

2013 (2) ECS (86) (Tri - Del)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI – 110066.**

DIVISION BENCH

Court No. 2

Malwa Cotton Spinning Mills Ltd.

Versus

CCE, Ludhiana

Appeal No. E/2632/2005

(Arising out of OIA No. 187/CE/APPL/LDH/2005 dated 25.03.2005 passed by CCE (A),
Ludhiana)

Date of Hearing/decision:12.03.2013

Malwa Cotton Spinning Mills Ltd.

Appellant

Versus

CCE, Ludhiana

Respondent

Present for the Appellant: Shri Udit Jain, Advocate

Present for the Respondent: Shri M S Negi, DR

CORAM:

Hon'ble Mr D N Panda, Judicial Member

Hon'ble Mr. Manmohan Singh, Technical Member

FINAL ORDER NO. 55841/2013

“It is settled law that once the claim does not assume the character of correct claim in the eyes of law, no right accrues to the claimant from the date on which defective application was filed and an opportunity given for removal of defects is a course of natural justice to entertain proper

application filed within limitation and no interest can be claimed against a defective application. Only on the date when defective application is rectified and a proper application comes to record, that date is relevant date for arise of refund with, interest in case refund is delayed.” [Para 3]

PER: D N PANDA

1. This appeal is against denial of interest on delayed refund from the date of filing of application. Ld. Counsel submits that refund is admissible that refund is admissible from the date of filing and not from the dated of rectification of defective application.
2. Revenue’s contention is that date of filing of refund application without any defect therein shall be counted for payment of interest by Department in case there is delay in refund. But when a defective application is filed and that was rectified subsequently within limitation period, the date for payment of interest in case of delayed refund is date when proper refund application comes to record of Department. We agree to this proposition of Revenue.
3. It is settled law that once the claim does not assume the character of correct claim in the eyes of law, no right accrues to the claimant from the date on which defective application was filed and an opportunity given for removal of defects is a course of natural justice to entertain proper application filed within limitation and no interest can be claimed against a defective application. Only on the date when defective application is rectified and a proper application comes to record, that date is relevant date for arise of refund with, interest in case refund is delayed. Therefore Revenue is correct to grant interest from the date on which valid application comes to record. We do not find any legal infirmity in the order of the first appellate authority for which appeal of the assessee is dismissed.

(Dictated & pronounced in the open court)