

REGISTERED  
SPEED POST



F.NO. 198/650/11-RA &  
198/237-241/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....9/7/13

ORDER NO. 1297-1302 /2013-CX DATED 07.10.2013 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.as per table in para 1 passed by the Commissioner (Appeals) Central Excise, Chennai.

APPLICANT : Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Chennai-6000 034.

RESPONDENT : M/s ITC Ltd., SBU Packing & Printing, Post Box No.2277, Tiruvottiyur, Chennai-600019

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**ORDER**

These revision applications are filed by Commissioner of Central Excise, Chennai-I against the orders-in-appeal Nos. passed by Commissioner of Central Excise (Appeals), Chennai as detailed below :-

Sr. No.	RA No.	Against O-I-A No./Date	W.R.T. O-I-O No./Date
1.	198/650/11	10/2011 (M-I) dt. 20.7.11	24/09 dt. 14.5.10
2.	198/237-241/12	31-34/09(M-I) dt. 29.1.10 10/11(M-I) dt. 20.7.11	1/08 dt. 1.1.08, 17/08 dt. 30.7.08, 20/08 dt. 9.9.08, 26/08 dt. 27.11.08

M/s ITC Ltd. are the respondents in this case.

2. Brief facts of the case are that M/s ITC Ltd., are manufactures of printed cartons, corrugated carton falling under CSH No. 48191010. They had filed 4 rebate claims for supply of cartons to the Nokia Special Economic Zone, Chennai. They manufacture Nokia master carton, Nokia Large Compact, Nokia Flat Sheer corrugated with the help of a job worker M/s Wadpack (P) Ltd., Bangalore. The raw materials for the manufacture of the above items are directly delivered at job worker's premises. The finished duty paid excisable goods is received by the assessee in their premises and are dispatched to M/s Nokia India (P) Ltd., Nokia SEZ under ARE-1 prepared by M/s ITC Ltd. under Bond without payment of duty.

2.1 The respondent was issued with show cause notices for the periods from June 2006 to 04.11.2007, alleging that they were not eligible for the rebate claim as the duty payment was not made by the exporter i.e. the assessee but by its job worker M/s Wadpack; the assessee ought to have followed the procedure laid down in the Notification No. 21/2004-CE(NT) dated 09.09.2004 and also there was no manufacturing activity of any kind carried out by the assessee in their premises. Hence the original authority passed the following orders rejecting the rebate claims :

Sl. No.	OIO No. and date	Period involved	Rebate Amount (Rs)
1.	01/08 dt. 01.01.08	06/06 to 02/07	62,44,603
2.	17/08 dt. 30.07.08	03/07 to 05/07	30,33,968
3.	20/08 dt. 09.09.08	06/07 to 10/07	74,32,251
4.	26/08 dt. 27.11.08	01.11.07 to 04.11.07	59,272

2.2 Aggrieved by the above orders, the respondent filed appeals before the Commissioner (Appeals). The Commissioner (Appeals) vide orders-in-appeal No. 31-34/2009(M-I) dated 29.01.2010, set aside the orders-in-original and allowed the appeal with consequential relief. The order-in-appeal was accepted by the Commissioner on 20.04.2010.

2.3 Consequent to this, the lower adjudicating authority, vide order-in-original No. 24/2009 dated 14.05.2010, sanctioned the rebate of Rs. 1,67,70,094/- under rule 18 of Central Excise Rules 2002 read with Section 11AB of Central Excise Act, 1944 by way of Cenvat credit in the assessee's books of account. The order-in-original was accepted by the Commissioner on 17.09.2010.

2.4 Aggrieved by the above order, the respondent filed an appeal before Commissioner (Appeals) on the grounds that the rebate should have been sanctioned by way of cheque/cash/DD along with interest. The Commissioner (Appeals) vide order-in-appeal No. 10/2011(M-I) dated 20.07.11, has allowed the appeal by way of directing the lower adjudicating authority to sanction rebate by cash/cheque along with interest on the delayed payments under Section 11BB at the prescribed rate for the period commencing from the date of expiry of three months from the date of making rebate application.

3. Applicant department filed revision application No. 198/650/11 on 01.12.2011 against the order-in-appeal No. 10/11 (M-I) dated 20.07.11 and contested the payment of interest from the expiry of 3 months from the date of filing rebate claims. The department did not challenge this order for allowing the rebate claim in cash. Applicant department has filed second revision application No. 198/237-241/12 on 12.10.2012

against both the orders-in-appeal dated 29.01.10 and 20.07.11 challenging the grant of rebate claim as well as interest on delayed payment of rebate from the expiry of 3 months from date of filing rebate claims. The grounds of these revision applications are as under :-

### **3.1 Grounds of RA No. 198/650/11**

3.1.1 Commissioner (Appeals) has decided on the following two issues while passing the order :-

- (i) Whether the rebate sanctioned to assessee and credited in the Cenvat account or it has to be issue by way of cheque/cash and
- (ii) Whether the assessee's demand of interest on delayed sanction of rebate is legally correct.

3.1.2 With reference to the first issue, the Commissioner (Appeals) relied on the Clarification issued by Board vide Circular No.687/3/2003-CX dated 03.01.2003, wherein it is stated that "there is no discretion with the sanctioning authority to give refund of duty paid on goods exported through credit account. It is therefore clarified that the duty paid through actual credit or deemed credit account on the goods exported must be refunded in cash". In view of above referred clarification the Order-in-Appeal is acceptable on this issue.

3.1.3 With reference to claim of interest on delayed payment of rebate, Commissioner (Appeals) relied upon the case of Gujarat Paraffins (P) Ltd Vs Joint Secretary, M.F., Govt. of India reported in 2004 (178) ELT 125(Guj.) wherein it was held that the claimant is entitled to interest at prescribed rate for period commencing from the date of expiry of three months from date of making rebate application, till date of payment by cheque. Based on the said case law, Commissioner (Appeals) held that the assessee are eligible to claim interest on the delayed payments under Section 11 BB of the CEA, 1944, at prescribed rate.

3.1.4 The Order of the Commissioner (Appeals) is not legal and proper for the following reasons:

(a) The Proviso to Section 11 BB reads as,

*'Provided that where any duty ordered to be refunded under sub-section (2) of the section 118 in respect of an application under Sub-section (1) of that section is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.'*

The explanation to the Proviso to Section 11 BB, reads as

*'Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant or 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 purposes of this section'.*

(b) From the above provisions, the assessee would be eligible for the rebate for the first time, only after the Orders-in-Appeal No.31-34/2009(M-I) dated 29.01.2010 passed by Commissioner (Appeals), wherein Commissioner (Appeals) had granted consequential relief as per law.

(c) Hence the assessee would be eligible to claim interest on rebate of duty only after three months from the date on which Commissioner(Appeals) held rebate as eligible but not from the date of expiry of three months from date of making rebate application.

### **3.2 Cross objection made by respondent w.r.t. RA No. 198/650/11**

3.2.1 While the above said order-in-appeal No.10/2011 (M-I) dated 20.07.2011 of the Commissioner of Central Excise (Appeals) has been partly accepted by the department, the challenge in the present revision application is restricted only to the grant of

interest commencing from three months from the date of making the application for the afore-mentioned rebate claims.

3.2.2 It is further stated in the revision application that the case of Gujarat Paraffins (P) Ltd. vs. Joint Secretary, Govt. of India in 2004 (178) ELT 125 (Guj.) relied upon by the Commissioner (Appeals) is distinguishable in as much as in that case, the claim of rebate was sanctioned by way of credit in the original order itself, and it was held by the Tribunal that the party was justified in getting interest for the period commencing from the expiry of three months from the date of making applications for rebate. It was also clarified in the same case law that the 'orders of the appellate authority referred to in the explanation to Section 11BB are those appellate orders which for the first time allow the rebate/refund claim', while in the present case the rebate claim was held as eligible only by order-in-appeal Nos. 31/2009 (M-I) to 34/2009 (M-I) dated 29.01.2010.

3.2.3 It is submitted that the above grounds taken in the revision application are contrary to express statutory provisions, Board circulars and binding precedents, which include Supreme Court rulings and orders of this Hon'ble Revisionary Authority, as detailed herein below.

3.2.4 Section 11 BB is the provision which governs the sole ground on which the order of the Commissioner (Appeals) has been challenged and the same is extracted here in below for ease of reference:

**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 ten per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board, 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 that where any duty ordered to be refunded under sub-section (2) of section 11B in*

*respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.*

*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, 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 purposes of this section.*

As can be seen from a plain reading of the above provisions, it is of no consequence for the purpose of Section 11BB as to whether the rebate claim was originally rejected or allowed. The only reference point for the purpose of interest under Section 11BB is the date of filing of the rebate claim. The proviso to Section 11BB relied upon in the revision application does not in any way support the case of the department.

3.2.5 It is further submitted the present issue is no longer res integra, the same having been settled by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India reported in 2011 273 E.L.T. 3 (S.C.). It is submitted that the issue raised in the present Revision Application stands negative by the Hon'ble Supreme Court in above judgment, as the following extract would show:

"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 11 B of the Act. Section 11 BB 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 11 B 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 11 BB of the Act becomes payable."

3.2.6 Hence, as per settled law we are entitled to interest on the rebate claims for the period starting from the date of expiry of three months of filing the claims, till the date of payment and the same is required to be paid to us without any further delay. The order of the Commissioner (Appeals), Chennai, being order-in-appeal No. 10/2011(M-I) dated 20.07.2011 having been passed strictly in accordance with law is therefore liable to be upheld in toto.

3.2.7 For the reasons stated above, it is prayed that this Hon'ble Revisionary Authority may be pleased to dismiss the revision application filed by the department under Section 35 EE of the Central Excise Act, uphold the order of the Commissioner of Central Excise (Appeals), Chennai, being order-in-appeal No. 10/2011 (M-I) dated 20.07.2011, and direct refund of the sanctioned rebate of Rs. 1,67,70,094/- along with interest at the stipulated rate commencing 3 months from the date of filing the rebate claims and render justice.

### **3.3 Grounds of RA No. 198/237-241/12:-**

3.3.1 The order-in-appeal No. 31-34/2009(M-I) dated 29.01.2010 passed by the Commissioner (Appeals) allowing the appeal of the assessee with consequential relief as per law is not proper.

3.3.2 Subsequent to the above order-in-appeal, the Jurisdictional Deputy Commissioner sanctioned the rebate and credited the same in the cenvat



account. Aggrieved by this, the assessee once again preferred appeal before the CCE(A), who allowed the appeal vide the order-in-appeal No.10/2011(M-I) dated 20.07.2011 by allowing rebate claims in cash along with interest under section 11 BB.

The above order-in-appeal 10/2011 (M-I) dt. 20.07.2011 was found to be not correct and proper with regard to payment of interest and was appealed before the Revisionary Authority on 24.11.2011, for the following reasons.

I. The CCE(A) relied upon the case of Gujarat Paraffins (P) Ltd Vs Joint Secretary, Ministry of Finance Govt of India reported in 2004 (178) ELT 125(Guj.) wherein it was held that the claimant is entitled to interest at prescribed rate for period commencing from the date of expiry of three months from date of making rebate application, till date of payment by cheque.

The explanation to the Proviso to Section 11 BB, states that '*Where any order of refund is made by the Commissioner(Appeals), Appellate Tribunal or any court against an order of the Assistant or 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 purposes of this section*'.

According to Proviso to Section 11BB, '*Provided that where any duty ordered to be refunded under sub-section (2) of the section 11B in respect of an application under Sub-section (1) of that section is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.*' From the above, it is very clear that the assessee became eligible for the rebate for the first time, only after the Orders-in-Appeal No.31- 34/2009(M-I) dated 29.01.2010 passed by Commissioner(Appeals), wherein CCE(A) had granted consequential relief as per law.

Hence the assessee would be eligible to claim interest on rebate of duty only after three months from the date on which CCE(A) held rebate as eligible

and not from the date of expiry of three months of his original rebate claim.

The case law cited by the Commissioner(Appeals) i.e. Gujarat Paraffins (P) Ltd. Vs. Joint Secretary, Ministry of Finance, Government of India reported in 2004 (178) ELT (Guj.) has entirely a different situation, wherein the claim of rebate was sanctioned by way of credit in the Original order itself. In such a case, it was held by the Tribunal that the party was justified in getting interest for the period commencing from the expiry of three months from the date of making applications for rebate. It was also clarified very well in the same case law that the explanation to the proviso to Section 11BB that the 'orders of the appellate authority referred to in the explanation to Section 11BB are those appellate orders which for the first time allow the rebate/refund claim.

II. By the OIA No.10/2011(M-1) dated 20.07.11, the Commissioner(Appeals) has set aside the Order-in-Original which granted the rebate in their Cenvat Account, due to which there is no order of sanction in principle in existence. So, the corollary would be that a fresh sanction needs to be in place. For this purpose, the Jurisdictional Deputy Commissioner does not have any powers to reopen, as there is no case of remand of the matter to Jurisdictional Deputy Commissioner, but instead the said order-in-appeal only set aside that relevant Order-in-Original. Therefore, in the absence of any sanction order pursuant to the order-in-appeal nor any direction by way of remand for sanctioning the rebate in question, there is no way to proceed further.

3.3.3 On careful reconsideration of the facts and circumstances of the entire case, as stated under S. No. (1) and (II) above, in the Grounds of Appeal in respect of both the order-in-appeal, the appellant herein believes that the ends of justice would be met only by setting aside the first order-in-appeal No. 31-34/2009 (M-1) dated 29.01.2010, notwithstanding the fact that

- (i) The said order-in-appeal was accepted initially by the appellant and
- (ii) An appeal filed by the appellant against the order-in-appeal No. 10/2011 (M-I) dated 20.07.2011 on the limited point of 'interest'.

It is brought out that the decision to supersede earlier decisions was taken in light of later developments that

- (1) Clearances to SEZ were treated differently by the Hon'ble CESTAT as no exports for the purpose of Rule 18 of CER 2002
- (2) Indispensability/Supremacy of the observance of procedure was upheld by Hon'ble Supreme Court.
- (3) Further the appellant herein seeks to avail of the remedy provided under sub-section 4 of Section 35EE of the Central Excise Act, which reads as follows.

*"(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section(1)."*

### **3.4 Cross objection filed by respondent M/s ITC Ltd. w.r.t. Revision Application No. 198/237-241/12**

The respondent vide letter dated 21.12.12 has filed following cross objections:-

3.4.1 At the outset it is submitted that the revision application is not maintainable and is without jurisdiction. Hence, the present reply is confined to preliminary objections with regard to the maintainability of the revision application now filed by the Department. Since the department is barred from even filing the present revision application, the respondent company cannot be called upon to counter the grounds stated in the revision application, until the maintainability issue is decided by this Hon'ble Authority. In the event of this authority being inclined to go into the merits of the revision application, despite the legal bar, we would request you to kindly put us on notice, so that we can take necessary action.

3.4.2 The above show cause notice has been issued pursuant to an application filed by the Assistant Commissioner of Central Excise, Chennai-I pursuant to an authorization by the Commissioner of Central Excise, Chennai-1. Although, the authorization is stated to have been given as per the powers conferred under Section 35EE (4) of the Central Excise Act, 1944, the said provision pertains to suo moto revision by the Central Government. Since this show cause notice has been issued on an application filed by

the department, it can only be treated as one made in terms of sub-section (1) of Section 35EE and the question of invoking the provisions of Section 35 EE (4) would not arise.

3.4.3 The time limit prescribed for filing a revision application under Section 35EE (1) is a period of 3 months from the date of communication of the order to the applicant. Admittedly, Order -in- Appeal No. 31-3412009 dated 29-01-2010 (M-I) was received by the Department on 18.02.2010 and Order-in- Appeal No. 10/2011 dated 20-07-2011 (M-I) was received on 02.09.2011. The last date for filing the revision applications against the two orders, respectively, expired on 18.05.2010 and 02.12.2011. Hence, the present revision application has been filed far beyond the statutory period of limitation provided under Section 35 EE (2) of the Central Excise Act, 1944. Furthermore, the proviso to Section 35 EE(2) has provided that on being satisfied that the applicant was prevented by sufficient cause from presenting the application within the period of 3 months , Central Government may allow the application to be presented within a further period of 3 months. In the first place, no application for condoning the delay in filing the Revision has been filed by Department and hence, the revision application could not have been taken on record and should have been rejected in limine as time barred. In other words, the present show cause notice itself is not maintainable when the revision application has been filed after expiry of the statutory period of limitation and is not even accompanied by an application for condoning the delay. Even otherwise, this Revision application has been filed beyond the condonable further period of 3 months. On this ground alone, it is submitted that' the present Revision application is liable to be rejected in limine as time barred.

3.4.4 Without prejudice to the above, it is submitted that the present revision application is without jurisdiction since it seeks to re-open concluded issues and agitate the merits of the eligibility to grant of rebate, despite the department having accepted the same earlier, as the following narration would show.

3.4.5 The Department filed a revision application before this Hon'ble Authority on 24.11.2011 on the limited question of liability to pay interest.

3.4.6 From the above, it can be seen that the Department has accepted Order- in- Appeal Nos. 31-34/2009 (M-I) dated 29-01-2010 sanctioning rebate and the Department has also accepted the sanction of rebate by Cash as ordered in Order- in- Appeal No10/2011 (M-I) dated 20-07-2011 and filed revision application before this Hon'ble Authority only on the limited question of liability to pay interest. The hereinabove mentioned revision application was heard on 14-12-2012 at Chennai. Under the circumstances, it is not open to the Department to reopen the entire issue which stands concluded between the department and the respondent company. Hence even on this ground the present revision application is liable to be dismissed in limine for want of jurisdiction.

3.4.7 It is further submitted that Section 35 EE does not permit filing of two revision applications. against the same order by the same party, Since the department has already filed a revision application against Order- in- Appeal No 10/2011 (M-I) dated 20-07-2011, another revision application against the same order, that too after expiry of the statutory period of limitation is not permissible and such a revision application should not be entertained by this Hon'ble authority.

3.4.8 Without prejudice to the above, it is further submitted that the grounds taken in the revision application by the Department are devoid of any substance and are contrary to settled law. However, as stated supra, since the revision application itself is not maintainable, the respondent is not averting to the same at this stage and reserves its right to do, if necessary.

4. Show Cause Notices were issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondents have filed their cross objections as mentioned in para 3 above.

5. Personal hearing scheduled in this case on 30.09.2013 was attended by Dr. S. Periyannan, Assistant Commissioner of Central Excise, 'D' Division,

Chennai-I on behalf of the applicant department who reiterated the grounds of revision applications. Smt. L. Maithili, Advocate appeared for hearing on behalf of the respondents who reiterated the submission made in their counter replies as discussed in foregoing para. She also submitted copies of some case laws in support of their contentions.

6. Government has carefully gone through the relevant case records/available in case files, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.
7. On perusal of records, Government observes that the said rebate claim filed by M/s ITC Ltd. the respondents, were rejected by original authority. In appeal, Commissioner (Appeals) vide order-in-appeal No. 31-34/09(M-I) dated 29.01.2010 allowed the appeals of respondents with consequential relief and set aside the impugned orders-in-original. In pursuance to said order-in-appeal the adjudicating authority vide order-in-original No. 24/09 dated 14.05.2010 sanctioned the rebate claim of Rs.1,67,70,094/- by way allowing re-credit in their cenvat credit account. The said order-in-original was accepted by Commissioner of Central Excise on 17.09.2010. Respondents filed appeal before Commissioner (Appeals) for allowing rebate in cash alongwith interest. Vide order-in-appeal No. 10/11 (M-I) dated 20.07.11 Commissioner (Appeals) allowed the appeal and directed the original authority to sanction the rebate claims in cash along with interest. The order for sanctioning rebate in cash was accepted by Department. However, the applicant department filed revision application (198/650/11) on the ground that assessee would be eligible for interest on delayed payment of rebate only after three months from the date of communication of order-in-appeal where under rebate claim was held admissible and not from expiry of three months from filing rebate claims.
8. Department has also filed another revision application No. 198/237-241/12 on 12.10.2012, against both the order-in-appeal No. 31-34/09 dated 29.01.2010 & 10/11 (M-I) dated 20.07.2011. In the said application, department has challenged both the above said orders on merit of the case contending that rebate claim is not admissible to the party. The respondent party has filed cross objection as discussed in para 3 above. The main objections taken by respondent to the second revision application are that the revision application filed after six months of communication of impugned orders-in-appeal, is clearly time barred and liable to be rejected on this ground alone, that department has committed a legal error in filing this second revision application against the order-in-appeal No. 10/11 dated 20.07.2011 when they have already filed other application No. 198/650/11 that department has accepted order-in-appeal No. 31-34/09 (M-I) dated 29.01.2010 and 10/11

dated 20.07.2011 as regards sanction or rebate claim in cash and cannot reopen the entire issue at this stage.

9. Government first takes up the second RA No. 198/237-241/12 for decision. Government notes that department has claimed to have filed this revision application under section 35 EE(4). In order to understand the issue, the provisions of section 35 EE of Central Excise Act 1944 may be perused which are extracted as under :-

**Section 35 EE** Revision by Central Government. —

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order :

**Provided** that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

*Explanation.* — For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

**Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees :

**Provided** that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, —

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A. "

The sub-section (4) of section 35 EE stipulates that Central Government may on its own motion annul or modify any order referred to in sub-section (1). The sub-section (1) states that Central Government may on the application by any person aggrieved by any order passed under section 35 A where order is of the nature referred to in the first proviso to sub-section (1) of section 35 B annul or modify such order. The sub-section (2) provides for time of 3 months for filing revision application. The delay upto 3 months can be condoned by Central Government on justified reasons. The provisions of sub-section (4) are to be read with provisions of sub-section (1) (1A) and (2). The time limit as prescribed under sub-section (2) has to be adhered to. So any application filed beyond the prescribed time limit being time barred cannot be entertained at all. In this case, the jurisdictional Commissioner of Central Excise has accepted order-in-appeal dated 29.01.2010, order-in-original dated 14.05.2010 and order-in-appeal dated 20.07.11 as regards the allowing of rebate claims. This fact is admitted in the present revision application itself. After this, applicant department has pleaded that Central Government may on its own revise these orders and disallow the rebate claims. This interpretation of statutory provisions is quite erroneous. The harmonious reading of sub-sections (1), (1A), (2) and (4) would reveal that the time limit laid under sub-section (2) is to be complied with while exercising revisionary powers under section 35 EE. The Commissioner of Central Excise is empowered under Section 1A, to review the order of Commissioner (Appeals) and get the revision application filed under section 35



EE (1A). In this case, department has filed the revision application and it is to be treated as filed under section 35 EE (1A)

9.1 In the instant case the impugned orders-in-appeal were received on 18.2.2010 and 2.9.2011 and revision application is filed on 12.10.2012. The said application is filed after the expiry of 3 months initial time period and also even after the lapse of condonable period of 3 months. The revision application filed after stipulated time period is clearly time barred and is not maintainable at all.

9.2 There are catena of judgments where under it is held that time limit prescribed under the custom Act cannot be ignored by departmental authorities.

9.3 Hon'ble Supreme Court in the case of collector Land Acquisition Anantnag and Others Vs. Mst. Katji and others reported in 1987 (28) ELT (SC) has held that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

9.4 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ Jurisdiction cannot direct the custom authorities ignore time limit prescribed under section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said section. In particular, the customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to section 27 of Customs Act.

9.5 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls Vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held that the "*Tribunal, acting under provision of central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim hors the limitation provisions of*

*section 11B ibid-under law laid down by Apex Court that the authorities working under central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under section 11B ibid and section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid acts, equally circumscribed in regard to belated claims-section 11B of Central Excise Act, 1944-Rules 12 of erstwhile Central Excise Act, 1944 Rule 18 of the Central Excise Act, 2002.-Contextually, in the case of Uttam Steel Ltd., also, the Hon'ble Bombay High Court allowed a belated rebate claim in a Writ Petition filed by the assessee. This Tribunal, acting under the provision of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of section 11B. "*

9.6 The time limitation for filing appeal before Commissioner of Customs (Appeals) as per section 128 of Customs Act, 1962, is 60 days and delay upto 30 days can be condoned by Commissioner (Appeals). In this regard, Hon'ble Allahabad High Court in the case of M/s. India Rolling Mill (P) Ltd. Vs. CESTAT, New Delhi, 2004 (169) ELT 258 (All) has held that Commissioner (Appeals) cannot condone delay exceeding 30 days in filing appeal. Similarly Hon'ble Supreme Court in the case of Singh Enterprises Vs. CCE Jamshedpur 2008 (221) ELT 163 (SC) has also held that Commissioner (Appeals) is empowered to condone delay upto 30 days and has no power to allow appeal to be presented beyond the delay of 30 days. Hon'ble Bombay High Court in the case of Khanpur Taluka Coop Spinning Mills Ltd. Vs. CCE Pune II 2013 (292) ELT 16 (Bom.) has held that High Court cannot direct the appellate authority to condone the delay exceeding 30 days in filing appeal or interfere with the order passed by original authority. Hon'ble High Court of Rajasthan in the case of Kaizen Organics Pvt. Ltd. Vs. UOI 2013 (293) ELT 326 (Raj.) has held that delay exceeding 3 months in filing revision application cannot be condoned.

9.7 Government notes that the ratio of above said case laws is squarely applicable to this case since time limitation provisions are contained in section 27 & 128 of Customs Act, 1962 and similar time limitation provisions are contained in section 35 EE (2) of Central Excise Act, 1944. As such, Government holds that the instant revision application filed after time limit stipulated under section 35 EE (2) of Central Excise Act, 1944, cannot be entertained as the same has become time barred. The said application is liable to be rejected as time barred.

10. Now, Government takes up the first revision application No. 198/650/11 for decision. The Commissioner (Appeals) has held in order-in-appeal dated 20.07.2011 that respondents are eligible for interest on delayed payment of rebate claims under section 11 BB from the date of expiry of three months from the date of filing rebate claims. Department has contested this order and contended that interest under section 11 BB with admissible from expiry of 3 months from the date of order-in-appeal where under rebate claim was held admissible.

11. 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).

11 .....  
12. ....

13. ....  
14. ....

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."*

12. 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.*

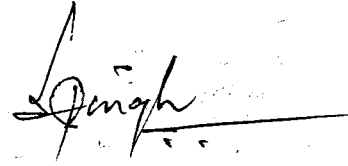
*3. The Supreme Court in its decision, in Ranbaxy (supra) considered the provisions of Section 11B and 11BB of the Central Excise Act, 1944 and held that Section 11BB lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date 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."*

13. Government observes that in the above said judgment, it has to be held in unambiguous terms that liability of revenue to pay interest under section 11BB commences from the expiry of three months from the date of receipt of application for refund / rebate claim under section 11 B(1) of Central Excise Act, 1944. As such Government finds no legal infirmity in the impugned order-in-appeal dated 20.07.2011 as regards allowing interest on delayed payment of rebate claims. The revision application No. 198/650/11 is therefore liable to be rejected.

14. In view of above, both the revision applications are rejected in terms of above.

15. So ordered.



(D P Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise,  
Chennai-I Commissionerate,  
26/1, Mahatma Gandhi Road,  
Chennai – 600 034.

Attended

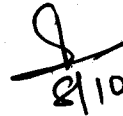
(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.E.C.-O.S.D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
भारत सरकार/Govt of India  
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GOI Order No.1297-1302/13-Cx dated 07.10.2013

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ATTESTED



(B.P. Sharma)  
OSD (Revision Application)