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F.No. 195/561/11-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 6/2/13

ORDER NO. 103/13-CX DATED 5.1.2013 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 THE ORDER-IN-APPEAL No. TNL-CEX-000-APP-163/2011 dated 24.3.11 PASSED BY COMMISSIONER OF CENTRAL EXCISE (APPEALS), MADURAI
APPLICANT	:	M/S S.THARTIUS ENGINEERING CONTRACTORS, TUTICORIN
RESPONDENT	:	COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI

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ORDER

This revision application is filed by the applicant M/s S. Thartius Engineering Contractors, Tuticorin against the order-in-appeal No. TNL-CEX-000-APP-163/2011 dated 24.3.2011 passed by the Commissioner of Central Excise (Appeals), Madurai with respect to order-in-original No. 37/2010 dated 22.7.10 passed by Assistant Commissioner of Central Excise Tuticorin Division.

2. Brief facts of the case are that the applicants registered manufacturers under Central Excise Registration No.AAUFS5091H XM 001 purchased duty paid raw materials for manufacture of finished goods and in addition, they also export the bought out goods under free shipping bill without claiming any of the benefits available to the exporters and have also not claimed any cenvat credit of duty paid on such goods. They have submitted a rebate claim on 25.6.2007 for Rs.13,96,692/- being the duty of excise paid on MS Plates, MS Beams, MS Channels falling under Central Excise Tariff Heading No.72085210 purchased from second stage dealer namely, M/s United Steel Distributors, No.26, Jones Street, Chennai. On scrutiny of the rebate claim certain deficiencies were noticed and the rebate claim was returned to the exporter on 16.7.2007 by the lower authority. The appellants resubmitted the said rebate claim on 18.7.2007. The said claim was scrutinized in terms of Notification No.19/2004-CE(NT) dated 6.9.2004 as amended and Notification No.21/2004-CE(NT) dated 6.9.2004 as amended issued under Rule 18 of Central Excise Rules, 2002, which stipulate certain conditions to be fulfilled by the claimant and the procedures to be followed by the Manufacturer-Exporter and Merchant-Exporter. The lower authority on scrutiny has noticed that the appellants have not followed certain conditions specified in the said two notifications.

2.1 The lower authority after due process of law rejected the rebate claim vide its order in original No.22/2008 (Rebate) dated 21.7.2008 on the following grounds –

The subject goods were exported through Chennai Port. As per condition 3(b) of Notification No.19/2004-CE(NT) dated 6.9.2004 as amended, the claim for rebate of duty paid on excisable goods shall be presented to the Assistant Commissioner or Deputy Commissioner or as the case may be, the Maritime commissioner. As the subject goods were exported through Chennai Port, the claim should be processed and sanctioned subject to its eligibility by the Assistant Commissioner or Deputy Commissioner. Though the appellants factory is in the jurisdiction of Assistant Commissioner of Central Excise, Tuticorin Division, the subject goods were not brought to the factory and processed for further export therefrom. Hence the Assistant Commissioner of Central Excise, Tuticorin Division is not concerned with the rebate claim under consideration. The said rebate claim is to be sanctioned only by the Maritime Commissioner, Chennai. Accordingly the rebate claim was rejected on the grounds of territorial jurisdiction only by the lower authority.

2.2 On appeal filed by the appellants, the earlier order in original No.22/2008 (Rebate) dated 21.7.2008 was set aside vide order in appeal No.30/10 dated 29.1.2010 in view of decision of CESTAT, Chennai in the case of TAFE Ltd Vs CCE, Chennai reported in 2008 (227)ELT80 (Tri. Chennai) which has decided that the order of the original authority sanctioning the refund is not defective except for territorial jurisdiction, and the same exercise need not be undertaken against by jurisdictional Assistant Commissioner. Accordingly, the order of the original sanctioning authority was restored by CESTAT. The ratio of this decision was followed in the appellant's case. Thus the case was remanded back to adjudicating authority with the direction that the Assistant Commissioner of Central Excise, Tuticorin is required to process the rebate on merits. However, the lower authority had issued a show cause notice dated 19.5.2010 afresh to the appellants on the allegation as below:

> "2 (i) The claimant has purchased the goods from M/s United Steel Distributors, Chennai, a second stage dealer. However, as per condition 2(a) of Notification No.19/2004-CE(NT) dated 6.9.2004 as amended, the excisable goods shall be

exported after payment of duty directly from a factory or warehouse except as otherwise permitted by the Board by a general or special order. The contents of the condition have not been followed as the goods have been purchased from second stage dealer and not a manufacturer.

(ii) A rebate of Rs.13,96,692/- was requested. But there has been a short shipment of 4.495 MT of goods. Hence, an amount of Rs.18,585/- has to be restricted."

The lower authority vide its order in original No.37/2010(R) dated 22.7.2010 has rejected the refund claim on the ground that the export of duty paid goods purchased from second stage dealer or even from first stage dealer would not qualify for rebate in terms of Para 2(a) of Notification No.19/2004-CE(NT) and are qualified only for drawbacks. Further it is observed by the lower authority that the subject goods are exported not directly from a factory or warehouse.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) to condone procedural infractions and to pass order for grant of rebate with interest for delayed payment of rebate from 18.7.07 till date of payment. Commissioner (Appeals) partially allowed the appeal of the applicant by excluding the amount involved in the short shipment and held that they are not entitled to interest under Section 11BB of the Central Excise Act, 1944.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The impugned order in appeal 163/2011 dated 24.3.2011 ought to have ordered interest for the rebate claim at 6% (as per notification 67/2003-CE(NT) for delayed payment of rebate from 18.7.2007 till date of payment.

4.2 The order in appeal 163/2011 dated 24.3.2011 has rightly set aside the order in original 37/2010 (rebate) dated 22.7.2010 denying the rebate claim, but has not granted interest and the petitioner challenge the order in appeal limited to the extent of denying interest.

4.3 The Government in various of its revision orders has consistently held that interest ought to be granted after expiry of three months.

They relied upon the following case laws:

- 2007-218 ELT (GOI)
- 1999-113-ELT 751 (GOI)
- GOI order 1781/10-CX dated 23.12.10

5. Personal hearing was scheduled in this case on 14.12.12. Shri P.Mahalingam, Advocate appeared on behalf of the applicant who reiterated the ground of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned the impugned orders-in-original and orders-in-appeal.

7. Government notes that the limited issue involved in the instant revision application is that whether the applicants are entitled for interest. Government notes that the order of Commissioner (Appeals) allowing rebate has not been challenged by department and so it has attained finality.

8. Government notes that as per chapter 9 para 2 of the CBEC Excise Manual the claim of rebate/refund is taken as filed only when all relevant documents are available. If any discrepancy is noticed it is returned to the applicants with query memo. In the instant case the rebate claim returned to remove the discrepancy was re-submitted on

18.7.07 which is relevant date for sanctioning rebate. The order of Commissioner (Appeals) sanctioning the rebate is not challenged by the department hence it attained finality. Further once the rebate is found admissible and interest is required to be paid on expiry of 3 months from the date of filing of the same in terms of Section 11BB of CEA 1944.

8.1 The Hon'ble Supreme Court in its judgement in case of M/s Ranbaxy Laboratories Ltd. Vs UOI reported as 2011-TIOL-105 SC-CS 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."

8.2 In another case of M/s Jindal Drugs, Government 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. In view of above circumstances Government remands the case back to the original authority to decide the interest claimed under Section 11BB of CEA 1944, by taking into account the above observation and the judgement cited supra. A reasonable opportunity of hearing will be afforded to the applicants.

10. Revision Application is disposed of in terms of above.

11. So ordered.

(D.P.Singh)
Joint Secretary (Revision Application)

M/s S. Thartius Engineering Contractors
13/9, Tiruchendur Road
Tuticorin-3

Attested

के. रामेश्वरम / K. RAMESHWARAM
विशेष कार्य अधि./OSD-II (RA)
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 103 /2013-CX dated 5-2-2013

Copy to:-

1. The Commissioner Of Central Excise, CR Building, Tractor Road, NGO 'A' Colony, Perumalpuram, Tirunelveli-627007
2. Commissioner of Central Excise (Appeals), Lal Bahadur Shastri Marg, CR Building, Madurai – 625 002.
3. The Asstt. Commissioner, Central Excise, C-50, SIPCOT Complex, Tuticorin Division Tuticorin-628008
4. Shri P Mahalingam, Advocate, R.No.1176/11; 40 R.K.Mills, B-Colony, Pedamedupudur, Coimbatore-004
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED

(P.K.Rameshwaram)
OSD (Revision Application)