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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005**

F NO. 195/80/16-RA / 2662 Date of Issue: 16/12/2022

ORDER NO. 1205 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 15.12.2022 OF THE GOVERNMENT OF INDIA PASSED BY
SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER
SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Uttam Galva Steels Ltd.

Respondent : Commissioner of CGST & CX, Raigad Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.-
CD/71/Rgd/2016 dated 04.12.2015 passed by the
Commissioner(Appeals),Central Excise ,Mumbai Zone-II.

ORDER

This Revision Application has been filed by M/s. Uttam Galva Steels Ltd. (hereinafter referred to as "Applicant") against the Order-in-Appeal No.-CD/71/Rgd/2016 dated 04.12.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the Applicant had filed a refund claim of Rs. 3,18,72,034/- dated 15.09.2010. A Show Cause Notice F.No. 18(Dn.KPL) Rebate/Misc/10/4965 dated 25.06.2010 was issued to the applicant asking to why the entire amount of Rebate claim i.e. 3,18,72,034/- should not be rejected and during adjudication the said rebate claim was rejected by the Deputy Commissioner vide order in original no. Raigad/KPL/RC/5749/12-13 dated 18.01.2013. Being aggrieved by the said order the applicant filed an appeal before Commissioner (Appeals). The said appeal had been rejected by the appellate authority vide Order-in-Appeal No. US/131/RGD/2013 dated 21.05.2013 on the ground that the applicant had filed appeal before CESTAT which involve rejection of refund for the same amount filed in the similar context. The CESTAT vide order No. A/790/13/EB/C-II dated 05.09.2013 had dismissed the appeal filed by the applicant as non- maintainable on the ground that the applicant cannot claim benefit twice of the amount of duty paid, one by way of refund and the other by way of rebate. The applicant had filed a revision application against Commissioner (A)'s order dated 21.05.2013 before the Central Government and the Revision authority (Government) had set aside the Commissioner (A)'s order and allowed the revision application, wherein it has been held that Government finds that rejection of the rebate claims by the original authority on the sole ground of issue of 'amounts to manufacture' by applying the Boards Circular retrospectively i.e. prior to 24.06.2010 cannot be held sustainable and hence liable to set aside. On the basis of the RA and Boards instructions dated 08.12.2004 the adjudicating authority sanctioned the rebate vide order-in-original No. Raigad/KPL/RC/2633/14-15 dated 05.02.2015. Aggrieved by the OIO only to the extent that interest ought to have been granted on the sanction of the delayed refund from the date of

filing of rebate application, the Applicant filed appeal with the Commissioner(Appeals), Central Excise ;Mumbai Zone-II, who vide Order-in-Appeal No.- CD/71/Rgd/2016 dated 04.12.2015 rejected their appeal on being premature.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. The Commissioner (Appeals) failed to appreciate that the Order dated 5th February, 2015 passed by the Deputy Commissioner was contrary to law in terms of the provisions of Section 11B of the Act and the law laid down by the Hon'ble Supreme Court in Ranbaxy Laboratories reported on [2011-TIOL-I05-S.C.-CS = 2011 (273) E.L.T. 3 (SC)=2012(27)S.T.R. 193(S.C.)] and therefore, the same was liable to be set aside. In failing to do so, the Commissioner (Appeals) has erred both, on facts and in law, in rejecting, the Appeal of the Applicants and has himself, acted contrary to the well settled law.
- ii. The Commissioner (Appeals) erred in law in not granting interest on rebate, as provided for in Section 11B of the said Act, payable on the expiry of 3 months from the date of filing of applications for rebate under Section 11B(1) of the said Act, totally amounting to Rs.90,96,226/- (Rupees Ninety Lakhs Ninety Six Thousand Two Hundred Twenty Six). The said amount has been calculated for the period after completion of 3 months from the date of rebate application upto the date of the actual payment received against the rebate claim.
- iii. Commissioner (Appeals) has erred in holding that the Appeal filed before his office was premature in terms of the decision of the Hon'ble Tribunal in the case of Hindustan Lever Ltd. Versus Commissioner of Central Excise, Nagpur reported in 2003 (151) E.L.T. 387 (Tri. Mumbai), whilst seeking grant interest on delayed sanction of rebate.
- iv. The Commissioner (Appeals) failed to appreciate that the decision of the Hon'ble Tribunal in Hindustan Lever (supra) was rendered in

circumstances where the Departmental Representative had raised a fresh argument in respect of the classification of goods before the Hon'ble Tribunal, which was not the subject matter of dispute before the Commissioner. The ratio of the said decision is wholly inapplicable in the facts of the present case as the Applicants had not raised any fresh issues but had only prayed for grant of interest on the delayed sanction of rebate, which they were entitled to in terms of the law as provided in Section 11BB of the Act and the mandate of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories (supra). Therefore, the Commissioner (Appeals) erred in purporting to place reliance on the aforesaid decision in Hindustan Lever, which as aforesaid was wholly inapplicable.

- v. It is submitted that the judgment of the Hon'ble Supreme Court in Northern Plastics (supra) in fact, supports the Applicants inasmuch as it has been categorically held that the right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to conditions regarding filing of such appeals and further that a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully affected his title to something. It is submitted that in the facts of the present case, the Applicants clearly have the right to appeal against the Order dated 5th February, 2015 passed by the Deputy Commissioner and further, the Applicants have been deprived of monies, which were legally payable and due to them, as a result of which they were entitled to interest in terms of Section 11BB of the Act. Therefore, in terms of the ratio of the aforesaid judgment of the Hon'ble Supreme Court, the Applicants had exercised their right of appeal, praying for interest on their delayed sanction of rebate, which they had been deprived of.

- vi. Commissioner(Appeals) failed to follow the instructions in the circulars(Circular No. 398/31/98-CX dated 02.06.1998, 670/61/2002-CX dated 01.10.2002) issued by the CBEC.
 - vii. In view of above Applicant is requested to set aside the impugned Order-in-Appeal and to grant the interest on delayed sanction of rebate.
4. Personal hearing in this case was scheduled on 15.06.2022, 19.07.2022, 26.07.2022, 13.09.2022 and 27.09.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.
 5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.
 6. On perusal of the records, Government observes that in the instant case, the issue involved is whether the applicant is entitled to the interest on delayed sanction of rebate claims from the date of filing of rebate claims which has been denied by the Commissioner (Appeals).
 7. With respect to the rejection of the appeal filed by the applicant on the ground that the appeal was premature as per section 35 of the central Excise Act,1944, Government notes that the observation of the Appellate authority that applicant is disappointed and not legally aggrieved with the order in original, is not legal and valid. Any person aggrieved by any decision or order passed under the Act, can approach to the appellate authority. In the present case, the applicant claimed to have been deprived of the interest in terms of Section 11BB of the Act on his rebate claims. Therefore, rejection of appeal by the appellate authority on this ground only is not valid and sustainable.

8. Government notes that the Section 11BB of the Central Excise Act 1944 provides that if any duty ordered to be refunded under Section 11 B within three months from the date of receipt of application under sub section (1) of that Section, interest at such rate as fixed from time to time by the Central Government on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. There is also an explanation to the above provision which is reproduced as under:

“Explanation: Where any order is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise, Deputy Commissioner of Central Excise, under sub-section 2 of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or as the case may be, by the Court shall be deemed to be an order passed under the said sub section (2) for the purpose of this section.”

The above Explanation to Section 11BB takes care of situation where the Assistant Commissioner of Excise rejects the claim for refund of duty. However, the Commissioner of Central Excise (Appeals) or Appellate Tribunal or Court set aside the same and allows the refund of duty. The explanation stipulates that such order of Commissioner (Appeals), Tribunal or Court will be deemed as an order passed under Section 11B(2) by the Assistant Commissioner of Central Excise. Thus, Explanation to Section 11BB statutorily incorporates that the order of refund passed by the Appellate Authority or Court will relate back to the date of passing of the refund order by Assistant Commissioner or Deputy Commissioner and would be construed as an order of the Assistant Commissioner under Section 11B(2). The true purport of the explanation is that once the Appellate Authority or the Court grants the refund, interest will be payable for the period from the expiry of 3 months from the original date of the filing of the refund claim till the date of payment of refund.

9. Government places its reliance on GOI Order Nos. 89-90/2014-CX, dated 19-3-2014 order - In RE: Sanket Food Products P Ltd - 2014 (307) ELT 608 (GOI) where in it was held that "Once rebate claim held admissible under Section 11B of Central Excise Act, 1944, interest liability starts after expiry of three months of date of receipt of application filed for rebate". The relevant paras of the said order are reproduced below:-

" 10. Government notes that Hon'ble Supreme Court in the case of M/s. Ranbaxy Laboratories Ltd. v. UOI reported on [2011-TIOL-105-S.C.-CS = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)] 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. 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 v. Inland Revenue Commissioners [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax (2010) 8 see 739 = (2010-TJOL-66-S.C.-JT).*

- 11. 11.....
- 12. 12.....
- 13. 13.....
- 14. 14.....

15. 15. *In view of the above analysis, our answer 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."*

11. Government observes that Hon'ble Supreme Court in the above said judgment has held in unambiguous terms that liability of the Revenue to pay interest under Section 11BB of Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) ibid and not from the expiry of said period from the date on which order of refund is made. In view of the principles laid down in above said judgment of Apex Court, Government finds no infirmity in the Order-in-Appeal No. 143/2011, dated 4-8-2011 and therefore upholds the same."

10. As the facts of the present case are akin to case law discussed above and therefore, relying on the Hon'ble Supreme Court's Judgment discussed supra as well as relying on Hon'ble Supreme Court's judgment in the case of M/s. Ranbaxy Laboratories Ltd. v. UOI reported on [2011 (273) E.L.T. 3 (S.C.) wherein Hon'ble Supreme Court has held in unambiguous terms that liability of the Revenue to pay interest under Section 11BB of Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) ibid and not from the expiry of said period from the date on which order of refund is made, Government holds that the impugned Order-in-Appeal is not just & legal and is liable to be set aside.

11. In view of above discussions, Government sets aside the impugned Order-in-Appeal No. CD/71/Rgd/2016 dated 04.12.2015 and allows the instant Revision Application.


(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 1205 /2022-CEX (WZ) /ASRA/Mumbai Dated 15.12.2022

To,

1. M/s. Uttam Galva Steels Ltd., Village Donvat, Khopoli Pen Road, Tal Khalapur, raigad-410202.
2. The Commissioner of CGST & CX(Raigad), Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410206.

Copy to:

1. The Commissioner(Appeals),Central Excise ,Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra, Mumbai-400051.
2. Sr P.S. to AS (RA), Mumbai.
3. Guard file.