

REGISTERED
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. 198/81/WZ/2018-RA

1756

Date of Issue: 27.03.2023

ORDER NO. 170 /2023-CX(WZ)/ASRA/MUMBAI DATED 27.03.23 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.

Applicants : Commissioner of CGST & CX, Nagpur -I

Respondent : M/s. Spentex Textiles Limited

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
NGP/EXCUS/000/APPL/610/17-18 dated 19.12.2017
passed by the Commissioner (Appeals), GST & CX, Nagpur.

ORDER

1. This Revision Application has been filed by the Commissioner of CGST, Nagpur-I (hereinafter referred to as "the Applicant-Department") against the Order-in-Appeal (OIA) No. NGP/EXCUS/000/APPL/610/17-18 dated 19.12.2017 passed by the Commissioner (Appeals), GST & CX, Nagpur.
2. Brief facts of the case are that M/s. Spentex Textiles Limited (hereinafter referred to as "the Respondent") is engaged in manufacture of Polyester Cotton Blended Yarn, Polyester Blended Viscose falling under chapter 55 of the Central Excise Tariff Act, 1985. They had filed 45 rebate claims under Rule 18 of the Central Excise Rules, 2002 for the rebate of duty paid on raw materials totally amounting to Rs.71,48,508/- used in the manufacture of exported goods. The Rebate sanctioning authority sanctioned the rebate claims alongwith interest amounting to Rs.7,14,459/- vide Order-in-Original (OIO) No. 69/Dn.Hingna/Reb/2017-18 dated 25.09.2017. However, aggrieved by the fact that the interest on the delayed payment of Rebate claim was not paid from the expiry of 3 months period from filing of rebate claim originally during the month of November 2004 and December 2004, but from 27.10.2015 i.e. the date on which application for refund was re-filed by the respondent consequent to Apex Court Order dated 09.10.2015, the Respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned OIA.
3. Hence, the Applicant-Department has filed the impugned Revision Application mainly on the following grounds:
 - a) The reliance on all the case law quoted by the Commissioner(Appeal) is misplaced as there is no dispute with regards the payment of interest to applicant from the date of application and on the contrary the O-I-O takes due cognizance of the same.
 - 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 month of November & December, 2004.

- 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.69/Dn.Hingna/Reb/2017-18 dated 25.09.2017. 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 November & December, 2004.
- d) 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 finality settled by the appellate authority/court-Demand for recovery of interest when the matter is pending before CEGAT pre-nature.*" This case law mutatis mutandis applies in the case of refund as the ambit of the demand and refund are same. In other words what applies to demand is applicable to refund case. While passing the impugned order supra the Commissioner(Appeals) have 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 27.10.2015 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.

4. Several personal hearing opportunities were given to the Applicant-Department and the respondent viz. on 06.10.2022, 19.10.2022, 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 45 rebate claims were filed by the respondent, under Rule 18 of the Central Excise Rules, totally amounting to Rs.71,48,508/-, during the period Nov-Dec'04, in respect of duty paid on raw materials used for manufacture of export goods. The rebate claims were initially rejected, but after the Hon'ble Apex Court's judgment dated 09.10.2015 went in favour of the respondent, they re-submitted the claims on 27.10.2015 alongwith Supreme Court decision. This time the claims were sanctioned vide impugned OIO alongwith interest under Section 11BB of the Central Excise Act, 1944 payable from 27.10.2015. However, the respondent appealed against this decision, demanding interest from the date of initially filing the rebate claims, viz. Nov-Dec'04, 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 27.10.2015 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 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) 2 Centax 306 (Bom.)] 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.

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.

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. NGP/EXCUS/000/APPL/183/17-18 dated 11.07.2017 passed by the Commissioner (Appeals), GST & CX, Nagpur and rejects the impugned Revision Application.


21/13/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 170 /2023-CX(WZ)/ASRA/Mumbai dated 21.03.23

To,

M/s. Spentex Textiles Limited,
A-31, MIDC Industrial Area.
Butibori, Nagpur - 441 122.

Copy to:

1. Commissioner of CGST & Central Excise,
Nagpur-I Commissionerate,
GST Bhavan, Civil Lines,
Telenghedi Road, Nagpur - 440 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.