ltd.,
B-56, Flatted Factory Complex,
Okhla-III, New Delhi-110020

Versus

**Commissioner of Customs (Preventive), New Delhi** **...... Respondent**
New Customs House, Near IGI Airport,
New Delhi-110037

**APPEARANCE:**
Shri Naveen Mullick and Shri Parth Mullick, advocates for the appellant
Shri Ram Parvesh Prasad, authorised representative for the department

**CORUM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**DATE OF HEARING: July 10, 2026**
**DATE OF DECISION: July 21, 2026**

**FINAL ORDER NO. 51220/2026**

**MR. ASHOK JINDAL**

The appellant is in appeal against the impugned order wherein appellant is claiming interest at the rate of 12% on their refund amount from the date of deposit till disbursement of the same.

2. The fact of the case is that a show cause notice was issued to the appellant alleging involvement in aiding and abetting the main firm, namely, Savi Vision Private Limited (SVPL) in evasion of Contravening Duty (CVD) by paying the same on retail selling price declared on goods at the time of import which was much lower than the actual sales price charged from the buyers. By way of adjudication order, the allegation made in the show cause notice was upheld and a penalty of Rs. 25 lakhs

was imposed on the appellant. The said order was challenged before this Tribunal and by a stay order dated 12.04.2010 the appellant submitted a sum of Rs. 5 lakhs and challenged the same before the Hon'ble High Court. The Hon'ble High Court of Delhi refused to interfere with the decision of this Tribunal asking the appellant to make a pre-deposit of Rs. 5 lakhs which was paid by the appellant on 29.10.2010. Vide final order dated 07.08.2015 the adjudication order was set aside and the matter was remanded back to the adjudicating authority for recomputation of demand in respect of goods sold to NCC/Kendriya Bhandaar and reduce the penalty on the appellant from Rs. 25 lakhs to Rs. 50,000/-. An appeal was filed against the said order before the Hon'ble Delhi High Court by the respondents which was dismissed. The appellant continued to write to the respondent during the intervening period, that is, from 2015 to 2023 for compliance of the order of this Tribunal dated 07.08.2015. But the said request was not entertained. Thereafter, the appellant filed an application under Rule 41 of the CESTAT Procedure Rules.

3. The Revenue submitted that the said order has been complied with on 23.01.2021 wherein recomputation was done by the department. Thereafter, the appellant filed a refund application on 29.08.2023 for the balance amount of Rs. 4,50,000/-. The said refund claim was sanctioned on 02.05.2024. However, interest was denied to the appellant. The said order of denial of interest was challenged. The learned Commissioner (Appeals) vide order dated 30.04.2025 sanctioned the interest at the rate of 6% from the date of deposit till the date of refund.

4. Against the said order the appellant is before me and submitted that the appellant is entitled interest at the rate of 12% from the date of deposit till the date of disbursal. To support this contention they relied

on the decision of this Tribunal in the case of **M/s Kumavat Contractors vs. Commissioner of CGST & ST, Jaipur I,** 2004 (Final Order No. 54503 of 2025 dated 16.01.2024) to show that he is entitled for interest at the rate of 12%.

5. On the other hand, learned authorised representative for the department submitted that interest at the rate of 6% has already been granted to the appellant in terms of section 35(f) of the Central Excise Act, 1954. Therefore, appeal is not maintainable.

6. Heard the parties.

7. Considering the submissions advanced by the learned counsel for the appellant, the issue has been examined by this Tribunal in the case of Kumavat Contractors (supra). Therein the Tribunal observed as under:

> **7.** It is observed that the amount in question i.e. of Rs.8,00,000/- is admittedly an amount which was deposited by the appellant for filing appeal before Commissioner (Appeals) when the duty demand as was proposed vide Show Cause Notice dated 01.12.2009 was confirmed by the original adjudicating authority vide its order dated 31.01.2011. This particular admission is sufficient for me to hold that the amount in question is purely in the nature of the amount of pre-deposit which is mandatorily to be deposited while filing the appeal before Commissioner (Appeals). The present dispute is about the refund of the said amount subsequent to the order passed in favour of the appellant setting aside the aforesaid confirmation of demand vide Order-in-Appeal dated 27.03.2018. Resultantly, the amount in question is purely an amount as was deposited in terms of Section 35F of the Finance Act.
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> **8.** The refund of said amount was sanctioned by the original adjudicating authority itself vide order dated 28.12.2020 but without interest. The said findings have been confirmed also with respect to the denial of the interest. I peruse from the order

under challenge that the Commissioner (Appeals) has relied upon the changes/amendment that has been incorporated in Section 35 and Section 35FF of the Finance Act and has denied the interest holding that the amount in question was paid before said amendment came into existence.

**9.** To adjudicate the correctness of those findings, Section 35F and 35FF, pre and post amendment is reproduced as below: Section 35F in the Central Excise Act, 1944 35F. Deposit, pending appeal of duty demanded or penalty levied. - Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied: Provided that where in any particular case, the [Commissioner (Appeals)] or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue: [Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filling.] [(Explanation.-For the purposes of this section "duty demanded" shall include,- (i) amount determined under section 11D; tc" (i) amount determined under section 11D;" (ii) amount of erroneous CENVAT credit taken; tc" (ii) amount of erroneous CENVAT credit taken;"

(iii) amount payable under rule 57CC of Central Excise Rules, 1944, tc" (iii) amount payable under rule 57CC of Central Excise Rules, 1944;" (iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004; tc" (iv) amount payable under rule 6 of CENVAT Credit Rules, 2001 or CENVAT Credit Rules, 2002 or CENVAT Credit Rules, 2004," (v) interest payable under the provisions of this Act or the rules made thereunder.] tc" (V) interest payable under the provisions of this Act or the rules made thereunder.]" Section 35F in the Central Excise Act, 1944 w.e.f. 06.08.2014 35F. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal— (i) under sub-section (1) of Section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise or Commissioner of Central Excise; (ii) against the decision or order referred to in clause (a) of subsection (1) of Section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against; (iii) against the decision or order referred to in clause (b) of sub-section (1) of Section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against: Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014. Explanation.— For the purposes of this section "duty demanded" shall include,— (i) amount determined under section 11D; (ii) amount of erroneous Cenvat credit taken; (iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004 Section 35FF in the Central Excise Act, 1944 35FF. Interest on delayed refund of amount deposited under the proviso to section 35F. - Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.] Section 35FF in the Central Excise Act, 1944 w.e.f. 06.08.2014 35FF. Interest on delayed refund of amount deposited under Section 35F.—Where an amount deposited by the appellant under Section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount: Provided that the amount deposited under Section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act.]

**10.** From the facts on record it is observed that the refund application was filed in the Year 2020. For Section 35FF as amended it is the date of application seeking refund which is relevant. I draw my support from the decision of M/s. Riba Textile Ltd. (supra) wherein it has been held as follows: "6. On going through the decision cited by learned A.R. in the case of M/s Juhu Beach Resort Ltd (supra), I find that in the said case, the decision of Hon'ble Apex Court in the case of Sandvik Asia Ltd vs. CIT, Pune – 2007 (8) STR 193 (SC) and the decision of Hon'ble High Court of Madras in the case of CCE, Chennai-II vs. UCAL Fuel Systems Ltd – 2014 (306) ELT 26 (Mad.) have not been considered. Therefore, the said decision cannot be relied upon. As in the case of M/s Marshall Foundry & Engg. Pvt. Ltd. (supra), this Tribunal has examined all said decisions and thereafter observed the issue of grant of interest in terms of Section 243 of Income Tax Act as under: 15. For better appreciation, section 243 of the Income Tax Act, 1961 reproduced as under:- "243. Interest on delayed refunds- (1) if the Income tax officer does not grant refund- (a) In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and (b) In any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund. Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable." 16. Section 35FF of the Central Excise Act, 1944 deals with the situation in hand, the same is extracted below:- "Section 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F-

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority) under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

17. On-going through the provisions of both Income Tax Act, 1961 and Central Excise Act, 1944, the interest on delayed refund is payable after expiry of 3 months from the date of granting refund or from the date of communication of order of the appellate authority, which are parimateria. Therefore, the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) is law of land, in terms of Article 14 of the Constitution of India which is to be followed by me, wherein the Hon"ble Apex has observed as under:-

"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word ’Compensation’ has been defined in P. RamanathaAiyar’s Advanced Law Lexicon 3rd Edition 2005 page 918 as follows: "An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price

of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer." 47. There cannot be any doubt that the award interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation. 48. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon’ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

49. By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the

delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded. 50. The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period." 18. As the Hon"ble Apex Court has answered the issue holding that the assessee is entitled to claim interest from the date of payment of initial amount till the date its refund. Therefore, I hold that the appellants are entitled to claim the interest on delayed refund from the date of deposit till its realization. 19. Further, the interest on the refund shall be payable @ 12% per annum as held by Hon"ble Kerala High Court in the case of Sony Pictures Networks India Pvt. Ltd. - 2017 (353) ELT 179 (Ker.) wherein it has held as under:- "14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.), the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.), wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the predeposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum. 15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11- 2002, to the amount of refund already made, within a month from the date of receipt of a copy of this judgment, after adjusting any interest paid.” 20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri.Ahmd.), wherein this Tribunal observed as under:- “5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Honble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon"ble Supreme Court in October 2004. In July 2005, the Hon"ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the payment to the appellants." 21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are pari- material. Therefore, following the decision of Hon"ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt. Ltd. (supra) I hold that the appellants are entitled to claim interest from the date of payment of initial amount till the date its refund @ 12% per annum." 7. As this Tribunal has examined the issue in details in the case of M/s Marshall Foundry & Engg. Pvt. Ltd. (supra), therefore, I hold that the appellant is entitled to claim the interest on delay refund from the date of deposit till its realization."

**11.** Resultantly, it is held that Commissioner (Appeals) has wrongly relied upon the pre amended Section 35FF for denying the entitlement of interest to the appellant. The appellant is held entitled for the same. The decision of Hon'ble Apex Court in the case of Commissioner of Customs (Import), Raigad vs M/s. Finacord Chemicals (P) Ltd. in Civil Appeal no. 16331638 of 2004 as decided on 08.04.2015 reported as [2015 (319) E.L.T. 616 (S.C.)] while discussing the liability of the department to pay the interest has referred to Departments' own circular dated 02.1.2002 wherein the Board clarified that the matters of refund other than the amount of duty would not be covered under the provisions of Section 11B of Customs Act or Section 35FF of Central Excise Act. It was held by the Hon'ble Apex Court that in such cases of refund even the concept of unjust enrichment is not applicable. Learned Apex Court has relied upon its decision in SLP titled as Union of India vs Suvidhe Ltd. in which decision of Bombay High Court in Suvidhe Ltd. vs Union of India reported as [1996 (82) ELT 177] was challenged. The Bombay High Court has observed that in case of deposits which were not in the form of duty, provisions of 11B of Customs Act will have no applicability. The deposits made under Section 35FF since is not the payment of duty, Section 11B will not be applicable.

**12.** Coming to the plea of the rate of interest, no doubt the department has relied upon a notification of 2014 and as per the Section 35FF also, the rate of interest has to be more than 5% but less than 36%, however, subject to a re-notification. The above decision of Hon'ble Apex Court in M/s. Finacord Chemicals (P) Ltd. (supra) which is subsequent to the said notification. Applying the said matrix, I hold the appellant entitled for interest at the rate of 12%. The decision of Hon'ble High Court is found not applicable to the given set of circumstances. The provision involved in the said decision is the Section 129 EE of the Customs Act. In view of the decision of M/s. Finacord Chemicals (P) Ltd. (supra) and all above decisions as discussed above as well as department's own circular dated 16.09.2014, the appellant is held entitled for

> interest from the date of deposit to the date of payment at the rate of 12%. With these findings, the appeal in question stands allowed."

8. Following the decision in the case of Kumavat Contractors (supra), I hold that the appellant is entitled to claim interest at the rate of 12% from the date of deposit till its realisation.

9. In view of this the impugned order is modified and the appeal is allowed with consequential relief, if any.

(Order pronounced on 21.07.2026)

**(MR. ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

Apoorva