

**REGISTERED
SPEED POST**



**F.No. 195/1039/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 06-01-2014

Order No. 10/14-cx dated 03.01.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against order-in-appeal No. 25/2011(V-II) CE dated 29.07.2013 passed by Commissioner of Central Excise (Appeals), Visakhapatnam.

Applicant : M/s Shri Lal Mahal Ltd. (Formerly M/s Shivnath Rai Harnarain (India) Ltd., Delhi.

Respondent : Commissioner of Central Excise & Customs, Visakhapatnam-II.

ORDER

This revision application is filed by the applicant M/s. Shri Lal Mahal Ltd. (Formerly M/s Shivnath Rai Harnarain (India) Ltd., Delhi) against the Order-in-Appeal No. 25/2011(V-II) CE dated 29.07.2013 passed by the Commissioner of Central Excise (Appeals), Visakhapatnam, with respect to Order-in-Original dated 18.02.2011 passed by the Assistant Commissioner of Central Excise, Kakinada-II in Central Excise Commissionerate Vishakhapatnam-II.

2. Brief facts of the case are that the applicant are merchant exporters and have exported rice, for which PP woven sacks were used as packing material. The applicant filed a rebate claim for Rs. 1,43,74995/- on 10.07.2007 before the Assistant commissioner of Central Excise, Kakinada -II division on the ground that they had exported rice to various countries and had used duty paid material, i.e. PP woven sacks which were used for packing of rice and that they were eligible for rebate of duty paid on the packing material used for export. The said claim was returned to the applicant by the said authority on the ground that certain procedural requirements as envisaged under Notification No. 21/2004 CE (NT) dated 06.09.2004 were not met. Aggrieved, the applicant filed an appeal with Commissioner (Appeals), Visakhapatnam. The said issue was remanded back to the jurisdictional Asst. Commissioner vide Order-in-Appeal No. 50/2008(V-II) CE dated 20.12.2008 with a direction to decide the issue after giving an opportunity to the applicant by the original authority calling for their explanation as to why the rebate claim should not be rejected as the same did not contain any documentary or other evidence in support of their plea that the duties on the packing material used in packing of the export goods were paid and the procedure laid down under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE (NT) dated 06.09.2004 has been followed for claiming the rebate under Section 11B of the Central Excise Act, 1944. The Asst. Commissioner rejected the claims on the ground that the applicant did not comply with the conditions of the said Notification; that they had not filed the requisite declaration informing the jurisdictional Asst. Commissioner about the proposed manufacture and the requirement of the materials

together with the proportion in which such material are actually used; that the input output ratio was not filed and the same was not verified and approved by the jurisdictional Asst. Commissioner and that ARE-2 have not been filed consequent on which the utilization of the materials i.e packing material used for packing the export goods is not certified by the Customs officers on the port of export. Aggrieved, the applicant filed appeal before Commissioner (Appeals), Visakhapatnam. The stand taken by the original authority was confirmed by Commissioner (Appeals) vide Order-in-Appeal No. 63/2009 (V-II) CE dated 29.10.2009. Consequently, the applicant filed a revision application with Government of India which was allowed vide G.O.I. Revision order No. 1667/10CX dated 01.11.2010. Based on the said order, amount of Rs. 1, 43, 74,995/- was sanctioned as rebate of duty on packing material used in the export of goods under Section 11B of the Central Excise Act, 1994 read with Rule 18 of the Central Excise Rules, 2002 and Notification No. 21/2004(NT) dated 06.09.2004.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) on the ground that the said claim was sanctioned without applicable interest to them inspite of their eligibility of interest in terms of Section 11BB of the Central Excise, Act, 1944. Commissioner(Appeals) rejected the appeal filed by the applicant.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Deputy Commissioner Kakinada-II and Commissioner(Appeals) Visakhapatnam as well, passed orders in gross violation of the Section 11BB of the Central Excise Act, 1944. The said Section 11BB of the Central Excise Act, 1944 reproduced says: "If any duty ordered to be refunded....." And, in the instance case the duty was ordered to be refunded by Joint Secretary (RA Unit) vide GOI Order No. 1667/10CX dated 01.11.10. Hence not paying the interest on delayed payment

of the subject rebate claim was a clear disobedience of a GOI order on the part of both the lower authorities, thus need to be set aside.

4.2 Deputy Commissioner Kakinada-II had shown a little knowledge about the CBEC Circular No. 670/61/2002-CX dated 01.10.2002 (reproduced below) & passed the Order-in-Original in gross disobedience to the Board.

"Para 2: In this connection, Board would like to stress that the provisions of Section 11BB of the Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest."

4.3 If assumed Deputy Commissioner Kakinada-II had confusion as to from which date the interest will be paid to the applicant there were plethora of judgments, to convert the confusion into conclusion (Some of which are cited below). But it seems from the Order-in-Original passed by Deputy Commissioner Kakinada was least bothered about applying mind to the order passed. As such, an order to this effect needs to be quashed. Applicant relied upon the judgement of following cases:-

- (i) GOI Order No. 247/2011-CX dated 17.03.2011 in the case of Jindal Drugs Ltd.
- (ii) Hon'ble Rajasthan High Court in J.K. Cement Works Vs. Asst. Commissioner of Central Excise & Customs, [2004(170) ELT 4(Raj.)].
- (iii) Commissioner of Central Excise & Customs & Service Tax Daman Vs. B Tax Ointment manufacturing Co. [2010(257) ELT 487 (Guj.)].
- (iv) M/s Swaraj Majda Ltd. Vs. Hon'ble Bombay High Court [2009(235) ELT 788];
- (v) Commissioner of Central Excise Pune-III Vs. M/s Ballarpur Industries Ltd. [2008 (229) ELT 498];
- (vi) Hon'ble Supreme Court in the case of M/s U P Twigs Fiber Glass Ltd. Vs. UOI [2009 (2430) ELT A27 (SC)].

5. Personal hearing scheduled in this case on 26.11.2013 was attended by Shri R.K.Sharma, advocate appeared on behalf of the applicant who reiterated the grounds of Revision Application. Shri K.S. Rao, Superintendent(LCC) Vizag, attended hearing on behalf of department and re-iterated the contents of order of Commissioner(Appeals).

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant has filed rebate claims on 10.07.2007 before the original authority, which was held inadmissible by original authority and appellate authority. The revision application filed by applicant against said Order-in-Appeal was allowed vide Government of India order No. 1667/10-CX dated 01.11.2010. The original authority sanctioned the rebate claims in compliance of said GOI order No. 1667/10-CX dated 01.11.2010. The applicant filed appeal before Commissioner(Appeals) on the ground that the said claim was sanctioned without applicable interest to them inspite of their eligibility of interest in terms of Section 11BB of the Central Excise Act, 1944. Commissioner(Appeals) rejected the appeal filed by the applicant. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that on delayed payment of refund/rebate claim interest is payable after the expiry of three months of the date of receipt of application for rebate in the Divisional office in terms of Section 11BB of Central Excise Act, 1944. This very issue is already decided by Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories Ltd. vs. UOI reported as 2011 (273) ELT 3 (SC). Hon'ble Supreme Court has categorically held as under :

"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section

(1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision, there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate Vs. Inland Revenue Commissioners [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax (2010) 8 SCC 739 = (2010-TIOL-66-SC-IT).

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15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

8.1 In another case of M/s Jindal Drugs, Government relying on above said judgement of Apex Court, vide its GOI Order No. 247/2011-CX dated 17.03.11 passed in revision application No. 198/184/08-RA-CX filed by Commissioner Central Excise, Raigad against order-in-appeal No. SRK/455-460/RGD-08 dated 24.07.08 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II, had upheld the impugned orders-in-appeal and held that in terms of Section 11BB interest is payable after expiry of three months from the date of receipt of refund / rebate application. Department contested the said GOI Order dated 17.03.11 by filing WP No. 9100/2011 in Bombay High Court who in it's judgment dated 30.01.2012 has upheld the GOI Order No. 247/2011-CX dated 17.03.11. The observations of Hon'ble High Court in para 2,3 of said judgment are reproduced below:

"2. Counsel appearing on behalf of the Petitioner submitted that the entitlement of the Respondent to a rebate was crystallized only on 6 December 2007 when the notice to show cause was dropped by the Commissioner of Central Excise. The rebate claims were sanctioned within a period of three months thereafter by the Assistant Commissioner (Rebate) and hence, no interest was payable. On the other hand, it has been urged on behalf of the respondent that the law has been settled by the judgment of the Supreme Court in *Ranbaxy Laboratories Ltd. vs. Union of India* and consequently no interference in the exercise of the jurisdiction under Article 226 of the Constitution is warranted.

3. The Supreme Court in its decision, in *Ranbaxy (supra)* considered the provisions of Section 11B and 11BB of the Central Excise Act, 1944 and held that Section 11BB lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B, then the applicant shall be entitled to interest at such rate as may be fixed by the Central Government. The Supreme Court observed that the explanation to Section 11BB introduces a deeming fiction to the effect that where the order for refund is not made by the Assistant Commissioner but by an appellate authority or the Court, then for the purposes of the Section the order passed by the appellate authority or the Court shall be deemed to be an order under sub-Section (2) of Section 11B. Having observed as aforesaid the Supreme Court also held that the explanation does not effect a postponement of the date from which interest becomes payable under Section 11BB and interest under the provision would become payable if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Hence, it is now a settled position in law that the liability of the Revenue to pay interest under Section 11BB commences from the expiry of three months from the date of receipt of the application for refund under Section 11B(1) and not on the expiry of the said period from the date on which an order for refund is made. The submission which has been urged on behalf of the revenue is directly in the teeth of the law as laid down by the Supreme Court. The order passed by the Commissioner (Appeals) granting interest and as confirmed by

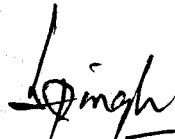
the revisional authority does not hence fall for interference under Article 226 of the Constitution. The Petition is accordingly dismissed."

9. From perusal of above, it is ample clear that once the rebate claim is held admissible, interest becomes payable after expiry of 3 months from the date of receipt of rebate claims in the office of rebate sanctioning authority. Government notes that the lower authorities have not considered the above said judgement, while passing the impugned orders disallowing interest claim. Both the authorities have erred in not considering these judgements. As such case is required to be remanded back for fresh consideration.

10. Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for fresh consideration of matter in view of above observations and pass a reasoned order in accordance with law. A reasonable opportunity of hearing will be afforded to the parties.

11. The revision application is disposed off in above terms.

12. So, ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Shri Lal Mahal Ltd.,
(Formerly known M/s Shivnath Rai Hamarain (India Ltd.)),
Shirilal Mahel House,
B-5, Bhagwan Dass Nagar, Delhi-110026.

ATTESTED




3/1/2014

अधीक्षक (आ.आ.)/अधीक्षक (आ.आ.)
अधीक्षक (आ.आ.)/अधीक्षक (आ.आ.)
C. S. (Accounts) / C. S. (Accounts)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 10/14Cx dated 03.01.2014

Copy to:

1. Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-II, Central Excise Building, Port Area, Visakhapatnam – 530 035.
2. Commissioner of Central Excise (Appeals) , Central Excise Building, Port Area, Visakhapatnam – 530035.
3. The Assistant Commissioner of Central Excise, Kakinada-II, D.No. 27-4-10 & 11, Temple Street, Kakinada- 533001.
4. Shri R K Sharma, Advocate, 157, 1 Floor, DDA Office Complex, CM Jhandewalan Extn., New Delhi-110055.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy


2/1/2014
(Bhagwat P. Sharma)
OSD-(Revision Application)

