

SPEED POST



F.No. 198/03/2019-R.A.
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...19/8/21..

Order No. 179/2021-CX dated 19-8-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 299/HAL/XAP-8, 9, 10 & 11/2017-18 dated 27.09.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Kolkata.

Applicants : The Commissioner of CGST & Central Excise, Haldia.

Respondent : M/s Haldia Petrochemicals Ltd., Haldia.

ORDER

A revision application no. 198/03/2019-R.A. dated 22.02.2019, has been filed by the Commissioner, CGST & Central Excise, Haldia (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 299/HAL/XAP-8, 9, 10 & 11/2017-18 dated 27.09.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Kolkata whereby the Commissioner (Appeals) has modified the Orders-in-Original Nos. R-98/R-I/HAL-II/HPL/2016-17, R-99/R-I/HAL-II/HPL/2016-17, R-100/R-I/HAL-II/HPL/2016-17 & R-101/R-I/HAL-II/HPL/2016-17, all dated 25.05.2017, passed by the Deputy Commissioner of Central Excise, Haldia-II Division, to the extent that applicable interest has been allowed to M/s Haldia Petrochemicals Ltd., Haldia (hereinafter referred to as the Respondents) in respect of rebate claims sanctioned to them.

2. Briefly stated, during the year 2004 and 2005, the Respondents undertook exports of Benzene and CBFS (on payment of Central Excise Duty) in discharge of export obligation against duty free imports, made under Advance Licenses procured under DEEC scheme, of the inputs required for manufacture of the export goods. After completion of exports, the Respondents filed five rebate claims, totally amounting to Rs. 6,97,14,036/-, before the original authority. The Respondents had imported duty free inputs under Customs Notifications Nos. 43/2002-Cus dated 19.04.2002 and 93/2004-Cus dated 10.09.2004, which initially specified that the benefit under Rule 18 of the Central Excise Rules, 2002, could not be availed by the importer. Subsequently, the said condition was corrected, vide Corrigendums dated 29.11.2002 and 24.06.2002 (for Notification No. 43/2002-Cus) and vide Corrigendum dated 17.05.2005 (for Notification No. 93/2004-Cus) to the effect that the restriction will apply only to benefit under Rule 18 to the extent of rebate of duty paid on material used in the manufacture of exported product and not to the export product itself. However, the original authority took a view that the aforesaid Corrigendum had only prospective effect and rejected the aforesaid rebate claims. The matter finally reached

the Hon'ble Calcutta High Court, in Writ Petition No. 559 of 2010. The Hon'ble High Court, vide Order dated 29.11.2016, held that the Corrigendum had retrospective effect and ordered that the rebate claims may be decided accordingly. Pursuant to the aforesaid Order dated 29.11.2016, the Respondents herein wrote to the original authority, vide letters dated 27.02.2017, seeking sanction of rebate claims. The original authority treated the date of receipt of the letters dated 27.02.2017 (which were received on 28.02.2017) as the date of receipt of the rebate claims and sanctioned the said claims, but no interest was allowed under Section 11BB of the Central Excise Act, 1944, as the rebate claims were disposed off within three months of the date of receipt of letter dated 27.02.2017. The details of the claims including the interest due thereon are tabulated hereunder:

SI. No.	Order-in-Original & Date	Order-in-Original passed by	Amount of rebate claim involved (in Rs.)	Amount of interest on delayed payment of rebate (in Rs.)	Concerned Period	ARE-I No. & Date
(A)	(B)	(C)	(D)	(E)	(F)	(G)
1	R-101/R-I/HAL-II/HPL/2016-17 & 25.05.2017	Deputy Commissioner, Central Excise, Haldia-II Division, Haldia Commissionerate	Rs. 1,68,57,519/-	Rs. 1,20,62,594/-	September 2004	P/07/04-05 & 27.09.2004
2	R-100/R-I/HAL-II/HPL/2016-17 & 25.05.2017	Deputy Commissioner, Central Excise, Haldia-II Division, Haldia Commissionerate	Rs. 1,34,77,489/-	Rs. 96,30,681/-	March 2005	02/AVR/04-05 & 07.03.2005
3	R-98/R-I/HAL-II/HPL/2016-17 & 25.05.2017	Deputy Commissioner, Central Excise, Haldia-II Division, Haldia Commissionerate	Rs. 2,30,47,860/-	Rs. 1,64,92,164/-	January 2005	P/13/04-05 & 11.01.2005
4	R-99/R-I/HAL-II/HPL/2016-17 & 25.05.2017	Deputy Commissioner, Central Excise, Haldia-II Division, Haldia Commissionerate	Rs. 1,36,83,045/-	RS. 97,77,566/-	November 2004 & December 2004	01/AVR/04-05 & 26.11.2004

On appeal by the Respondents herein, the Commissioner (Appeals) relying upon the judgment of the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. vs. Union of India* {2011 (273) ELT 3 (SC)} and the judgment of the Hon'ble Calcutta High Court in the Respondent's own case i.e. *Haldia Petrochemicals Ltd. vs. Joint Secretary, Ministry of Finance* {2017 (345) ELT 619 (Cal.)} held that the interest under Section 11BB is payable from the expiry of 03 months from the date of making the application for refund and,

accordingly, allowed the applicable interest by modifying the orders of the original authority.

4. The instant revision application has been filed, mainly, on the grounds that the claims were sanctioned within stipulated period of 03 months from the date of receipt of application i.e. 28.02.2017; that since the rebate was paid within 03 months from the date of receipt of application which was made available in view of the Hon'ble High Court's Order dated 29.11.2016, the interest is not payable; and that the reliance on the judgment in the case of Ranbaxy Laboratories Ltd. (supra) is misplaced. The Respondents filed cross-objections dated 09.05.2019 and further written submissions dated 10.08.2021.

5. Personal hearing, in virtual mode, was held on 18.08.2021. Sh. Som Dev Sharma, AC appeared for the Applicant and reiterated the contents of the RA. Sh. Harkamal Chakravorty, Sr. GM (F&A) reiterated the contents of the cross-objections dated 09.05.2019 and the written submissions dated 10.08.2021, for the Respondents.

7. The Government has carefully examined the matter. The issue involved herein is whether in a case of sanction of rebate/refund pursuant to the order of a Court, the interest will be payable under Section 11BB, from the date of expiry of 03 months from the date of receipt of application for refund or on the expiry of 03 months' period from the date on which the order of refund is made. The Government observes that this issue is no longer res-integra. In the case of Ranbaxy Laboratories Ltd. (supra), the Hon'ble Supreme Court has answered this question 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.

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 the 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."

The Hon'ble Supreme Court has followed the judgment in Ranbaxy Laboratories Ltd. in the case of *Manisha Pharmo Plast Pvt. Ltd. vs. Union of India* {2020 (374) ELT 145 (SC)} and held that the "statutory interest ought to commence after non-payment within three months from the date of application, being the statutory point envisaged by Section 11BB of the Act." Further, the Commissioner (Appeals) has rightly pointed out that in the Respondent's own earlier case, the Hon'ble Calcutta High Court had followed the judgment in

Ranbaxy Laboratories Ltd. to hold that interest is payable in accordance with Section 11BB of the Act calculating such interest from expiry of 03 months from the date of making application for refund.

8. In the present case, the Applicant department has sought to treat the letters dated 27.02.2017 written by the Respondent herein in pursuance of the Order dated 29.11.2016 of the Hon'ble Calcutta High Court as the date of receipt of the rebate claims. However, the Government observes that this contention is totally misplaced in as much as the rebate claims were filed during 2004 and 2005, though these came to be sanctioned in 2017 only pursuant to the order of the Hon'ble Calcutta High Court. Therefore, there is no doubt that the interest is payable after expiry of 03 months from the date when the rebate claims were filed by the Respondents herein and not from the date of receipt of the letter vide which they had pressed for sanction of these rebate claims in pursuance of the Hon'ble High Court's Order dated 29.11.2016.

9. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & Central Excise,
Haldia Commissionerate, Customs House,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001.


G.O.I. Order No. 179/21-CX dated 19-8-2021

Copy to: -

1. M/s Haldia Petrochemicals Ltd., Bengal Eco Intelligent Park, Tower-I, Block EM, Plot No. 3, Salt Lake City, Sector-V, Kolkata – 700 091.

2. The Commissioner of CGST & Central Excise (Appeals),
Kolkata, GST Bhawan, Room No. 254, 180 Shantipally,
Rajdanga Main Road, Kolkata – 700 107.
3. P.S to A.S. (Revision Application)
4. Guard File
5. Spare Copy.

ATTESTED


19/8/21
Subdt (RA)