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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F.No.195/680/2010-RA-CX

Date of Issue: 12/02/20

ORDER NO. 169/2020-CX (WZ)/ASRA/MUMBAI DATED 05.02.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Reliance Industries Ltd.

Respondent : Commissioner of Central Excise(Appeals), LTU, Mumbai

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
SB/72/LTU/MUM/2/10 dated 18.05.2010 passed by the
Commissioner of Central Excise(Appeals), LTU, Mumbai.

ORDER

This Revision Application is filed by the M/s Reliance Industries Ltd., Maker Chamber-IV, 3rd Floor, 222, Nariman Point 400 021 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. SB/72/LTU/MUM/2/10 dated 18.05.2010 passed by the Commissioner of Central Excise(Appeals), LTU, Mumbai.

2. During the period 29.05.2006 to 18.12.2006, Applicant's Patalganga Unit, Raigad had filed 192 rebate claims under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER') and also claimed one refund under Rule 5 of the Cenvat Credit Rules,2004 (herein after as 'CCR') in respect of the goods cleared for export. While granting the said rebate/refund claims they were not granted interest on delayed refund as these claims were sanctioned beyond three months from the date of filing claims. Hence the Applicant then filed their application dated 04.05.2007 for claim of interest of Rs. 31,20,926/-. The Assistant Commissioner, Central Excise & Customs, Rasayani Division vide Order-in-Original No. RC-13/RAS/08-09 dated 09.03.2009 rejected their claim of interest on the following grounds:

- (i) Interest of Rs. 16,37,800/- - In respect of 108 rebate claims (43+65 claims) were having some discrepancies and returned to the Applicant. The Applicant then resubmitted and subsequently 43 claims were sanctioned within three months from resubmission and 65 claims were sanctioned little beyond three month from resubmission. As regards the 65 claims, the Assistant Commissioner while sanctioning rebate had not given specific direction to pay interest and such rebate sanction

orders were appealable. Since the Applicant had not filed any appeal, orders of sanctioning rebate claims must be treated as full and final.

- (ii) Interest of Rs. 2,13,722/- - In respect of 46 rebate claims were having some discrepancies and returned to the Applicant. Subsequently, rebates were sanctioned within three months of resubmission and therefore no question of any interest payment.
- (iii) Interest of Rs. 8,18,782/- - In respect of 38 rebate claims were sanctioned beyond 90 days from the date of filing, however on refund is not payable as the Assistant Commissioner while sanctioning rebate had not given specific direction to pay interest and such rebate sanction orders were appealable. Since the Applicant had not filed any appeal, orders of sanctioning rebate claims must be treated as full and final.
- (iv) Interest of Rs. 4,50,622/- - In respect of one refund claim under Rule 5 of the CCR which was sanctioned and appealed by the Department and pending with CESTAT for decision. As refund of principal amount is agitated and the issue is subjudice, interest claim is premature and liable for rejection.
- (v) The provision of Section 11BB of the Central Excise Act, 1944 (herein after as 'CEA') have not been incorporated in the notification issued under Rule 5 of the CCR and liability to pay interest under Section 11BB, if refund is sanction beyond three month is not applicable in this case.

Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise(Appeals), LTU, Mumbai who vide Order-in-Appeal No. SB/72/LTU/MUM/2/10 dated 18.05.2010 partially allowed the appeal i.e.

no interest is payable in respect of 108 and 46 rebate claims and interest payable in respect of 36 rebate claims and one refund claim under Rule 5 of the CCR. Aggrieved, with the Order-in-Appeal dated 18.05.2010 to the extent it hold that the Applicant was not entitled to interest payable in respect of 108 and 46 rebate claims, the Applicant then filed appeal with the Revisionary Authority. The Joint Secretary vide GOI Order No. 604/12-CX dated 25.05.2012 rejected the Applicant's revision application, but also set aside the order of the Commissioner(Appeals) to the extent it partially allowed the Applicant's claim for interest and restored the Order-in-Original No. RC-13/RAS/08-09 dated 09.03.2009. The Applicant then filed a Writ Petition No. 2797 of 2012 with the Hon'ble Bombay High Court. Vide its Order dated 19.11.2014, the Hon'ble High Court quashed and set aside the GOI Order dated 09.03.2009 and restored the Revision Application for being heard and decided afresh on merits and in accordance with law.

3. Being aggrieved with the Order-in-Appeal dated 18.05.2010, the Applicant filed the Revision Application on the grounds that all the documents stipulated in Para 8.3 of the CBEC's Excise Manual of Supplementary Instructions 2005 had been filed with the rebate applications viz the claim for rebate on letter head giving the ARE-I nos and dates, corresponding Invoice nos and dates, amounts of rebate on each ARE-1s and its calculations, Original copy of the ARE-1, Invoice issued under Rule 11 and self attested copies of the Shipping Bills and Bill of Lading. The deficiencies/queries were raised several days after the expiry of the period of 48 hours of the receipt of rebate application as stipulated in the Board's Circular No. 130/41/95-CX dated 30.05.1995. The only inquiry contemplated by the Notification 19/2004-CE(NT) dated and Para 8.4 of the CBEC's Manual is the comparison of the various copies of the ARE-1 and the ascertainment on the basis of such comparison of the fact of export and the payment of duty. On carrying out of such comparison and

ascertainment, the rebate has to be granted and if there is any delay in the grant of the rebate the consequence of interest has to follow. Further, assuming that the date of rectifying the discrepancies is the relevant date for calculating the time duration for interest, in that case also they are entitled for interest on delayed refund/rebate amount to Rs. 2,98,002/- which were sanctioned after 90 days from the date of resubmission. The period of three months under Section 11BB has to be reckoned from the date of receipt of the application under Section 11B(1) which is the date on which the application was originally filed and not the date the date on which it was re-submitted after removal of defects. The Applicant prayed that the Order-in-Appeal be set aside to the extent it holds that the Applicant is not entitled to interest of Rs. 7,13,919/- and Rs. 9,23,875 pertaining to 43 and 65 rebate claims respectively and the claims for interest of Rs. 2,13,722/- pertaining to 46 claims and the Applicant be granted interest of Rs. 18,51,516/- on delayed payment of refund.

4. A personal hearing in the case was held on 17.10.2019. Ms Shilpa Balani, Advocate appeared on behalf of the Applicant and Shri Bhupendra Singh, Assistant Commissioner, Raigad Commissionerate appeared on behalf of the Respondent. The Applicant submitted that interest was claimed as all prescribed documents were given. They prayed that what was allowed in the Order-in-Appeal cannot be taken back as the department had not filed a revision application against the Order-in-Appeal.

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 notes that in the Applicant's Writ Petition No. 2797 of 2012, the Hon'ble Bombay High Court vide Order dated 19.11.2014, set aside the GOI Order No. 604/12-CX dated 25.05.2012 and the Revision Application was restored to the file of the Revisionary Authority for being

heard and decide the matter afresh on merit and in accordance with law. Against this background, Government takes up the current Revision Application afresh.

7. The issue in the current revision application is whether the Applicant is entitled or not to the interest on delayed refund under Section 11BB of Central Excise Act, 1944 in respect of the 108 [43 nos (tabulated in Para 3 of the OIO dated 09.03.2009) + 65 nos (tabulated in Para 6 of the OIO dated 09.03.2009)] and 46 nos (tabulated in Para 4 of the OIO dated 09.03.2009) rebate claims.

8. Government observes that the Applicant has filed application dated 04.05.2007 under Section 11BB of Central Excise Act, 1944 for the interest on delayed refunds and has claimed interest by calculating from the date of submission of their rebate applications. Therefore, interest is due on the delay refund at the prescribed rate. Section 11BB deals with interest on delayed refunds. Section 11BB of CEA, 1944 states that

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

Provided 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 [, National Tax 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, the

order passed by the Commissioner (Appeals), Appellate Tribunal [National Tax 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.]”

9. In the instant case, the issue involved is determination of the date of receipt of refund claim application under Section 11B of CEA, 1944 and which of these dates i.e. date of filing incomplete claim or date of correction of the deficient claim has to be merited for commencement of the statutory period of 3 months for the purpose of Section 11BB of CEA, 1944.

10. In this regard, the provisions of Para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions are very clear which state that

“2.4 It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not within three months of filing of claim. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of documents not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period.”

Further, the Board's Circular 130/41/95-CX dated 30.05.1995 also clearly states that for the purpose of Section 11BB of Central Excise Act, 1944, relevant date shall count from the date of receipt of all the requisite information or documents. Hence Government finds that the liability of Department to pay interest under Section 11BB of the CEA commences from the date of expiry of three months from the date of receipt of all requisite information or documents in respect of the refund application under Section 11B of the CEA. In this, Reliance is also placed on the Case law of the Hon'ble Supreme Court judgment in the case of Ranbaxy Laboratories V/s Union of India & ORS dated 21.10.2011[2011 (272) ELT 3 (SC.)]


11 On perusal of the Order-in-Original No. RC-13/RAS/08-09 dated 09.03.2009, it is observed that discrepancies were noticed in respect of 43 nos (tabulated in Para 3 of the OIO dated 09.03.2009) and 46 nos (tabulated in Para 4 of the OIO dated 09.03.2009) rebate claims respectively and the same were communicated to the Applicant and subsequently the requisite documents/clarification were submitted by the Applicant. In respect of these 89 rebate claims mentioned in Para 3 and Para 4 respectively of the Order-in-Original dated 09.03.2009, the said claims were sanctioned within three months from the date of submission of requisite information/documents. Hence the Applicant is not entitled for interest in the said rebate claims. Since these claims are refunded within the statutory period of 3 month from the date of receipt of refund application, the question of interest on the refunded amount does not arise.

12. In respect of 65 (tabulated in Para 6 of the OIO dated 09.03.2009) rebate claims, it is observed that in these claims discrepancies were noticed and the same were communicated and returned to the Applicant. On resubmission and requisite documents/clarification by the Applicant, the claims were sanctioned beyond three months from the date of resubmission of claims and submission of requisite documents/clarification. Government finds that interest under Section 11BB of Central Excise Act, 1944 is payable after expiry of the three months from the date of submission of rebate claims. In the instant case rebate was sanctioned after the expiry of the statutory of statutory period of 3 months in respect of the aforementioned 65 claims and hence are entitled for interest for the delayed period.

13. Therefore, the Government remands the matter to the original authority for scrutiny of these 65 claims for the purpose of determination of the period which is over above the statutory period of 90 days for the purpose of determination and payment of interest on delayed refunds.

14. In view of the above, Government modifies the impugned Order-in-Appeal No. SB/72/LTU/MUM/2/10 dated 18.05.2010 passed by the Commissioner of Central Excise(Appeals), LTU, Mumbai and partially allow the Revision Application filed by the Applicant

15. So, ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 169/2020-CX (WZ)/ASRA/Mumbai Dated 05-2-2020.

To,
M/s Reliance Industries Ltd.,
Maker Chamber-IV, 3rd Floor, 222,
Nariman Point, Mumbai 400 021.

Copy to:

1. The Commissioner (Appeals), LTU, Mumbai.
2. The Commissioner of GST & CX, Raigad Commissionerate,
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file