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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
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Mumbai- 400 005

195/35-A/15-RA / 946

Date of Issue: 06/07/2018

ORDER NO. 178 /2018-CX (WZ)/ASRA/MUMBAI DATED 07.06.18 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. PUNE-EXCUS-001-APP-112-14-15 dated 25.11.2014 passed by the Commissioner (Appeals), Central Excise, Pune I.

Applicant : M/s Tata BlueScope Steel Limited, Pune.

Respondent : The Commissioner, Central Excise, Pune-I.



ORDER

This Revision application is filed by M/s. Tata BlueScope Steel Ltd., Pune (hereinafter referred to as 'applicant') against the Order in Appeal No. PUNE-EXCUS-001-APP-112-14-15 dated 25.11.2014 passed by the Commissioner (Appeals), Central Excise, Pune I.

2. The brief facts of the case is that the applicant had received an order for manufacture and supply of Pre-Engineered Steel Buildings (PEB) from M/s Perols Telecommunications & Electronics ("the Customer") an SEZ unit in the NOKIA Telecom SEZ, Kanchipuram Dist., Tamil Nadu - 602105, against which it supplied PEB to the Customer on payment of Excise duty and filed a Rebate claim for Rs. 30,07,548/- (Rupees Thirty Lakh Seven Thousand Five Hundred and Forty Eight only) on 29.04.2011. The said rebate claim was decided vide Order in Original dated 19.09.2011 wherein part amount of Rs.27,54,420/- (Rupees Twenty Seven Lakh Fifty Four Thousand Four Hundred and Twenty only) was sanctioned and the remaining amount of Rs. 2,53,128/- (Rupees Two Lakh Fifty Three Thousand One Hundred and Twenty Eight only) was rejected. Aggrieved by the Order in Original dated 19.09.2011, the applicant preferred an appeal before Commissioner (Appeals) against the said Order who vide his Order in Appeal No. PI/RKS/19/2012 dated 27.01.2012 allowed the claim of Rs.2,53,128/-.

3. Subsequently, the applicant vide letter dated 14.05.2013 requested the respondents to sanction the balance amount of rebate claim of Rs.2,53,128/- in terms of Commissioner (Appeals) Order dated 27.01.2012. However, a show cause notice was issued to the applicant on 19.07.2013 proposing to reject the rebate claim amounting to Rs.2,53,128/- on the ground of limitation in terms of Section 11 B of the Central Excise Act, 1944. The said show cause notice was decided the Assistant Commissioner, Central Excise, Pune-IV Division, Pune-I Commissionerate vide Order in Original No. P-I/Div.IV/Reb/179/2013 dated 12.08.2013 wherein the rebate claim was as time barred.



4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Pune-I, however, the said Commissioner (Appeals) vide Order in Appeal No. PUNE-EXCUS-001-APP-112-14-15 dated 25.11.2014 upheld the OIO to the extent of rejection of the Rebate claim of INR 2,53,128/-.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds that:

5.1 the Commissioner has denied Rebate claim on the basis of incorrect interpretation of clause (ec) to Explanation (B) to Section 11B of the Excise Act. The Commissioner ought to have appreciated that the aforesaid provision of the Act is applicable only in cases where duty is refundable as a consequence of judgment, decree, order or direction of appellate authority. The Commissioner failed to appreciate that the said provision will be applicable to cases wherein duty deposited during the course of litigation, investigation, etc. is refundable due to favorable order from Appellate Authorities. In other words, the said provision is applicable to fresh Refund claims which are due because of favorable order at appellate forum and not to a refund claim filed earlier and adjudicated in favour of applicant by the Appellate Authorities.

5.2 they had filed the Rebate claim within the time prescribed [as specified under Section 11B of the Excise Act, and the Rebate amount was refundable to the Applicant immediately after the receipt of OIA dated January 27, 2012. Further, there was no requirement on part of the Applicant to file a fresh Rebate claim given that the same was sanctioned by the Hon'ble Commissioner (Appeals) setting aside the OIO dated September 19, 2011 in favour of the Applicant.



- 5.3 the Commissioner has erred in stating that as per clause (ec) to Explanation (B) to Section 11B of the Excise Act the Applicant should have filed a Rebate claim application within one year from the relevant date i.e. the date of the OIA.
- 5.4 they submitted that there would not arise any additional application for the same exports. Also, it may please be noted that the Commissioner had rejected only a part of the said Rebate claim on certain grounds which was appealed before the Commissioner and the order rejecting the said claim was set aside in favour of the Applicant.
- 5.5 they referred to the decisions in the case of Spic Ltd. vs. CCE [2007 (209) E.L.T. 91 (Tri.)] and Bajaj Auto Ltd vs. Commissioner [1996 (88) E.L.T 763]; wherein categorically it was held that filing of fresh application for refund is not warranted in case of favourable appellate order in original Refund claim.
- 5.6 that it is a settled law that the date of filing of initial claim shall be considered as the relevant date for the purpose of computation of limitation period. In this regard, the Applicant placed strong reliance on the case of Re: Dagger Forst tools Limited [2011 (271) E.L.T. 471 (GOI)]; wherein it was held that initial date of filing Rebate claim is the relevant date under Section 11B of the Excise Act.
- 5.7 The Applicant further referred to the judgements:
- IN RE : Famy Care Ltd. [2014 (311) E.L.T. 871 (G.O.I.)]
 - Shasun Pharmaceuticals Ltd. vs Joint Secretary, M.F. (D.R.), New Delhi [2013 (291) E.L.T. 189 (Mad.)]
 - IN RE : I.O.C. LTD. [2007 (220) E.L.T. 609 (G.O.I.)]
 - Commissioner of Central Excise, Bolpur v. Bhandiguri Tea Estate [2001 (134) E.L.T. 116 (Tri. Kol.)]
 - Goodyear India Ltd. v. Commissioner of Customs, Delhi [2002 (150) E.L.T. 331 (Tri. Del.)]
 - CCE, Delhi-I v. Aryan Export & Ind. [2005 (192) E.L.T. 89 (DEL.)]



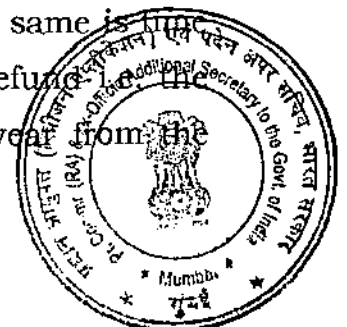
- CCE, Bolpur v. Bhandiguri Tea Estate [2001 (134) E.L.T. 116 (T. Kol.)]
- CCE, Pune-I v. Motherson Sumi Systems Ltd. [2009 (247) E.L.T., 541 (T. Mum.)]

5.8 the Commissioner has considered the request letter [dated May 14, 2013] submitted by the Applicant as a Rebate claim. The Applicant had only filed a request letter and not a fresh Rebate claim per-se.

5.9 as per provisions contained in Section 11B(1) of Excise Act, any person claiming Refund of Excise duty [and interest, if any] needs to file an application within one year from the "relevant date". Further, as per Section 11B (2) of the Excise Act, where on receipt of an application under Section 11B(1) of the Excise Act the Assistant / Deputy Commissioner of Central Excise is satisfied that the whole or any part of the Excise duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly.

5.10 As per Explanation to Section 11BB where an order of Refund is made by the Commissioner against the order passed by Deputy / Assistant commissioner of Central Excise, such order shall be deemed to be the order passed under Section 11B(2) of the Excise Act. That where for the purpose of payment of interest on delayed refunds an order by the Commissioner is considered as an order passed under Section 11B(2) of the Excise Act, the OIA dated January 27, 2012 passed by the Commissioner needs to be considered as an order for Refund and the Commissioner should Refund the Rebate amounting to INR 2,53,128/- to the Applicant.

5.11 the SCN was issued to the Applicant and the reply of the same was duly submitted. Nonetheless, the OIO was passed rejecting the said Rebate of INR 2,53,128/- stating that the same is barred on the premise that the application for Refund letter requesting the Rebate was filed after one year from the



date of the OIA. Consequently, the Commissioner has instead passed the OIA.

5.12 In this regard, it is further submitted by the Applicant that there is no need of filing any fresh Rebate claim after receipt of an order in the favour of the Applicant. Therefore, reliance is placed on a direct judgment in the case of Commissioner of C. Excise and Customs, Hyderabad vs. Shanti Auto (P) Limited [2012 (284) E.L.T. 219 (Tri- Bang)].

5.13 That the Commissioner has erred in holding the said judgment is inapplicable as the analogy drawn from the facts of the case are applicable to the Applicant's situation. Further, the Applicant also gives reference to the judgment of *Janson Textile Processors vs Commissioner Of C. Ex., Salem* [2013 (298) E.L.T. 287 (Tri. - Chennai)] wherein also it has been similarly held as the aforesaid judgment.

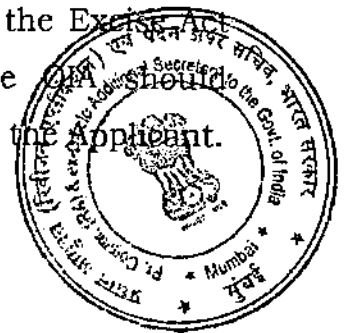
5.14 when the amount becomes refundable as a consequence of a favorable order the question of application of limitation period to such refund does not arise. This position has been upheld in the following judgments:

- Commissioner of Central Excise & Customs, Nashik vs. Crompton Greaves Limited [2009 (246) E.L.T. 409 (Tri - Mum)]
- Omega Alloys Casting (P) Limited vs. Commissioner of Central Excise Bhopal [2000 (121) E.L.T. 336 (Tribunal)]

The Applicant also relied upon the following decisions:

- Wazir Steel Industries - (95) E.L.T. 45 (Tri.)
- Harish Textile Engg - 1995 (79) E.L.T. 277 (Tri.)
- Gujarat State Fertilizers - 1999(105) E.L.T. 52 (Tri.)
- Nahar Spinning Mills - 2005 (184) E.L.T. 213 (Tri.)
- Gujarat State Fertilizers - 2005 (186) E.L.T. 607 (Tri.)

5.15 it can be established that the limitation period prescribed in clause (ec) to Explanation (B) to Section 11B of the Excise Act does not apply in the present facts and the limitation should therefore, be set aside with consequential relief to the Applicant.



- 5.16 they referred to the provisions contained in Section 11BB of the Excise Act; whereby the Applicant will be eligible for an interest at the notified rate if the refund has not been granted to the Applicant within a period of three months from the date of the receipt of application.
- 5.17 as the OIA dated January 27, 2012 has been passed by the Commissioner (Appeals) against the OIO dated September 19, 2011 the OIA dated January 27, 2012 would be deemed to be an order passed under Section 11B(2) and the Refund should have been granted to the Applicant. However, the Commissioner has passed the OIA rejecting the said Rebate of INR 2,53,128/- without considering the detailed submissions made by the Applicant.
- 5.18 the Applicant should be granted the said Rebate of INR 2,53,128/- in full along with the applicable interest as per Explanation to Section 11BB of the Excise Act.
- 5.19 the entire basis of rejection of the Rebate claim under the OIA is unsustainable to the extent of disallowance, as it is a well settled position in law that due to a mere procedural lapse, substantial benefit like Rebate of duty paid on Export goods cannot be denied.
- 5.20 in the OIA nowhere it is alleged that export / supply to SEZ has not taken place, but a mere procedural lapse has occurred. The OIO in Paragraph 13 has provided that the Rebate claim was sanctioned to the Applicant as a consequence of the OIA dated January 27, 2012 passed by the Commissioner.
- 5.21 That the export of goods has indeed taken place and the said factual position is duly appreciated. The Commissioner has sought to deny the substantial benefit of Rebate claim only on the basis that the request letter to the Commissioner was filed after one year from the date of the OIA, considering it as a fresh claim. Whereas, there is no requirement for filing a fresh application in such cases, given that all the requisite details and



documents have already been submitted before the Commissioner while making the Rebate application.

5.22 The Applicant has placed reliance on the decision of Ford India Private Limited vs. Assistant Commissioner of Central Excise, Chennai [2011 (272) E.L.T. 353 (Mad)]; wherein it has been held that so long as their substantive compliance and that the factum of export is not in doubt, rebate being a beneficial scheme, the same should be interpreted liberally. In the present facts, substantial procedures are being compiled by the Applicant and accordingly, the Rebate of INR 2,53,128/- be granted to the Applicant in full.

5.23 the Applicant places strong reliance on the decision of the Hon'ble Supreme Court in Mangalore Chemicals and Fertilizers Limited V/s Deputy Commissioner reported in [1991 (55)E.L.T. 437 (S.C)]; wherein it has been held that procedural condition of technical nature is condonable while substantive condition is not condonable. In the present facts, the substantive condition of export / supply of goods to SEZ developer have been fulfilled by the Applicant and the Department seeks to deny the Rebate Claim on lapse of procedural conditions.

6. A Personal hearing in the matter was fixed on 22.03.2018. Mr. Vijay Jangam, Manager, Finance, and Ms. Kehkasha Sehgal, Advocate appeared for the personal hearing on behalf of the applicant. No one was present from the respondent's side (Revenue). The applicant reiterated the submissions filed in the revision application and pleaded that in view of the submissions made OIA be set aside and RA filed by them be allowed because once a rebate claim was filed within time there is no need to file the rebate at each and every stage of success of litigation.

7. 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.



8. Government observes that the issue to be decided in this case is whether the applicant were required to file a fresh rebate claim after the Commissioner (Appeals) Order dated 27.01.2012 and whether the limitation stipulated under Section 11 B is applicable to such rebate claim?.

9. Government notes that while dismissing the appeal filed by the applicant and upholding the Order in Original 12.08.2013, Commissioner (Appeals) in his impugned order, mainly observed as under:-

In such case the relevant provision for deciding 'relevant date' is clause (ec) to Explanation (B) to section 11B which reads as under -

'Explanation. - For the purposes of this section, -

(A) 'refund'

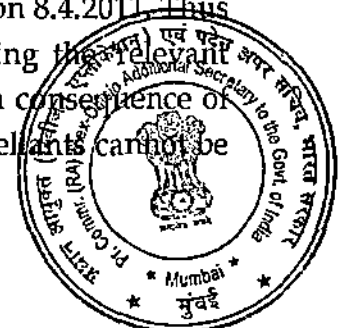
(B) "relevant date" means, -

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order of or direction of appellate authority, Appellate Tribunal or any court; the date of such judgment, decree, order or direction;'

In view of the above provision the Appellants were required to file rebate claim within one year of the date of the order of Commissioner (Appeals).

.....

The Appellants' further contention is that the refund should have been granted suo-moto and have relied on the decision in the case of Spic Ltd. (supra) and Bajaj Auto Ltd. (supra). I find that the clause (ec) to Explanation (B) to section 11B of the Act defines 'relevant date' for the purposes of refund arising out as a consequence of judgment or order of appellate authority. The clause (ec) was inserted w.e.f. 11.5.2007. The decision in the case Spic Ltd. (supra) cited by Appellants pertains to refund under section 27 of the Customs Act. 1962. I find that the clause corresponding to clause (ec) in Explanation (B) to section 11B was inserted in section 27 ibid on 8.4.2011. Thus the said decision is before the insertion of the clause defining the 'relevant date' in section 27 for the purposes of refund arising out as a consequence of judgment or order of appellate authority. Therefore, the Appellants cannot be



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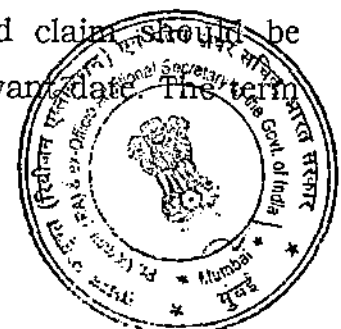
given any benefit on account of the said case law. In the case of Bajaj Auto Ltd, (supra) the refund claim was rejected by the Assistant Collector subsequent to Commissioner (Appeals) order for non-submission of duplicate copy of the Bill of Entry although the same was submitted earlier by the Appellant assessee to Assistant Collector. As such the ratio of this case is also not applicable to the facts and circumstances of the instant case. Thus I am of the view that the Appellants were required to file an application for the rebate claim after the order of the Commissioner (Appeals) one year from the relevant date as per the provisions of section 11B (1) read with clause (ec) to explanation (B) of Section 11B of the Act and the application dated 14.05. 2013 is time barred as held by the Adjudicating Authority. Accordingly, I do not find any merits in the appeal and the same is liable to be rejected.

10. Government observes that as per the provisions of Section 11B of the Central Excise Act, 1944, refund claim is required to be made within one year from the relevant date. This provision is as under:-

Section 11B. Claim for refund of duty and interest, if any, paid on such duty -

(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

It can be seen from the above that the refund claim should be preferred by the claimant within one year from the relevant date. The



"relevant date" is defined in Section 11B of the Central Excise Act, 1944 in the following manner:-

(B) "relevant date" means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;



(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;

(eb) in case where duty of excise is paid provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;

(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;

(f) in any other case, the date of payment of duty.

From the perusal of aforesaid provisions, Government observes that the clause (ec) above which concerns refund as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, deals with a situation where a duty demand or penalty imposed by lower authority is set aside in appeal proceedings and as a consequence thereof some amount of duty or penalty paid becomes refundable to the claimant. In such a case the claimant has to file a refund claim within one year from the date of order passed in appeal since the refund claim is not sanctioned by the appellate authority but arises in consequence to the order of the appellate authority. Government further observes that in the case of setting aside of Order in Original rejecting claim of refund, the claimant becomes automatically eligible for the amount of refund. In the present case applicant's rebate claim was rejected by the original authority on the ground of time bar and in appeal proceedings this order of the original authority was set aside by the Commissioner (Appeals). In this situation the refund is not in consequence of the order of appellate authority, but order itself sanctions the refund claim which was earlier rejected. Hence, there can be no requirement to file another application for receiving the amount of refund originally claimed in the first refund application.



11. Government further observes that the applicant in their appeal before Commissioner (Appeals) had relied on decision in the case of Spic Ltd. Vs CCE] 2007(209) E.L.T.91 (Tri.)), involving identical issue, however, Commissioner (Appeals) in his impugned order observed that

the decision in the case Spic Ltd. (supra) cited by Appellants pertains to refund under section 27 of the Customs Act. 1962. I find that the clause corresponding to clause (ec) in Explanation (B) to section 11B was inserted in section 27 ibid on 8.4.2011. Thus the said decision is before the insertion of the clause defining the 'relevant date' in section 27 for the purposes of refund arising out as a consequence of judgment or order of appellate authority. Therefore, the Appellants cannot be given any benefit on account of the said case law.

12. Government observes that the Commissioner of Customs, Chennai filed Civil Miscellaneous Appeal No. 2166 of 2008 against the aforementioned CESTAT Final Order No. 1037/2006, dated 9-11-2006 [2007 (209) E.L.T.91 (Tri.-Chennai)] (SPIC Ltd. v. Commissioner). The Hon'ble Madras High Court Bench while dismissing the appeal filed by the department vide order dated 12-12-2014 [Commissioner vs. SPIC Ltd - 2015 (318) ELT A178 (Mad)] observed as under:-

4. We have perused the order of the Tribunal. We find that at the relevant point of time, there is no provision as pointed out by the Department to say that on an order passed by the Commissioner (Appeals) in favour of the claimant, another application for refund is required to be filed.

5. In this regard, it is relevant to extract the reasoning of the Tribunal, which is as follows:

"10. In Para 100 of the Mafatlal Industries Ltd. judgment, the Supreme Court had directed that in respect of claims which had been pending in suits/writ appeals, the concerned petitioners should file refund claims within 60 days of pronouncement of the judgment in that case. In the instant case, the appellants had received favourable orders vide order



in-appeal dated 14-6-1993 and 30-10-1996. Subject claims had not been pending in any proceeding before any court at the time when the Hon'ble Supreme Court pronounced the judgment. What the Hon'ble Supreme Court ordered in Para 100 extracted above is in respect of claims involved in pending writ petitions/writ appeals/suits. Therefore, it cannot be said that the subject claims are governed by the directions of the Apex Court referred to above. In the Kerala State Electricity Board's case, the Kerala High Court dismissed the petition filed by the Kerala State Electricity Board for the reason that they had not complied with this direction of the Hon'ble Supreme Court and ordered that their only recourse was to approach the Hon'ble Supreme Court. In both the cases relied on in the impugned order, the appellants had not filed claims as per Section 11B of the Central Excise Act. In case of the present appellants they had filed refund claims in accordance with law. Section 11B, either before the amendment or after the amendment does not envisage that the assessee should file fresh refund application following a successful appeal / revision proceedings by the parties. Once a refund claim is filed, before the concerned authority, as has been done by the appellants in the present case, statutory requirement in this regard has been complied with by the claimant seeking refund under the Act. Refund application need not be made at each stage if the initial claim before the Assistant / Deputy Commissioner is not successful. The law laid down by the Apex Court in the Mafatlal Industries Ltd. is that all refund claims including those made pursuant to an order in appeal / revision were subject to provisions of Section 11B of the Central Excise Act / Section 27 of the Customs Act. I am, therefore, of the considered view that the appellants are eligible for the refund amounts claimed. Their claims shall be allowed after scrutiny also from the angle of unjust enrichment as ordered by the Commissioner (Appeals). Accordingly, I allow both the appeals.

6. *When there is no provision for filing a second refund application, the question of limitation does not arise. Further, the time limit under Section 27(1) of the Customs Act would be for the first application and the appeal is a continuation of the original proceedings and therefore there can be no limitation in respect of the proceedings pursuing the refund claim. Accordingly, both the questions of law are answered in favour of the assessee and against the Revenue.*



7. *In the result, the order of the Tribunal stands confirmed and this Civil Miscellaneous Appeal stands dismissed. No costs."*

From the aforesaid judgement / order of Hon'ble Madras High Court Bench, Government observes that the apprehension of Commissioner (Appeals) referred to in para 13 supra, is taken care of and Appellate Tribunal's contention that Section 11B of Central Excise Act, 1944/Section 27 of Customs Act, 1962 either before amendment or after amendment did not envisage that assessee should file a fresh application following a successful appeal/revision proceedings by the parties and therefore, refund application is not required to be made at each stage if initial claim before Asstt./Deputy Commissioner is not successful, holds good.

13. Government would also like to invite attention to para (3) of CBEC Circular No. 572/9/2001-CX, dated 22-2-2001 regarding disposal of refund rebate claims where application is pending at appellate level which provides as under :-

(3) The cases where refund arises due to order of Commissioner (Appeals) or Commissioner of Central Excise/Customs and decision is taken to contest them before CEGAT.

In such cases appeal/stay application should be filed expeditiously well before the expiry of stipulated period of three months (and not waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order diving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders passed by Commissioner (Appeals) suffer from serious infirmities and it involves grant of heavy refunds.



Board vide its Instruction issued under F. No. 276/186/2015-CX.8A dated 01.06.2015 also stressed that the aforesaid instructions on refunds which are self contained and unambiguous should be followed meticulously.

14. In view of above discussions and findings, Government holds that in the present case applicant's rebate claim was rejected by the original authority and in appeal proceedings this order of the original authority was set aside by the Commissioner (Appeals) on submitting certain documents which were not submitted earlier. hence, there is no requirement to file another application for receiving the amount of refund originally claimed in the first refund.

15. Government further observes that the applicant in his revision application has also contended that he should be granted the said Rebate of Rs. 2,53,128/- in full along with the applicable interest as per Explanation to Section 11BB of the Central Excise Act, 1944.

16. The provisions of Section 11BB of the Central Excise Act, 1944, are reproduced below:-

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.

17. Government observes that as per Explanation to Section 11BB, where the refund/rebate claim is allowed consequent to the order of appellate authority or any Court against the order of the Asstt./Dy. Commissioner, Central Excise, the order of the appellate authority/Court shall be deemed as an order passed under sub-section (2) for the purposes of this Section.

18. Government also observes that Hon'ble High Court Bombay while dismissing the appeal vide its Order dated 20.02.2014, filed by Commissioner Central Excise, Pune-II in case of Sulaki Chemicals Pvt Ltd [2014 (340) ELT 511 (Bom)] against the Tribunal's Order which had held that "*the assessee is entitled to interest, on the refund allowed by Commissioner (Appeals), with effect from the date of expiry of three months from the date of receipt of the application of refund by the department*", held as under:-

5. We are unable to accept the revenue's contention. Section 11BB of the Act, in so far as it relevant provides that if any duty ordered to be refunded under sub-section (2) of Section



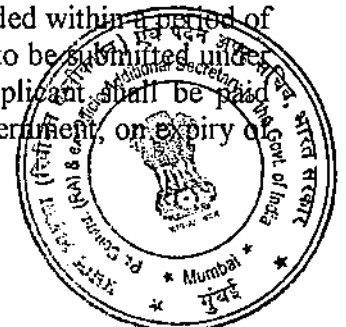
Act to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of the section, interest shall be paid to the applicant at the appropriate rate, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. Explanation to Section 11BB of the Act provides that where any order of refund is made by the Commissioner (Appeals) or the Appellate Tribunal or any Court, the order passed by such Appellate Authority or Court shall be deemed to be an order passed under sub-section (2) of Section 11B of the Act for the purpose of this Section. It is, therefore, clear that the appellate order allowing the refund of duty relates back to the order of the original authority and therefore by virtue of substantive Section 11BB of the Act, interest on the refund amount has to be paid from the date immediately after three months from the date of receipt of the application to the original authority till the refund of such duty.

19. Government also places its reliance on GOI Order Nos. 89-90/2014-CX, dated 19-3-2014 order In RE: Sanket Food Products P Ltd – 2014 (307) ELT 608 (GOI) where in it was held that “Once rebate claim held admissible under Section 11B of Central Excise Act, 1944, interest liability starts after expiry of three months of date of receipt of application filed for rebate”.

The relevant paras of the said order are reproduced below:-

10. Government notes that Hon'ble Supreme Court in the case of *M/s. Ranbaxy Laboratories Ltd. v. UOI* reported on [2011-TIOL-105-S.C.-CS = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)] 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 v. Inland Revenue Commissioners [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax (2010) 8 see 739 = (2010-TJOL-66-S.C.-JT).

11.

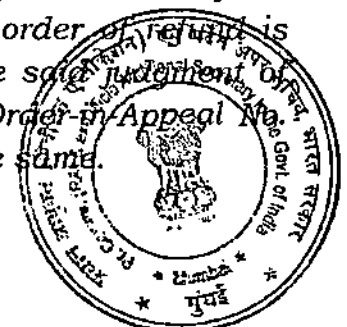
12.

13.

14.

15. In view of the above analysis, our answer 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. "

11. Government observes that Hon'ble Supreme Court in the above said judgment has held in unambiguous terms that liability of the Revenue to pay interest under Section 11BB of Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) ibid and not from the expiry of said period from the date on which order of refund is made. In view of the principles laid down in above said judgment of Apex Court, Government finds no infirmity in the Order in Appeal No. 143/2011, dated 4-8-2011 and therefore upholds the same.



20. In the present case Government observes that the rebate was held admissible by the Commissioner (Appeals) vide Order in Appeal No.P-1/RKS/19/2012, dated 27.01.2012 against Order in Original No. PI/Divn IV/Reb/169/2011 dated 19.09.2011 of the Deputy Commissioner, Central Excise, Pune-IV Division, Pune-I Commissionerate and therefore, in view of the case laws mentioned at para 18 & 19 supra and as per Explanation to Section 11BB of Central Excise Act, 1944, Government holds that the applicant is eligible for interest under Section 11BB of Central Excise Act, 1944 after expiry of three months from the date of receipt of Commissioner (Appeals) Order in Appeal No.P-1/RKS/19/2012, dated 27.01.2012.

21. In view of above discussion, Government sets aside impugned order in Appeal and Order in Original.

22. Revision application thus succeeds in above terms with consequential relief.

23. So, ordered.

Ashok Kumar Mehta
07.6.2018

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-Officio

Additional Secretary to Government of India

ORDER No. 178 /2018-CX (WZ) /ASRA/Mumbai DATED, 07/06/2018.

True Copy Attested

To,
M/s Tata Blue Scope Steel Limited,
247 & 250, Hinjewadi, Taluka : Mulshi,
Pune 411 057.

S. R. Hirulkar
6/6/18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of CGST, Pune-I Commissionerate, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001.
2. The Commissioner of CGST (Appeals-I) Pune, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001
3. The Deputy / Assistant Commissioner Division II (Pimpri Division), CGST Pune-I Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

