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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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/19/2019-RA / 1506

Date of Issue: 16 .03.2023

ORDER NO. 22/2023-CX(WZ) /ASRA/Mumbai DATED 14 .03.2023 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, 1962.

- Applicant : M/s Anupam MHI Industries Ltd
Plot No. 893,894, & 895, Nadiad Dakor Highway,
Salun, Nadiad, Kheda (Gujarat)
- Respondent : The Commissioner of CGST, Vadodara-I Commissionerate
- Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. VAD-EXCUS-001-APP-390-2018-19 dated 03.10.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Vadodara.

ORDER

The Revision application is filed by M/s Anupam MHI Industries Ltd, Plot No. 893,894, & 895, Nadiad Dakor Highway, Salun, Nadiad, Kheda (Gujarat) (hereinafter referred to as the 'applicant') against the Order-In-Appeal No. VAD-EXCUS-001-APP-390-2018-19 dated 03.10.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Vadodara.

2. Brief facts of the case are that the Applicant is a DTA unit engaged in the manufacture of 'Rail Mounted Crane' falling under chapter 8426900 of Central Excise Tariff Act, 1985 and were given permission for job work to be done from M/s. Pipavav Defence & Offshore Eng. Co. Ltd. (100% EOU), Village-Rampara-11, Taluka- Rajula Village-Lunsapur, Dist-Amrell and removal of finished goods from the premises of job worker, under Rule 4(6) of Cenvat Credit Rules 2004.

3. The Applicant had earlier filed a rebate claim for Rs. 10,03,55,932/- seeking rebate of duty paid on final products exported under ARE1 under the provisions of the Rule 18 of the Central Excise Rules, 2002; read with Notification No.19/2004-CE (NT), dtd. 06.09.2004 for export of 'Super Post Panamax STS w/o Spreader (Rail mounted Quay Cranes)' which was sanctioned by the Assistant Commissioner Division-III, Anand, vide OIO No. 214/Reb/Excise/2015-16 dated 30.03.2016.

4. Being aggrieved against the OIO No. 214/Reb/Excise/2015-16 dated 30.03.2016, the Commissioner Central Excise, Customs & Service tax, Anand preferred an Appeal before the Commissioner Appeal, Vadodara-I on 24.06.2016.

5. The Commissioner (Appeals) OIA No. VAD-EXCUS-003-APP-325/2014-15 dated 03.11.2015, remanded back the case to original adjudicating authority, as in the impugned order, the Adjudicating Authority had not discussed about (a) the permission required under Para 6.14 (b)(i) of FTP 2009-14 and also use of duty free inputs, services and (b) capital goods of job worker who is a 100% EOU, that there was absence of verification of utilization of Capital goods as OIO stated that no duty free material / consumables shall be used for the job work, it did not say anything about the Capital goods.

(c) That the rebate claim has been sanctioned by the Jurisdictional Assistant Commissioner(JAC) of the exporter and not by JAC of the manufacturer or Maritime Commissioner and therefore, the rebate claim has been given without jurisdiction and (d) that Para 6.14 (b)(1) of FTP reiterates that DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback and the grant of rebate of duty was contrary to the provisions of FTP.

6. The Applicant filed 04 separate claims for Rs. 34,73,95,853/- under the provisions of the Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE (NT), dated 06.09.2004. As the issue was the same and the first claim was reviewed, the said 04 claims were liable to be rejected as the Applicant had not complied with various procedures to be followed to get the benefits of rebate / other export incentives and hence SCN dated 30.06.2016 was issued to the Applicant for rejection of the 04 rebate claims.

6.1. Commissioner (A) OIA NO. VAD- EXCUS-003-APP-580/2016-17 dated 27.02.2017 and other material facts available on record, it was found that whatever queries had been raised in above claim under SCN was sorted out and did not find any legal infirmity in the impugned OIO and upheld impugned Order and rejected the departmental appeal, therefore the above 4 rebate claims which were earlier processed and even cleared in the Pre-Audit was sanctioned vide OIO No. 115-118/Reb/Excise/2017-18 dated 30.05.2017.

6.2. Subsequently, as the applicant vide letter dated 31.08.2017, had requested to grant the interest of rebate in pursuance of order of the Commissioner(Appeal) and as the request of interest on delayed refund was not required to be paid as there was no delay in granting rebate and therefore, that as per Section11BB of the Act read with sub-section (2) of Section11B, SCN dated 12.10.2017 was issued for rejection of interest claim of Rs. 3,43,71,812/-.

7. The Adjudicating Authority vide Order in Original No. 383/Ref/Ex/2017-18 dated 05.04.2018 sanctioned interest amounting to Rs. 2,31,85,140/- and rejected interest amounting to Rs. 1,11,86,708/-

8. Being aggrieved, the applicant filed appeal before Commissioner, GST and Central Excise, Appeals, Vadodara. The Appellate Authority vide Order-In-Appeal No. VAD-EXCUS-001-APP-390-2018-19 dated 03.10.2018 upheld the Order-in-Original on the grounds that the adjudicating authority had correctly observed that the claim was treated as filed on 21.06.2010 in view of para 2.4 of Chapter 9 of CBEC's Excise manual of Supplementary Instructions, particularly when the basic documents based on which refund, if admissible, became due to them or otherwise was not available with them prior to 21.06.2016. The Appellate Authority further observed that in this context coupled with the facts and circumstances of the case, the reliance placed by the Applicants on various decisions is not of any help to them and that the Applicant submitted the requisite documents on 21.06.2016 and only after that their rebate claim becomes a valid claim for processing and since, the adjudicating authority already sanctioned the part interest claimed by the Applicant considering the date of submission of claim as 21.06.2016 which was not under dispute in the proceeding, there is no need to intervene the impugned order.

9. Being aggrieved and dissatisfied with the impugned Order-in-Appeal, the applicant has filed this Revision Application on the following grounds that:

9.1. That the impugned grants very less interest Section under Section 11BB of the central excise act, 1944 as opposed to the total interest payable under the said provision under the law and under the given set of facts and circumstances;

9.2. That there is no dispute in the impugned order regarding general proposition that interest under Section 11BB of the Central Excise Act, 1944 has to be paid when refund rebate is delayed in granting to the assessee;

9.3. That it was never alleged in the SCN that the rebate claims were initially filed in defective manner or incomplete in any way but it was stated in the said SCN that while rebate claims stood filed on respective dates, interest under Section 11B is not payable since as per the interpretation of revenue authorities towards the scheme of Section 11B and Section 11BB, the rebate paid was not late since it was within 3 months from OIA dt.27.02.2017;

9.4. That the original authority is denying partial interest claim on the ground that the rebate claims were filed in deficient manner earlier and only after filing certain

other documents as called for, the interest claim starts to run. That the impugned order cannot travel beyond the scope of the proceedings in such casual manner, without putting the Applicant to any notice;

9.5. That SCN is the foundation of the case and the proceedings cannot travel beyond the scope of the SCN as held by the Hon'ble Apex Court in the case of Brindavan Beverages P. Ltd. 2007(213) ELT 487(SC) and Ashok Shetty & Associate CA 2017(4) GSTI 53(Tri-Bang);

9.6. That the Applicant was never put to notice regarding the so called deficiency in the rebate claims originally filed at any stage but was merely issued SCN dated 12.10.2017;

9.7. That the so called deficiency memos merely asked redundant and irrelevant questions which were duly answered by the Applicant which were not relevant and/or germane to the issue of sanctioning rebate at all and it was merely dilatory tactic;

9.8. That such rebate was found to be in order by the original authority and was duly proposed to be sanctioned and sent for "pre-audit" as per the internal working style of the revenue authorities to which the Applicant is not concerned about at all;

9.9. That the Hon'ble Mumbai High Court in the case of Bombay Chemicals Ltd. [2007(8) STR 417(Bom)] has held that pre-audit was not a legal process and the revenue authorities do so at their peril and this cannot be a reason to delay and/or deny rebate claim to the assessee. The important aspect to be appreciated here is that once the original authority never found any problem with the rebate claim at all, it cannot be said that the rebate claim was deficient in any manner;

9.10. That it is disputed that necessary and relevant documents were not submitted by the Applicant earlier with the original claim and it was submitted only in their communication dated 20.04.2015 at all inasmuch as the rebate claim was always complete and in order at the initial stage itself;

9.11. That in terms of Board Circular No. 130/41/95-CX dt.30.5.1995, if any refund/rebate claim is filed which is deficient in any manner, the same must be returned to the Applicant within 48 hours/two days of date of claiming Admittedly this was not done in the present case;

9.12. That the belated action on part of the rebate sanctioning authority to grant rebate belatedly i.e. beyond three months from the date of claiming the rebate itself, cannot result in denial of legitimate interest liable to be paid under section 11BB of the Central Excise Act 1944 to the Applicant;

9.13 That the order of the Hon'ble Apex court in the case of Ranbaxy [2011 (273) ELT 3(SC)] which was relied upon by the Applicant and which was in favour of the applicant was ignored by the department;

9.14. That the Hon'ble Apex court in the case of Humdard (Waqf) Laboratories [2016(333) ELT 193(SC)] has also taken a view that where the rebate/refund is claimed and within two days the same is not found deficient and returned/any deficiency query memo is not issued to the assessee, the revenue authorities cannot skirt around from their legal obligation to pay interest under section 11BB of the Central Excise act 1944 in case of rebate/refund is sanctioned to the assessee beyond three months period from the date of claiming the rebate;

9.15. The Applicant has relied upon the following case laws in support of their contention

- a. Hero Motors Ltd. [2017(357) ELT 377(Tri-Del)]
- b. Reliance Industries Ltd. [2011(265) ELT 407(T)]
- c. Sterlite Industries Ltd. [2017(8) TMI 312(Bom.)]
- d. M/s. I-Process Services (India) Pvt. Ltd [2017(1) TMI 381 (Delhi.)]
- e. M/s JSW Steel Ltd [2018 (10) TMI 842 (Tri- Bangalore)]
- f. Haldia Petrochemicals Ltd. [2017(345) ELT 619(Cal)]

9.16. That perusal of the so called deficiency memo dated 01.04.2015 shows that whatever was asked was not relevant to rebate claim at all since in terms of the specific provisions of CBEC Circular as also the supplementary instructions;

9.17. That all documents were always filed along with the original claim itself and extraneous documents such as job work permissions etc. have no relevance to the interest under section 11BB of the central excise act 1944;

9.18. That unnecessary delays and/or complications introduced by pre-audit division, is not of any botheration to the Applicant in any manner, much less under the legal provisions particularly when the original authority had initially sanctioned the rebate;

9.19. That the submission of invoices upto March 2015 on 05.11.2015 is irrelevant to the rebate claim as credit taken was taken properly and at the time of sanction of rebate it is not to be seen whether the raw material credit was correctly availed or not.

9.20. That the claim was always proper when filed and the so called deficiency memos have been issued merely for the sake of delaying the rebate as an afterthought and an eyewash, whereby the legitimate dues to be paid to the Applicant were illegally detained/delayed by the revenue authorities from being paid to the Applicant and as a result, the due interest claimed deserves to be granted to them;

9.21. That the AA has failed to consider the facts and evidences and assumed that the claims were incomplete and interest on delayed refund was payable only after filing complete claim despite court rulings to the contrary;

10. Personal hearing was scheduled for 10.11.2022 or 23.11.2022 or 14.12.2022 or 11.01.2023. Shri Saurabh Dixit, Advocate appeared for the hearing on 14.12.2022 on behalf of the Applicant. He submitted that the instant claim was for interest. He further submitted that the departments contention that interest has been paid from the date when complete documents were received is not based on correct appreciation of the facts. He submitted an additional written submission at the time of the hearing.

10.1. In the additional submissions dated 14.12.2022, the Applicant while reiterating the contents of the grounds of revision also has chronological dates pertaining to ARE1 No 2/14-15, ARE 1 No 5/14-15, No. 1/15-16, 2/15-16 and 3/15-16 to further their contention that the rebate claims were sanctioned late. The applicant has also submitted the comments on the each of the deficiencies claiming that the deficiencies were not legal requirements for sanction of the rebate claims.

11. 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.

11.1. Government observes that issue in question is whether there has been a delay in the sanction of the rebate claim particularly in view of the deficiency memos issued

to non submissions of requisite documents and whether interest has been correctly claimed by the Applicant.

11.2. The relevant Section 11BB of the Central Excise Act, 1944 is reproduced below for ready reference:

“Section 11BB. Interest on delayed refunds. - If any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section there shall be paid to that applicant interest at such rate [not below five percent and not exceeding thirty per cent per annum as is for the time being in fixed [by the Central Government by Notification in the Official Gazette], 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.

Provided

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Dy. Commissioner of Central Excise under sub-section (2) of Section 118, the order passed by the Commissioner Appeals, Appellate Tribunal as the case may be, the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.”

11.3. The Government observes that 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 Government also finds that as per the Board Circular No.670/61/2002-CX dated 01.10.2002 the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months.

12. Government observes that the Appellate Authority has rightly observed that the instant case is factual in nature and after going through the chronology of submissions has at Para 5.2 and 5.4 concluded as under:

“5.2 Accordingly, the crux of the issue is that the documents as called by the department under various letters were essential documents for processing the refund claim or not. Therefore, the appellant's contention that interest should be given after completion of three months from submission of rebate claim is incorrect in as much as it is not in the spirit of the law to file any improper claim without any requisite documents and submit the same belatedly for claiming the interest thereon. The law requires that the valid claim needs to be filed with the requisite documents essential to process the claim and in the absence of which the said claim cannot be considered as valid one and would acquire the character of valid claim only when the essential documents are filed by the claimant. Therefore the documents called for are in the nature of essential as without which no claim can be processed. The documents asked for ought to have been the part of the refund claim ab initio.

5.4 I further find that the above provisions are explicitly laid down in para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary instructions pertaining to Refund which reads as under.

2.4 It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filled). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant in not in disadvantageous position with respect to limitation period

5.4.1 In view of the above guidelines, the adjudicating authority has correctly observed that the claim is treated as filed on 21.06.2016 in view of para

2.4 'supra', particularly when the basic documents based on which refund, if admissible, became due to them or otherwise was not available with them prior to 21.06.2016 as discussed above. It is in this context coupled with the facts and circumstances discussed above that the reliance placed by them on various decisions is not of any help to them. I further find that the appellant submitted the requisite documents on 21.06.2016 and only after that their rebate claim becomes a valid claim for processing. Since, the adjudicating authority already sanctioned the part interest claimed by the appellant considering the date of submission of claim as 21.06.2016 which is not under dispute in this proceeding, so there is no need to Intervene the impugned order."

13. Government observes that the adjudicating authority have gone into the entire chronology of the case in detail and examined the issue of grant of interest claimed by the Applicant taking into consideration the relevant sections and instructions in the matter and has rightly sanctioned the interest to the extent eligible and the same has been echoed by the Appellate Authority as stated above and Government is not inclined to interfere with the same.

14. In view of above discussions and findings, Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned order and upholds the impugned Order-in-Appeal.

15. The Revision Application is dismissed being devoid of merit.


14/3/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER NO. \22/2023-CX(WZ) /ASRA/Mumbai DATED 14.03.2023

To

M/s Anupam MHI Industries Ltd
Plot No. 893,894, & 895, Nadiad Dakor Highway,
Salun, Nadiad, Kheda (Gujarat)

Copy to :

1. The Pr. Commissioner of CGST & CX, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara 390 007.
2. Commissioner of CGST & Central Excise, Vadodara Appeals, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.