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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F. No. 198/95/WZ/2018-RA

11712

Date of Issue: 27.03.2023

ORDER NO. 168 /2023-CX(WZ)/ASRA/MUMBAI DATED 21.03.23 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of CGST & CX, Ujjain

Respondent : M/s. Spentex Industries Limited

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
IND/EXCUS/000/APP/680/17-18 dated 27.02.2018
passed by the Commissioner (Appeals), GST & CX, Indore.

ORDER

1. This Revision Application has been filed by the Commissioner of CGST & CX, Ujjain (hereinafter referred to as "the Applicant-Department") against the Order-in-Appeal (OIA) No. IND/EXCUS/000/APP/680/17-18 dated 27.02.2018 passed by the Commissioner (Appeals), GST & CX, Indore.

2. Brief facts of the case are that M/s. Spentex Industries Limited (hereinafter referred to as "the Respondent") is engaged in manufacturing and export of Polyester Cotton Blended yarn. They had filed 56 rebate claims under Rule 18 of the Central Excise Rules, 2002 for the rebate of duty paid on raw materials totally amounting to Rs.27,87,824/- used in the manufacture of exported goods. The Rebate sanctioning authority sanctioned the rebate claims vide Order-in-Original (OIO) No. 523/AC/Refund/Div.-II/2017-18 dated 21.11.2017. However, aggrieved by the fact that the interest on the delayed payment of rebate claim was not paid, the Respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned OIA.

3.1 Hence, the Applicant-Department has filed the impugned Revision Application mainly on the following grounds:

- a) The Appellate Authority i.e. Commissioner (Appeal) while making his decision in the instant case has relied upon many case laws and primarily on the Hon'ble Supreme Court's decision in the case of M/s. Ranbaxy Laboratories Ltd., reported as [2011 (273) E.L.T. 3 (S.C.)], and has observed that "in this issue there are umpteen decisions wherein it has been categorically held by the Courts and Tribunals that Interest for delayed refund was payable under Section 11 BB from the date of expiry of 3 months period from the date of receipt of the original refund application".
- b) It is submitted that the inference that "rebate claims of the appellant never attained finality" is based on wrong factual grounds and hence it was erroneously held by Commissioner (Appeals) that the relevant

date is date of filing of rebate claims in original i.e. in the months of June, July & October, 2006.

- c) It is significant to observe that the Hon'ble Apex Court had merely laid down the position of law with respect to admissibility of rebate on the final product and rebate on inputs at the time. In this judgment, it is nowhere mentioned that statutory compliance of law specifically in this case Section 11B of the Central Excise Act, 1944 is not required. The assessee also filed rebate claims of input stage rebates only on the basis of Hon'ble Supreme Court judgment severally. Since the assessee themselves have filed rebate claims severally based on the Supreme Court's judgment, it obviously has a status of fresh rebate claims under Section 11B. This material fact has been considered by the lower adjudicating authority while deciding relevant date for sanction of interest vide the OIO No. 523/AC/Refund/Div-II/2017-18 Dated 21.11.2017. However while deciding the relevant date the Commissioner (Appeal) has not considered this vital aspect. He has thus erred in deciding that the relevant date is filing of rebate claims in original i.e., in the month of June, July & October, 2006.
- d) From the provisions of Section 11B and 11BB, it can be transpired that the "Relevant date" for the purpose of filing refund application shall be date of judgment/order of Appellate Tribunal which in the instant case is 04.09.2017. Consequent to this the party had filed the refund application as per section 11B(1) on 07.09.2017 and interest was payable to the party after three months from the date of application of refund which in the instant case is 06.12.2017 and since lower Adjudicating Authority had sanctioned the Refund claim on 21.11.2017 thus there is no delay in deciding the case hence no interest is payable. But the Commissioner (Appeal) in the impugned OIA dated 27.02.2018 held that the interest is payable from the date of expiry of 3 months from the date of filing of refund claim for the first time before the sanctioning authority, which is illegal, inappropriate and not proper.

e) Further, in the case of Mukund Ltd. Vs CCE, Mumbai-I [1996(88)ELT725(Tri.)], the Hon'ble Tribunal held that, "*Interest Liability to interest under Section 11AA of the Central Excise Act, 1944 does not commence till the dispute is finally settled by the appellate authority/court - Demand for recovery of interest when the matter is pending before CEGAT pre-mature.*" This case law mutatis mutandis applies in the case of refund as the ambit of the demand and refund is same. In other words what applies to demand is applicable to refund case. While passing the impugned order supra the Commissioner(Appeals) has not considered the verdict of the Hon'ble Tribunal in the case of Mukand Ltd. Vs. CCE, Mumbai in which it has been held that the provision for recovery of interest under Section 11 AA of the Central Excise Act can be invoked only after the date of decision of the appellate authority/court. Applying the ratio of the above decision, the relevant date is 07.09.2017 and the three month period for payment of interest on delayed refund is to be computed there from. The Hon'ble Apex Court decided the case on 09.10.2015, consequent to which the refund became admissible to the appellant.

In the light of the above submissions, the Applicant-Department prayed to set aside the impugned order-in-appeal.

3.2 The respondent also filed cross objections, inter alia contending as follows:

a) it is submitted that the Applicant at para-16 of the Grounds of Appeal has contended that the appellant never contested the initial OIOs issued in the FY 2006 and accordingly it stood as final and valid till date. The Applicant has contradicted their statement of facts, narrated at paras 4 & 5. It can be seen that in Para4 they have detailed the above Order-in-Originals and in Para-5, the Applicant has stated as under:

"The assessee being aggrieved with the Order-in-Original of the Deputy Commissioner made an appeal before the Commissioner (Appeals), Central Excise, Indore. The Commissioner (Appeals)

vide his Order-in-Appeal No. WD-1/19-22/2007 dated 05.02.2007 upheld the Orders-in-Original passed by the then Deputy Commissioner, Central Excise, Division, Pithampur.....

- b) It is therefore clear that that the contention of the Applicant that the Respondent never contested the above said 010s and accordingly it stood as final and valid till date is sheer misleading.
- c) The Respondent submit that the Applicant in their grounds of appeal at Para -17 has put-forth arguments that the Hon'ble apex court had merely laid down the position of law with respect to admissibility of rebate on inputs at the time. In this judgment, it is nowhere mentioned that statutory compliance of law specifically in this case, Section-11B of the Central Excise Act, 1944 is not required. It is submitted that this is a very poor logic. The Deputy Commissioner vide 010 dated 25.08.2006, 31.08.2006, 28.09.2006, 10.04.2006 & 29.01.2007 as detailed in the preceding para had sanctioned rebate to the extent central excise duty paid on export goods after having been satisfied that the rebate applications filed on 31.05.2006, 27.06.2006, 14.07.2006/28.07.2006/28.08.2006, 14.07.2006 and 20.10.2006 respectively, were as per sub-section (2) of Section 11B of the Central Excise Act, 1944 that said amount is refundable to the Respondent.
- d) The Respondent humbly submit that the findings of the Hon'ble Commissioner (Appeals) is in consonance with the provisions of Section 11-B and Section 11-BB of the Central Excise Act, 1944 and, thus, does not call for any interference by this Hon'ble authority. Hon'ble Allahabad High Court in the case of Siddhant Chemicals v/s Union of India [2014 (307) ELT 44 (All)] held that under Section 11BB of Central Excise Act, 1944 interest has to be paid automatically, if an expiry of period of 3 months from the date of receipt of application for refund, if amount claimed is not refunded. The payment of interest is not dependent on claim by party.

4. Several personal hearing opportunities were given to the Applicant-Department and the respondent viz. on 13.10.2022, 03.11.2022, 08.12.2022 and 22.12.2022. However, both of them did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been given, the matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the main issue involved in the instant Revision Application is to decide the date from when interest under section 11BB of the Central Excise Act, 1944 would be payable to the respondent for delayed payment of rebate?

7. Government observes that 56 rebate claims were filed by the respondent, under Rule 18 of the Central Excise Rules, totally amounting to Rs.27,87,824/-, during the period May, June, July & Oct'06, in respect of duty paid on raw materials used for manufacture of export goods. The rebate claims were initially rejected, but after the revision application of the respondent was allowed by the Government of India vide Order dated 04.09.2017, based on the Hon'ble Supreme Court's judgment dated 09.10.2015 on interpretation of Rule 18 of Central Excise Rules,2002 in respondent's earlier case, the respondent re-submitted the claims on 07.09.2017. This time the claims were sanctioned vide impugned OIO. However, the respondent filed an appeal demanding interest under Section 11BB of the Central Excise Act, 1944 from the date of initially filing the rebate claims, which was allowed by the Appellate authority vide impugned OIA.

8. Government observes that the Applicant-Department has contended that initial OIO rejecting the rebate claims had attained finality and that the respondent themselves had filed rebate claims severally based on the Supreme Court's judgment, therefore it obviously had a status of fresh

rebate claims under Section 11B. Government observes that if this view of the Applicant-Department is accepted then the entire lot of so called 'fresh rebate claims' submitted by the respondent on 07.09.2017 was required to be rejected on the grounds of being time-barred under Section 11B *ibid*, being filed after the stipulated period of one year from the date of shipment of export goods. The very fact that the impugned rebate claims have been sanctioned contradicts this contention of the Applicant-Department.

9. Government do not find the case law of Mukand Ltd. Vs. CCE, Mumbai-I, relied upon by the Applicant-Department, as relevant in the instant context. On the other side, Government observes that the case law relied upon by the Appellate authority, viz. Ranbaxy Laboratories Ltd. v. Union of India — 2011 (273) E.L.T. 3 (S.C.) has been the basis of numerous subsequent judgments. One such judgment passed recently is Lavino Kapur Cotton Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai [(2023) 2 Centax 306 (Bom.) [02-12-2022] (2023)] wherein Hon'ble Bombay High Court has held as under:

13. The question which arises for our consideration is whether 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 the application for refund under section 11B(1) of the Act or the date on which the Order of refund is made?

14. The date of filing of application for refund before the Authority is not in dispute. Assuming that the Assistant Commissioner of Central Excise, in the present case, had proceeded to accept the claim of the Appellant for refund and proceeded to pass an Order in terms of Section 11B(2) of the Act, then in case the amount was not refunded despite such an Order, the Appellant would be entitled to interest on the delayed payment of the refund after the expiry of three months from the date of such an Order. Section 11B, therefore, does not at all envisage an application to be filed seeking refund. The only application, which Section 11B envisages is an application for refund in terms of Section 11B(1) and the only Order that the said Section 11B envisages is an Order under section 11B(2), where if satisfied, the Assistant Commissioner of Central Excise or Deputy Commissioner may make an Order for refund of the whole or any part of the duty of excise and interest if any paid on such duty paid by the Appellant.

15. *With a view to ensure that despite an Order being passed in terms of Section 11B(2), the amount of refund is not withheld for an unreasonably long period of time, Section 11BB envisages payment of interest on delayed refund beyond the period of three months from the date of receipt of an application under sub-section (1) of Section 11B. The rate of interest which is payable is at a the rate not below 5 per cent and not exceeding 30 per cent per annum, which may be fixed by the Central Government in an official gazette.*

The explanation appended to Section 11BB clearly takes care of a situation, where an Order of refund is made by the Commissioner of Appeals, the Appellate Tribunal or any Court against an Order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under sub-section (2) of Section 11B, such an Order would be deemed to be an Order passed under the said sub-section (2) of Section 11B for the purposes of Section 11BB, that is payment of interest on delayed refund.

16. *A reading of the aforementioned provisions makes it clear that in a case where the Order is passed by the Appellate Tribunal, as has been done in the case of the Appellant, by virtue of its Order dated 13 October 2017, the said Order is deemed to be an Order under sub-section (2) of Section 11B and interest would be liable to be paid on delayed refund and therefore, interest would be liable to be paid in terms of Section 11BB on delayed refund as if it was an Order passed under sub-section (2) of Section 11B if the amount was not refunded within three months from the date of receipt of the application under sub-section (1). This issue, however, is no longer res integra.*

17. *The Apex Court in Ranbaxy Laboratories Limited (supra) has held as under :*

"19. 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 11-BB 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 the order of refund is made."

18. *In our view, therefore, the tribunal, in its Order impugned wrongly applied the judgement of the Apex Court supra for purposes of denying the benefit of interest on delayed refund by holding that it was not*

entitled to the same from the date of the application under section 11B(1), but only after the expiry of three months from the date of the Order of the tribunal dated 10 February 2016, if such applications were filed in terms of the said Order and were disposed of within three months thereof.

19. Be that as it may, we allow the appeals and answer the question in favour of the Appellant.

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. IND/EXCUS/000/APP/680/17-18 dated 27.02.2018 passed by the Commissioner (Appeals), GST & CX, Indore and rejects the impugned Revision Application.


21/3/23
(SHRAWAN KUMAR)

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

ORDER No. 168 /2023-CX(WZ)/ASRA/Mumbai dated 27.03.23

To,

M/s. Spentex Industries Limited,
(now known as CLC Industries Limited)
51-A, Industrial Area, Sector-III,
Pithampur, Dist. - Dhar (M.P.).

Copy to:

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2. Adv. Alok Barthwal
215A, Bansi Trade Centre
581/5, M.G.Road,
Indore - 452 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.