



REGISTERED
SPEED POST

F.No. 195/1220/11-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..25/9/13

Order No. 1279 /13-Cx dated 24.09.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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. US/346/RGD/2011 dated 17.10.2011 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

Applicant : M/s Madhav Steel. Mumbai.

Respondent : Commissioner of Central Excise, Raigad.

ORDER

This revision application has been filed by the applicant M/s Madhav Steel. Mumbai against order-in-appeal No. US/346/RGD/2011 dated 17.10.2011 passed by the Commissioner (Appeals-II), Central Excise, Mumbai with respect to Order-in-Original passed by the Deputy Commissioner(Rebate) Central Excise, Raigad.

2. Brief facts of cases are that the applicant had filed three rebate claims totally amounting to Rs. 9,87,777/-. These claims were rejected vide Order-in-Original No. 07-09/04-05/D.C(R)/RGD dated 19.08.2004 for not following the procedure prescribed in Board's Circular No. 294/10/97-Cx dated 30.01.1997 and 18/92 dated 18.12.1992. Being aggrieved by the above Order-in-Original, the applicant filed an appeal before the Commissioner (appeals), Mumbai-III who vide Order-in-Appeal No. BR/M-III/160/2004 dated 22.12.2004 set aside the above said Order-in-Original and allowed the appeal. The department preferred revision application before Government of India against the above said Order-in-Appeal dated 22.12.2004. The Revisionary Authority vide its order No. 451/2006-Cx dated 29.05.2006 held that the impugned Order-in-Appeal was not sustainable and therefore set aside the same. Being aggrieved by the G.O.I. order dated 29.05.2010, the applicant filed Writ Petition No. 2706/2006 before the Hon'ble Bombay High Court who quashed the Revisionary Authority's order dated 29.05.2006 and directed the department to pay forthwith petitioners the amount of Rs. 8,87,777/- as claimed. Department allowed new R.C.No.16594, 16595 and 16596 w.r.t. above discussed impugned rebate claims and the same were sanctioned without interest. Subsequently the applicant's requested for grant of interest from the date of filing the rebate claim i.e. 09.01.2004. But the same was rejected by the adjudicating authority vide impugned Order-in-Original.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (appeals) who modified the Order-in-Original to the

extent that lower authority has sanctioned the rebate claims, vide order dated 5.5.2011 which was dispatched on 10.05.2011, thereby causing a delay of 98 days as the statutory time limit of three months was expired on 01.02.2011 and that the applicant is entitled for interest for a delay of 98 days as absorbed in terms of section 11B *ibid*.

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

4.1 The applicant say and submit that the present case is fully covered by the judgment of the Hon'ble Supreme Court in the matter of Ranbaxy Laboratories Limited – 2011 (273) ELT 2(SC) wherein it is held that the interest on the delayed refund is payable under section 11BB of the Central Excise Act, 1944 on the expiry period of 3 months from the date of receipt of application and not from the date of reorder of refund or appellate order. Thus the applicants are entitled for interest from 9.4.2004 as the rebate claims were filed on 9.1.2004.

4.2 The Commissioner (appeals) committed a grave error by referring to new RC claims No. 16594, 16595, 16596 which are dated by the department as 1.11.2010 and failed to appreciate that the applicant have not filed any fresh rebate claims and they have filed 3 rebate claims No. 688, 689 & 690 all dated 9.1.2004 which were detailed in show cause notice dated 28.5.2004 and Order-in-Original dated 19.08.2004 and thus any reference to new rebate claims dated 01.11.2010 by the department in their own files cannot defeat the law laid down by the Hon'ble Supreme Court and cannot negate the provisions of Central Excise Act, 1944 and thus Commissioner committed a grave error by denying interest from the initial date of eligibility i.e. 9.4.2004.

4.3 the applicant say and submit that after the pronouncement of the judgment by the Hon'ble High Court and after receipt of the judgments dated 10.8.10 the applicant have written letter dated 7.8.10 & 15.11.10 and these are

the only 2 letters written by the applicant after receipt of the judgments and thus the applicants have not file any new rebate claims and thus any reference to any new rebate claims no. is simply done by the department so as to deny the rightful claim of interest to the applicants.

4.4 The impugned order in original as well as Order-in-Appeal are totally illegal and not valid and proper and is thus not sustainable. The Assistant Commissioner as well as Commissioner (appeals) Commissioner committed a grave error by holding that the interest is not payable as the Hon'ble High Court has not ordered for payment of interest to the claimant. The Assistant Commissioner ought to have appreciated that the issue before the Hon'ble High Court was to decide the validity and legality of the order dated 29.5.06 passed by the Revisionary Authority and the Hon'ble High Court had held that the order dated 29.5.06 passed by the Revisionary Authority is erroneous and perverse and thus quashed the said order and directed the payment for rebate claim. Thus the Hon'ble High Court had held that order dated 29.5.06 is totally erroneous and perverse which itself shows that lower authority i.e. the Deputy Commissioner and the Revisionary Authority have committed a grave error by rejecting the rebate claim and it was only the Commissioner (appeals) who correctly sanctioned the rebate claim. Thus the denial of interest on the basis of the order of the Hon'ble High Court is totally erroneous and the impugned order the required to be set aside.

4.5 the Assistant Commissioner as well as Commissioner (appeals) passed the impugned orders in a mechanical manner and arbitrarily in a predetermined manner without considering any of the judgments which were specifically relied upon by the applicant and the copies of which were filed along with the letter dated 18.1.11 and thus the impugned order is a non speaking order which is required to be set aside solely on this ground alone.

4.6 The Government may kindly appreciate that the Hon'ble High Court had held the order passed by the lower authority is erroneous and perverse and thus

the applicant are entitled for interest from the initial date of entitlement of claims and thus denial of the same is totally unjustified.

4.7 The Government may kindly appreciate that the once the Hon'ble High Court had held that the orders passed by the lower authorities are erroneous and perverse the department is not only legally but is also duty bound to pay interest from the date of making the initial claim before the Assistant Commissioner till payment of the same as per the judgment of the Hon'ble Tribunal in the matter of Jansons Export- 2007 (220) ELT 895 (Tri.-Chennai), and 2009 (236) ELT 260 (Tri.Ahmd.) and thus the impugned order rejecting the claim of interest is not legally sustainable and the same is thus required to be set aside. The applicant cited following judgment in their defence:-

- (i) 2004(170) ELT 4(Raj.) J.K. Cement Works, Affirmed by High Court 2005 (179) ELT A 150 (SC)
- (ii) 2008(229) ELT 205 (All.) U.P. Twiga Fiber Glass Ltd. Affirmed by Supreme Court 2009 (243) ELT A27 (SC) U.P. Twiga Fiber Glass Ltd.
- (iii) 2009 (236) ELT 299 (Tri.-Ahmd.) Reliance Industries Ltd. and 2010 (259) ELT 356 (Guj.) Reliance Industries Ltd.

5. Personal hearings scheduled in this case on 08.08.2013 at Mumbai was attended by Shri R. K. Sharma, Sr. Counsel on behalf of the applicant who reiterated grounds of revision applications. Nobody attended hearing on behalf of department.

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

7. Government observes that the instant rebate claims were initially rejected by the original authority vide Order-in-Original dated 18.08.2004. Commissioner (Appeals) vide Order-in-Appeal dated 22.12.2004 set aside the said Order-in-

Original and allowed the rebate claims. Department filed Revision Application against said Order-in-Appeal dated 22.12.2004, which was decided by the Government vide Order No. 451/2006-Cx dated 29.5.2006 in favour of department. The applicant filed W.P. No. 2706/2006 before the Hon'ble Bombay High Court against the said Revision Order dated 29.05.2006, who set aside said the G.O.I. order and rebate claims were held admissible. Accordingly, the department allowed new rebate claim nos. and sanctioned rebate claims. However, interest claim was dis-allowed. The Commissioner (Appeals) modified impugned Order-in-Original in as much as he allowed interest of 98 days considering the date of filing rebate claims on 1.11.2010. 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. In

these cases, the rebate claims were initially rejected by original authority vide Order-in-Original dated 19.8.2004 with reference to rebate claim applications filed prior to that date. As such the rebate claim applications were actually filed prior to 19.8.2004 and interest liability has to be computed under section 11BB w.r.t. initially date of filing rebate claims. Allotment of new rebate claim numbers suo moto by the department will not alter the position with regard to admissibility of interest for delayed payment of interest under section 11BB of Central Excise Act, 1944 from the expiry of 3 months after filing the rebate claims prior to 19.8.04. Hence, order of Commissioner (appeals) allowing interest only for 98 is not legal and proper and hence, modified to the above extent.

10. Revision Application is disposed of in above terms.

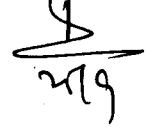
11. So, ordered.

M/s Madhav Steel,
Shop No. 12,
114E-4, R.K. Wadi,
2nd Parshi Wada,
Mumbai 400 004.



(D P Singh)
Joint Secretary (Revision Application)

(Attested)




(Bhagwat Sharma)
सहायक आचार्य/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त. मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

G.O.I. Order No. 1279 /2013-Cx dated 24.09.2013

Copy to:-

1. Commissioner of Central Excise, Raigad Commissionerate, Plot No.1, Kendriya Utpat Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai
2. The Deputy Commissioner, Central Excise Raigad, Office of the Maritime Commissioner of Central Excise – Raigad, Gr. Floor, Kendriya Utpat Bhavan, Sector-17, Plot No.1, Khandeshwar, Navi Mumbai –410 206.
3. The Commissioner of Central Excise (Appeals), Mumbai Zone –II, Utpad Shulk Bhavan, 3rd Floor, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
4. M/s R.K. Sharma & Associates, Advocates, 157, 1st Floor, DDA Office Complex, CM-Jhandewalan Extension, New Delhi – 110055.
- ✓ 5. PS to JS(RA)
6. Guard File
7. Spare Copy.


(Bhagwat P. Sharma)
OSD(RA)