



**REGISTERED  
SPEED POST**

**F.No. 195/143/12-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.....2/11/14.....

Order No. 1437/13-cx dated 30-12-2013 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, 1944 against the Order-in-Appeal No. US/429/RGD/2011 dated 25-11-2011 passed by Commissioner of Central Excise(Appeals), Mumbai Zone-II.

Applicant : M/s Sterlite Industries (I) Ltd., Pune,

Respondent : Commissioner of Central Excise & Customs, Raigad.

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ORDER

This revision application is filed by M/s Sterlite Industries (I) Ltd., Pune against the Order-in-Appeal No. US/429/RGD/2011 dated 25-11-2011 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II with respect to Order-in Original No. 1432/10-11 dated 11.12.2010 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that six rebate claims of the applicant amounting to Rs., 2,66,22,966/- filed on 16.02.05 and 28.02.05 were rejected by the Assistant Commissioner of Central Excise (Rebate), Raigad on the ground that imported machines subsequently exported were not excisable goods and the Notification No. 19/2004 issued under Rule 18 did not cover the duty paid under the Customs Act as the same is not specified therein. The Customs Duty paid on the said imported machines and the Cenvat Credit availed and subsequently reversal of an amount equivalent to Cenvat Credit taken against Customs Duty paid at the time of import, cannot be said to be a levy of Excise Duty. Being aggrieved by the order of Assistant Commissioner, the applicant filed an appeal before the Commissioner(Appeals) who set aside the order of Assistant Commissioner vide Order-in-Appeal No. SRK/437/RGD/2007 dated 19.11.2007. The Revenue filed a Revision Application against the aforesaid Order-in-Appeal dated 19.11.07 which was rejected the Government of India vide Revision Order No. 18/09-Cx dated 20.01.09. The department filed Writ Petition against said Revision order before Hon'ble Bombay High Court. Hon'ble High Court rejected the said Writ Petition. Meanwhile the original authority vide impugned Order-in-Original has provisionally sanctioned the rebate claim of Rs. 2,66,22,966/- without interest.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner(Appeals) on the ground of non sanction of interest who rejected the same.

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

4.1 The Commissioner(Appeals-II) has erred in holding that the rebate claim was sanctioned by the lower authority as an interim measure on the basis of an undertaking given by the applicant and the bank guarantee furnished by it. It is submitted that there is no provision under the Central Excise Act or the Central Excise Rules to sanction a rebate claim on an interim basis after obtaining a bank guarantee and an undertaking from the applicant to return back the amount in case the matter is finally decided against it. The department was duty bound to sanction the rebate in view of the favourable order passed both the Commissioner(Appeals) and the Joint Secretary, Revision. Even the Writ Petition filed by the Department was initially dismissed for non-appearance and has now been dismissed on merits also as the Hon'ble High Court did not find any merit in the department's contention. In the absence of any order staying the operation of the order of the Commissioner(Appeals) and the Joint Secretary, Revenue, the department ought to have suo motu sanctioned the rebate along with interest. There were no directions from the Hon'ble High Court requiring the applicant to furnish a Bank Guarantee and it was on account of wrongful refusal by the department and requirement of funds that the applicant agreed to furnish a Bank Guarantee but the same cannot be held against it for sanctioning the rebate claim on a provisional basis without interest. The whole action of the department is illegal and the Commissioner(Appeals-II) ought to have allowed the appeal directing the lower authority to sanction the interest.

4.2 Applicant submits that the Commissioner(Appeals-II) has grossly erred in holding that the matter has not been finally resolved specially when the Bombay High Court order dismissing the Revenue's Writ Petition was brought to his notice as has also been acknowledged in his Order-in-Appeal. Once the matter has been finally resolved, the appeal against non-payment of interest could not have been dismissed as pre-mature.

4.3 Applicant submits that the Commissioner(Appeals-II) has agreed that there is no provision for provisional sanction of rebate claim and that the rebate claim sanctioned has to be treated as final. He has, however, still chosen to uphold the order of the lower adjudicating authority by holding that the rebate claim was sanctioned as an interim measure on the basis of undertaking by the applicant and the Bank Guarantee furnished by it. Applicant submits that the whole act of asking for a Bank Guarantee and an undertaking from it was illegal and interest claim cannot be denied on that ground. It is settled law that the department cannot take advantage of its own wrong and subject an assessee to a higher liability arising out of its own errors and actions as has been observed by the Hon'ble Supreme Court in the case of Priyanka Overseas Pvt. Ltd., Vs. U.O.I. [1991(51) ELT 185 (SC)]. His order is therefore, liable to be set aside and directions for sanction of interest needs to be issued.

4.4 Applicant submits that the Commissioner(Appeals-II) ought to have upheld the admissibility of interest on the amount of rebate sanctioned by the Original Authority in accordance with the provisions of Section 11BB of the Central Excise Act, 1944 and the Hon'ble Bombay High Court decision in the case of Swaraj Mazda, Ballarpur Industries and Hon'ble Gujarat High Court decision in the case of Bitex Ointment Manufacturing Co., cited supra. These decisions were brought to the notice of Commissioner(Appeals-II) but he has simply noted the same but has not given any finding on the same. His order is therefore, a non-

speaking order for having not dealt with all the submissions made by the applicant. His order is liable to be set aside on this ground.

5. ~~Personal hearing held in this case on 28.11.2013 was attended by Shri Vipin Kumar Jain, advocate and Ms. Tuhina Sinha, advocate on behalf of the applicant who reiterated the ground of revision application. 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 14.6.07. In appeal, Commissioner (Appeals) set aside the said Order-in-Original dated 14.6.07 and allowed the appeal of applicant. The department filed revision application against said Order-in-Appeal dated 19.11.07, which was rejected by G.O.I. vide revision order No. 18/2009-CX dated 20.01.2009. The department filed Writ Petition before Hon'ble Bombay High Court against said G.O.I. order dated 20.01.2009, which was rejected by the Hon'ble High Court. Meanwhile, the original authority sanctioned the rebate claims without interest vide impugned Order-in-Original dated 11.12.2010. Being aggrieved by non sanction of interest, the applicant filed appeal before Commissioner(Appeals), who rejected the same. Now, the applicant has filed this revision applicant 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).

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."

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

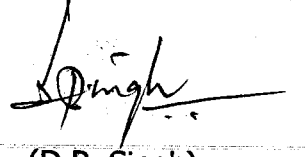
*made by the Assistant Commissioner but by an appellate authority or the Court, then for the purposes of the Section the order passed by the appellate authority or the Court shall be deemed to be an order under sub-Section (2) of Section 11B. Having observed as aforesaid the Supreme Court also held that 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. Government notes that the lower authorities have not considered the above said judgement while passing the impugned orders disallowing interest claim. Both the authorities have erred in not considering these judgements. As such case is required to be remanded back for fresh consideration.

10. Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for fresh consideration of matter in view of above observations and pass a reasoned order in accordance with law. A reasonable opportunity of hearing will be afforded to the parties.



11. The revision application is disposed off in above terms.
12. So, ordered.

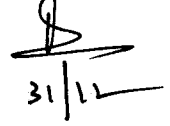


(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Central Excise & Customs,  
Raigad Commissionerate, Ground Floor,  
Kendriya Utpad Shulk Bhawan,  
Sector-17, Plot NO. 1, Khandeshwar,  
Navi Mumbai-410 206.

ATTESTED



31/12

(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  
नई दिल्ली/New Delhi

Order No. 1437 /13-Cx dated 30-12-2013

Copy to:

1. The Commissioner of Central Excise (Appeals) Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra, Kurla Complex, Bandra (East), Mumbai-400 051.
2. The Deputy Commissioner of Central Excise (Rebate), Raigad, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot NO. 1, Khandeshwar, Navi Mumbai-410 206.
3. M/s. Sterlite Industries (I) Ltd., Gate No. 924927, Sanaswadi, Tal-Shirur, Pune -412208.
4. Shri Vipin Kumar Jain, Advocate, Tax Laws Chambers, Advocates Nirmal, 19<sup>th</sup> Floor, Nariman Point, Mumbai 400021.

5. Guard File.

6. PS to JS (RA)

7. Spare Copy

  
(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)