

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. 195/282/2019-RA/2028

Date of issue: 12.04.2023

ORDER NO. 227/2023-CX (WZ) /ASRA/MUMBAI DATED 10.4.23 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 CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Bindal Exports Ltd.

Respondent : Pr. Commissioner, CGST & CX, Mumbai South

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. IM/CGST/A-1/MUM/387/18-19 dated 29.10.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai.

ORDER

This Revision Application has been filed by the M/s. Bindal Exports Ltd., 270, Bindal House, Surat-Kadodara Road, Kumbharia, Surat - 395 010 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. IM/CGST/A-I/MUM/387/18-19 dated 29.10.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai.

2. The brief facts of the case are that the Applicant, a manufacturer exporter, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Rebate sanctioning authority sanctioned the rebate claims totally amounting to Rs.41,74,826/- vide Order-in-Original (OIO) No. 82/MTC-R/2017-18 dated 05.05.2017. However, aggrieved by the fact that the interest on the delayed payment of rebate claims was not paid, the applicant filed an appeal, which was rejected by the Commissioner (Appeals) vide impugned OIA.

3. Aggrieved, the Applicant has filed the instant Revision Application mainly on the following grounds:

- (i) That the present case is fully covered by the judgment of the Hon'ble Supreme Court in the matter of — Ranbaxy Laboratories Limited — 2011 (273) E.L.T. 3 (SC), wherein it is held that the interest on delayed refund is payable under Section 11 BB of the Central Excise Act, 1944 on the Expiry period of 3 months from the date of receipt of Application and not from the date of recorder of refund or applicant order, and thus the appellants are entitled for interest from initials date of entitlement, same may please be granted.
- (ii) That once the Hon'ble High Court had held that the orders passed by the lower authorities are erroneous and perverse the department is legally duty bound to pay interest from the date of making the initial

claim before the Asst. Commissioner till payment of the same as per the judgment of the Hon'ble Tribunal in the matter of Jansons Exports — 2007 (220) E.L.T. 895 (Tri- Chennai), Hemalaxmi Books (India) P Ltd. 2009 (236) E.L.T. 260 Tri- Ahmd). And thus the impugned order rejecting the claim of interest is not legally sustainable and the same is thus required to be set aside.

(iii) That kind attention is also invited to the following judgments of the Hon'ble Supreme Court, High Court, Tribunals wherein it is held that the interest is payable from the date, when initially the refund claim ought to have been granted within 3 months from the application of the same:

- o J.K. Cement Works [2004(170) ELT 4(Raj.)]
- o U.P. Twiga Fibre Glass Limited [2009(243) ELT A27(SC)]

The Applicant prayed that the impugned order be set aside with consequential relief.

4. Personal hearing in the case was fixed for 17.1.2023. Shri Mukund Chauhan, CA, attended the hearing online and submitted that the only issue in the instant RA is sanction of interest on already sanctioned rebate which was delayed. He referred to written submissions dated 11.01.23 on the matter. He requested to allow the RA. No one appeared for the respondent nor have they sent any written communication.

4.1 In their written submissions dated 11.01.2023, the applicant inter alia submitted that:

a Ld. Commissioner (Appeals) has erred at para three of his OIA dated 29/10/2018 that:-

"There is no order passed by the lower authority rejecting the claim of interest and therefore there is no cause of action inviting interference of any appellate forum"

The applicant submitted that interest on delayed grant of refund is automatic. When Adjudicating Authority passed OIO dated 05/05/2017 and sanctioned refund of amount Rs.41,74,826/- but did not give the interest for the delayed sanction of refund, the CAUSE OF ACTION, arised on same day, because grant of interest U/s-11BB is automatic if refund U/s-11B is sanctioned after the three months from the date of submission of refund claim. Therefore the "CAUSE OF ACTION" arised on 05/05/2017, when OIO was passed by Adjudicating Authority and refund claim was sanctioned. Being aggrieved by the said OIO dated 05/05/2017, they had correctly filed the appeal before commissioner (Appeal) against the said OIO dated 05/05/2017.

b In support to their submission that interest U/s-11BB of the Act is automatic as soon as the refund claim is sanctioned, beyond the period of three months from the date of submission, the applicant relied on following judgements:-

- Manisha Pharmo Plast P Ltd. – 2020(374)ELT145(SC)
- Ranbaxy Laboratories – 2011(273)ELT3(SC)
- Fabrimax Engineering P Ltd. – 2022(379)ELT604(Bom)
- Qualcomm India P Ltd. – 2021(50)GSTL269(Bom)
- Jindal Drugs – 2019(367)ELT591(Bom)
- Kamakshi Trade Exim – 2019(351)ELT102(Guj)

The applicant contended that the ratio of above mentioned judgements was squarely applicable to their case also. They also relied on Board circular No.670/61/2002 CX dated 01/10/2002, where in Board has given the direction to grant interest automatically, if refund is sanctioned beyond the period of three months from the date of submission of claim. Instruction in Board circular is binding on Department as held by Hon'ble Supreme Court in the case of UOI Vs. Arviva Ind. (I) Ltd 2007

(209) ELT (SC) and Paper products Ltd. Vs. CCE 1999 (112) ELT 765 (SC) and CCE vs. IOCL 2004 (165) ELT (SC).

- c From the OIO dated 05/05/2017, it appears that the original refund claims were filed on various dates between November 2004 to July 2005 and the sanction order was passed on 05/05/2017. Therefore, they are eligible for interest according to the provision of section 11BB of the Act for 13 years (approximately), as per statutory rate of interest on the sanction amount Rs.41,74,826/-.

5. Government has carefully gone through the relevant case records available in the case file, written submission 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 whether interest under section 11BB of the Central Excise Act, 1944(CEA) would be payable to the applicant for delayed payment of rebate?

7. Government observes that once the rebate claim is held as admissible under Section 11B of the CEA, interest liability starts after the expiry of three months from the date of receipt of application for rebate in the office of rebate sanctioning authority, in terms of Section 11BB *ibid*, which is reproduced hereunder:

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.

Thus, Government observes that the Statute in very unambiguous terms allows for interest to be paid for any delay beyond 3 months, from date of receipt, in sanction of rebate under Section 11B *ibid*.

8. Government observes that the case law relied upon by the applicant, 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)] 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 on 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 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.

9. In view of above discussions and findings, Government sets aside the Order-in-Appeal No. IM/CGST/A-1/MUM/387/18-19 dated 29.10.2018 passed by the Commissioner (Appeals-I), CGST & CX, Mumbai and allows the impugned Revision Application.

Shrawan
10/4/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. *227*/2023-CX (WZ)/ASRA/Mumbai dated *10.4.23*

To,
M/s. Bindal Exports Ltd.,
270, Bindal House, Surat-Kadodara Road,
Kumbharia, Surat - 395 010.

Copy to:

1. Pr. Commissioner of CGST & Central Excise,
Mumbai South Commissionerate,
13th & 15th Floor, Air India Building,
Nariman Point, Mumbai - 400 021.
2. Adv. Mukund Chouhan,
M/s. MKC Legal,
731, 7th Floor, Ajanta Shopping Centre,
Near Metro Tower, Ring Road,
Surat - 395 002.
3. ~~Sr. P.S. to AS (RA).~~
4. Guard file
5. Spare Copy.