

198/498/11-RA

REGISTERED

SPEED POST



F.No. 198/498/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 18/12/12

ORDER NO. 1754/12-Cx DATED 17-12.2012 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 : ORDER IN REVISION APPLICATION FILED, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE ORDER-IN-APPEAL No. 26/Kol-I/2011 dated 18.4.11 passed by Commissioner of Central Excise (Appeals-I), Kolkata.

APPLICANT : Commissioner of Central Excise, Kolkata-I

RESPONDENT : M/s Dujodwala Resins & Terpenes Ltd., Kolkata

ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Kolkata-I Commissionerate against the orders-in-appeal No.26/Kol-I/2011 dated 18.4.11 passed by Commissioner of Central Excise (Appeals-I), Kolkata with respect to order-in-original No.02/MC/ER/KOL-I/2009 dated 7.12.09 passed by the Maritime Commissioner, Central Excise, Kolkata-I.

2. Brief facts of the case are that the respondents M/s Dujodwala Resins & Terpens Ltd., Kolkata cleared the excisable goods "Rosin Refined" on payment of duty for export from manufacturing unit situated at Industrial Complex, Bari Brahmana, Jammu-18113 and submitted the rebate claim of Rs.71,75,382/- and Rs.101,861/- on 20.11.2006 and 19.01.2007, respectively. The two rebate claims were not sanctioned as the exporter was availing the benefit of exemption under notification No.56/2002-CE dated 14.11.2002. Finally the two rebate claims were sanctioned on 2.6.08 after enactment of Finance Bill 2008 on 10.5.08 where clause 83 amended Rule 18 of Central Excise Rules, 2002 with retrospective effect so as to allow rebate of duty paid on excisable goods cleared from factory for export for which refund has been granted under certain notifications issued under Section 5A of Central Excise Act, 1944. It was further found that the rebate claim was sanctioned within one month of enactment of Finance Bill, 2008 and as there were no provision in the law to provide interest for such delay in sanctioning rebate claim as the appellant were not entitled to get rebate claim prior to enactment of Finance Bill, 2008, the adjudicating authority rejected the claim for interest.

3. Being aggrieved by the order-in-original, the respondent filed appeal before Commissioner (Appeals) who set aside the impugned order and allowed the appeal of the respondent.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Appellate Authority has observed that when the refund claims (2 nos.) have been sanctioned creating the same as to have been filed within time and the objection raised through issuance of SCN proposing rejection of rebate claim in view of availment of benefit of notification No.56/2002-CE dated 14.11.02 for the period from 1.3.02 to 7.12.06 (the subject goods cleared from the factory) have also been over-ruled by Govt. of India. There is no justification for not paying the interest to the assessee as per Section 11BB of the CEA, 1944.

4.2 The observation of the Commissioner (Appeal-I), Kolkata does not appear to be legally correct as the same appear contrary to the provision as laid down in the Circular No.670/61/2002-Cx dated 1.10.02 which was issued against the back drop of the sanctioning of refund beyond a period of three (3) months and non-payment of interest on such sanctioned either assigning any reason or giving vague and unconvincing reason. But in the instant case, the chronology of event proves that the Maritime Commissioner had no scope of giving blanket sanction to the claims without getting him satisfied from the orders/notifications/circulars issued by the Govt. of India specifically issued in respect of rebate claims. As, during the material period (when the rebate claim was filed) the assessee was availing benefit of Notification No.56/2002-CE dated 14.11.2002 which inter-alia provide for exemption to specified goods manufactured by units located in specified areas of Jammu & Kashmir equal to Duty of Excise and Additional Duty of Excise paid in cash by way of making refund of the said amount of duty paid to the manufacturer or the manufacturer at his own option may take credit of such amount of duty. Hence, assessee was not entitled to get refund of rebate.

4.3 In view of the amendment of Rule 18 of Central Excise Rules 2002 by the Finance Act, 2008, it is inter-alia mentioned that the exporter became ineligible for grant of rebate in the instant case and the validity of the said rebate claim had become operative only w.e.f. 10.5.2008. The noticee submitted their refund claim on 20.11.2006 and 19.1.2007 respectively and the rebate was sanctioned on 2.6.2008 i.e. within one month from the date of enactment of Finance Bill, 2008 (amending Rule 18

of C.E.Rules, 2002) i.e. on 10.5.2008. Thus, there was no delay in sanctioning rebate by the department.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. They vide their letter dated 23.7.12 submitted the following case laws as claimed in their favour:

- GOI Order No.206-209/12-Cx dt. 24.2.12
- GOI Order No.247/11-Cx dt. 17.3.11
- Ranbaxy Laboratories Vs. UOI 2011 (273) ELT 3 (SC)
- UOI Vs M/s. Jindal Drugs (HC).

6. Personal hearing scheduled in this case on 11.10.12. Shri Sanjay Bhardwaj, Authorized signatory appeared on behalf of the respondent who reiterated the defence submission made at para 5 above. Nobody appeared for hearing from department side.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. On perusal of records Government observes that the rebate claim of the respondents was submitted on 20.11.06 and 19.1.07 respectively. The claim was not sanctioned as the exporter was availing benefit of exemption under Notification no.56/2002 CE dated 14.11.02. The amount was sanctioned only after the enactment of the Finance Bill 2008 on 10.5.08 where Clause 83 amended Rule 18 of Central Excise Rules 2002 with retrospective effect so as to allow rebate of duty paid on excisable goods cleared from the factories for export for which refund has been granted under certain Notification issued under Section 5A of Central Excise Act 1944 for the period from 1.3.02 to 7.12.06. As there was no legal provision to sanction rebate of duty to the exporter who was already availing the benefit under Notification No.56/02-CE dated 14.11.02 prior to Finance Bill 2008 the original authority observed that the respondents become eligible for the rebate only after enactment of Finance Bill 2008 on 10.5.08. He held that the rebate was sanctioned within a month of enactment of the Finance Bill 2008 hence there was no scope to allow interest on the sanctioned amount of rebate. Commissioner (Appeals) allowed the appeal of the respondents observing that it is well

settled law that the refund due must be disbursed within three months from the date of submission of application. He also relied upon the CBEC Circular No.670/61/2002-Cx dated 1.10.02 which provides that the provision of Section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned from beyond three months and jurisdictional officers are not required or look for instruction from higher appellate authorities. Now the applicant department has filed this Revision Application on the grounds stated at para 4 above.

9. Government notes that the respondents have countered all the arguments of department and stated that they are entitled for interest in terms of section 11B and relied upon the various case laws including Supreme Court, Judgment dt. 21-10-2011 in the case of Ranbaxy Laboratories Ltd. vs UOI reported on 2011 (273) ELT 3 (SC).

9.1 Government notes that Rule 18 of Central Excise Rules, 2002 was amended retrospectively w.e.f. 1.03.02 to 7.12.06 vide Section 88 of Finance Act, 2008 allowing rebate of duty paid on excisable exported goods for that portion of duty for which refund has been granted in terms of area based exemption notification to the manufacturer. The said amendment in Rule 18, make such rebate claims admissible during the period 1.03.02 to 7.12.06. Government observes that the retrospective validation of admissibility of rebate claims, made the claimant entitled for said rebate claim during the relevant period. The said amendment has not put any bar on payment of interest in terms of Section 11BB for delay payment of said refund claims. So the time limit provided under Section 11BB for the purpose of computing interest liability has to be adhered to. Interest liability arises when any duty ordered to be refunded under Section 11B(2) is not refunded within three months from the date of receipt of application under Section 11B(1). Since the said amendment has not put any restriction on the payment of interest in terms of Section 11BB, the argument of department that interest will arise after three months of amendment, does not hold good.

9.2 Government notes that Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories vs UOI reported on 2011-TIOL-105-SC-CS in its judgement dated 21.10.11 has settled the issue and 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)

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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."*

9.3 In another case of M/s Jindal Drugs, Government 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 its judgment dated 30.01.2012 has upheld the Government Order vide 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:

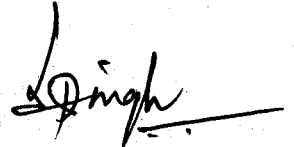
"2. *Counsel appearing on behalf of the Petitioner submitted that the entitlement of the Respondent to a rebate was crystallized only on 6 December 2007 when the notice to show cause was dropped by the Commissioner of Central Excise. The rebate claims were sanctioned within a period of three months thereafter 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."

10. Thus, so far as repeated argument of the department that the impugned rebate claims became legally payable only after the issue of keeping the said claims in abeyance was finally settled vide amendment of Rule 18 of Central Excise Rules, 2002 vide Finance Act, 2008, is concerned, the above cited judgements have unambiguously settled the issue by holding that interest under Section 11BB becomes payable on the expiry of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and any explanation/reasons due to which the delay occurred, will not have any bearing upon the said legal position. Therefore, Government finds no infirmity in the impugned order-in-appeal and upholds the same.

11. The revision application is thus rejected being devoid of merit.
12. So ordered.



(D.P.Singh)

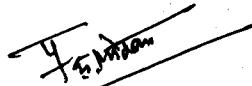
Joint Secretary (Revision Application)

Commissioner of Central Excise
Kolkata-I Commissionerate
Kendriya Utpad Shulk Bhawan (1st Floor)
180, Shanti Palli, Kolkata

Copy to:

1. M/s Dujodwala Resins & Terpenes Ltd., OM Tower, 6th Floor, 32 Jawaharlal Nehru Road, Kolkata-700071.
2. The Commissioner of Central Excise (Appeal-I), 169, AJC Bose Road, Bamboo Villa (4th Floor), Kolkata-700014.
3. The Maritime Commissioner of Central Excise, Kendriya Utpad Shulk Bhawan, 8th Floor, 180, Shanti palli, Rajbada Main Road Kolkata-700107.
4. Shri Sanjay Bhardwaj, Authorized Signatory, C/o Dujodwala Resins & Terpenes Ltd., OM Tower, 6th Floor, 32 Jawaharlal Nehru Road, Kolkata-700071.
5. PS to JS(RA)
6. Guard File
7. Spare Copy

ATTESTED



(P.K.Rameshwaram)
OSD (Revision Application)