

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. 195/55/14-RA /4496

Date of Issue: 25/08/2021

ORDER NO. 264 /2021-CX (SZ) /ASRA/Mumbai DATED 20.08.2021 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.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 06/2014(V-I) CE dated 04.03.2014 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) Visakhapatnam.

Applicant : M/s Aditya Birla Nuvo Limited,
Worli, Mumbai.

Respondent : Commissioner of Customs & Central Excise, Visakhapatnam-I.

ORDER

This Revision Application has been filed by M/s Aditya Birla Nuvo Limited, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 06/2014(V-I) CE passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals) Visakhapatnam.

2. The brief facts of the case are that the applicant was engaged in the manufacture of Sea Water Magnesia at Adityapalem, Chippada (V), Bhimli (M). They imported capital goods in 1998 under Project Import regulations and availed Cenvat credit admissible. The Unit fell sick, obtained necessary permission for clearance of the capital goods for export to Iran, debited an amount of Rs.33,51,967/- in their cenvat account and exported the goods under ARE-1 No.1/2001-02 to 11/2001-02, all dated 15.10.2001. The Unit was wound up in June 2002. A rebate claim for refund of the amount of Rs.33,51,967/- on goods exported on payment of duty was filed, which was rejected by the lower authority vide Order in Original No.05/2002 dated 08.08.2002. The rejection was challenged before Commissioner (Appeals) who vide Order in Appeal No.11/2007(V-I)CE dated 14.01.2007 directed the lower authority to re-examine the claim under Rule 18 of the Central Excise Rules 2001/2002. Being aggrieved, the department filed appeal against the aforesaid Order in Appeal before the Tribunal, who dismissed Department's appeal vide Final Order No.711/2009 dated 24.03.2009 on the grounds of jurisdiction and held that the appropriate authority is the Revision Authority. Subsequently, Department filed an application with the Revisionary Authority, who, vide GOI Order No.220/2011-CX dated 10.03.2011, dismissed the same as time barred under Section 35EE of the Central Excise Act, 1944. In a letter dated 27.01.2012 addressed to the DC, Division-III, Visakhapatnam (jurisdictional Divisional Officer), the applicant claimed to have not received the certified original order from the Revisionary Authority, that a duplicate was sought and received on 08.12.2011, and that the rebate may be sanctioned along with interest under Sec 11BB of the CEA, 1944. Adjudication proceedings ensued and the vide Order in Original No.12/2012-13 dated 20.07.2012 Deputy Commissioner, Div-III, Visakhapatnam -I allowed the rebate claim but denied the interest from the date of Application of the rebate claim till the disbursal thereof.

3. Being aggrieved, the applicant filed appeal before Commissioner of Central Excise, Customs & Service Tax (Appeals) Visakhapatnam inter alia submitting that the interest under Section 11BB of the Central Excise Act 1944, commenced from date of filing of the rebate claims i.e. 25.10.2001 and the date

of the Order dated 14.01.2007 of the Commissioner of Central Excise (Appeals), Visakhapatnam was open Order and irrelevant as to the date of reckoning for computation of interest on rebate claims; that all requisite documents required in support of the rebate claim were duly filed along with the rebate claim on 25.01.2001 and furnishing of any further document subsequently in 2012 pursuant to the direction of the office of the Deputy Commissioner, Div.III, Visakhapatnam would neither shift the date for computation of interest under Section 11BB of the Act nor make the rebate claim as initially filed deficient or incomplete when the delay in seeking further documents was attributable to the Department. The Commissioner (Appeals) vide Order in Appeal No. 06/2014(V-I) CE dated 04.03.2014(impugned Order) upheld the Order in original No.12/2012-13 dated 20.07.2012 and rejected the appeal filed by the applicant :-

4. Being aggrieved with the impugned Order in appeal, the applicant has filed this Revision Application on the various grounds mentioned therein.

5 A Personal hearing in this Revision Application was held on 26.02.2021 which was attended by Shri V.M. Chavda, Advocate, Shri Sunil Shenoy, Manager (Indirect Tax) and Ms. Sanya Zhaweri, Consultant, on behalf of the applicant. They submitted a written submission and also reiterated their earlier submission. They referred to Circular 130/41/95-Cx dated 30.05.1995 and also Hon'ble Bombay High Court's judgement in Shelf Drilling International Inc V. Union [(2016)341 ELT 164 (Bom)].

6. Vide additional written submissions dated 19.02.2020, the applicant narrated brief facts of the case in chronological order after reproducing paras 6,7,8 an 9 of the impugned Order made following additional submissions :-

7.1 By Order in Appeal No.06/2014(V-I) CE the Commissioner of Central Excise (Appeals), Visakhapatnam rejected their appeal based on the findings which are as follows:-

.....

6.....In terms of Para 5 of CBEC Circular No. 572/9/2001-CX dated 22/2/2001 issued in F.No. 201/20/2000-CX. 6, the expeditious disposal is directed in case the claim is found inadmissible on merits and did not involve litigation. The contents of this Circular are now a part of Chapter 9 of the CBEC's Manual of Supplementary Instructions. When Section 11BB was inserted in the statute, the CBEC issued Circular No. 130/141/95-CX dated 30/05/1995 [From F.No. 268/29/95-CX 8], instructing compliance with the following procedure:

.....(d) An acknowledgement should be issued immediately after the above mentioned verification which will be an evidence of the receipt of refund application in terms of 11BB. The period of 3 months in terms of Section 11BB shall be counted from the date following the date of receipt of refund application upto the date of dispatch of cheque for refund.

7....The lower authority chose the alternate course i.e. to initiate adjudication proposing denial of the claim and the events listed supra have occurred in the chronology listed since the claim was rejected in adjudication, the instructions pertaining to sanction get eclipsed by the rejection order of the basic claim itself and the claim necessarily has to enter the channel of statutory remedy on basic admissibility itself. Therefore, the Appellant's contention that the interest is due after the expiry of three months from the date of filing claim (25/10/2001) along with case law relied upon prima facie merits dismissal as legally untenable.

8....The OIA No. 11/2007 (V-I) CE dated 14/01/2007..... This is obviously NOT an order passed under Sec 11B(2) as claimed by the Appellant. The OIA dated 14.01.2007 is therefore out of deeming fiction of Explanation under Section 11BB and hence the Appellant is on a wrong footing to assume that the refund becomes due with effect from the date of this OIA (14/01/2007).

9... the OIA dated 14/01/2007 merged with both The Tribunal Order dated 24/03/2009 and the RA Order dated 10/03/2011 (recorded to be issued on 21/03/2011). This timeline event now results in the enlivening of the remand order by Commissioner (Appeals) in OIA No. 11/2007 dated 14/01/2007 as on 21/03/2011 in his letter dated 27/01/2012, recorded to be received by the DO on 07/02/2012, the Appellant has admitted in para 13 that the Original Order from RA was not received and that they obtained a duplicate only on 08/12/2011.

10...I have examined this aspect carefully and find that Sec 11B(1) requires an application to be made by the claimant for refund, if it becomes refundable consequent to a judicial pronouncement, within one year, reckoned from the date of such order, as provided in Section 11B(5)(B)(ec). This provision was inserted in the statute with effect from 11/05/2007 by Section 117 of the Finance Act 2007 (22 of 2007). The CBEC clarified this provision, inter alia budgetary changes of 2007, in DOF 334/1/2007. TRU dated the 28th February 2007 at para 29(r).

11.....It was necessary for the Appellant to have filed a fresh claim upon being communicated of the ruling by the higher forum under clause (ec) supra, since it is on record that they made respondents in the departmental appeals. This was factually not done as rightly held by the lower authority at Para 15(c) of the impugned order. Hence the appellant cannot claim interest under Sec 11BB at least prior to the filing of a fresh claim considered in the impugned order, recorded to be filed with the Division on 08/02/2012. The line of reasoning is consistent with the view taken by the Tribunal in Vardhaman Fabrics P. Ltd. V. CCE, Surat [2009 (234) ELT 301 (Tri-Ahmd)]. The application filed on 08/02/2012 has been adjudicated on 20/07/2012, admittedly beyond the three month period

referred to in Section 11BB. The lower authority explained the delay as owing to completeness raised in deficiency memoranda, recorded as rectified by the appellant partially on 30/03/2012 and fully on 05/07/2012. At para 10, 15(d) and 15(e) of the impugned order, the lower authority has recorded the fact that the documents as per stipulations in force as on the date of processing the rebate claims were complete only on 05/07/2012 and hence the actual date of filing is to be taken as 05/07/2012. This is consistent with the CBEC's manual of Supplementary Instructions [Para 2.4 in Chapter 9] as well as the 1995 Circular extracted earlier....."

7.2 In the backdrop of above facts, the above findings contained in the impugned order are ex facie illegal, unsustainable and ought to be set aside on the following grounds which are urged without prejudice to each other:

- The impugned order has laid much emphasis albeit erroneously on the fact that the Respondent i.e. the Deputy Assistant Commissioner of Customs, Division II/III, Vishakhapatnam did not initially sanction the rebate claims filed by the Applicant on 25/10/2001 rather initiated adjudication proceedings for denial of the above rebate claims, which in terms of the finding contained in the impugned order, were concluded in their favour on 10/03/2011 by virtue of the Order F.O. No. 220/2011-CX passed by this Revisionary Authority dismissing the Revision Application filed by the Respondent relating to the above rebate claims. In the above premises, the impugned order holds that the Applicant was required to file a fresh refund application claim, after passing of the above Order dated 10/03/2011 which was indeed done on 08/02/2012 by them. The impugned order further upholds the finding in the Order-in-Original dated 20/07/2012 that the above application was found deficient in terms of deficiency memoranda dated 15/02/2012 issued by the Respondent which was complied with by them on 05/07/2012 and therefore there was no delay beyond the period of 3 (three) months from the date of filing of refund application and their demand for interest in terms of section 11B of the Act is unjustified. While reaching the above conclusion which is clearly erroneous for the reasons to be set-out hereafter, the impugned order has not only completely discarded all the binding precedents of the Supreme Court strictly interpreting plain language of Section 11BB of the Act and various High Courts but also glossed over and tweaked the directions contained in C.B.E.C. Circulars placed on record by them as regards processing of the interest payable on delayed rebate/refund claims. The impugned order has also pressed into service the clause (ec) inserted in Section 11B(5)(B) of the Act with effect from 11/05/2007 in support of the above erroneous findings without appreciating the plain language and true purport of the above provision introduced much after the filing of rebate claims by them on 25/10/2001.
- The hypothesis propounded in the impugned order that no interest is payable from the expiry of the date of filing of rebate claim once the some enters the arena of adjudication and appeal lacks legal footing and militates against the

plain language of Section 11 BB which reads as follows: (The applicant has reproduced Section 11 BB alongwith proviso and explanation)

The plain language of the Section 11BB of the Act reproduced above does not merit any interpretation beyond the words provided in the statute much less a hypothesis regarding fate of the rebate/refund application in the event of the same entering the arena of adjudication proceedings or otherwise.

- The aforesaid proposition of the Applicant is based on the ratio of the Supreme Court's ruling in case of Ranbaxy Laboratories Ltd V. Union [(2011)(273)ELT 3(SC)] holding that the interest stipulated under Section 11BB of the Act begins to run from the expiry of three months from filing of a refund/rebate application and the Explanation contained therein does not postpone the date of computation of the interest on refund claim. The Supreme Court has further held that the provisions of Section 11BB are to be construed strictly, looking merely at its plain language and there is no room for reading or implying anything into it or ascribing any intention to it. The Supreme Court has also approved and quoted verbatim the C.B.E.C Circular No. 670/61/2002-CX dated 01/10/2002 emphasizing that the provisions of Section 11BB of the Act relating to interest are attracted automatically for any refund sanctioned beyond a period of three months. The significant observations of the Supreme Court contained in the paragraphs 9 to 11 of the judgement in the case of Ranbaxy Laboratories Ltd V. Union (supra) squarely applicable to the facts of the present case (The applicant has reproduced paragraphs 9 to 11 of the judgment Hon'ble Supreme Court, supra).
- The proposition of law that the interest on the refund accrues immediately from the expiry of three months from the filing of refund/rebate application which was settled by the Supreme Court in case of Ranbaxy Laboratories Ltd. V. Union (Supra), has been further expounded by the Bombay High Court in a recent ruling in case of Shelf Drilling International Inc V. Union [(2016)341 ELT 164 (Bom)] while examining Section 27A of the Customs Act which is *parimateria* to Section 11BB of the Central Excise Act; the Bombay High Court has unequivocally held that the ratio of the judgement of the Supreme Court in case of Ranbaxy Laboratories Ltd. V. Union (Supra) shall be applicable even in case where certain deficient/further documents were supplied at a later date and the interest would be computed from the date of initial application so long as the initial application was not rejected on the ground of incomplete or deficiency in documents. The above observations of the Bombay High Court are contained in the paragraphs 18 to 21 of the said judgement (The applicant has reproduced paragraphs 18 to 21 of the Hon'ble Bombay High Court, supra).

The above observations apply with great force to the facts of the present case and leave no room for doubt that the date for computation of interest for subject rebate claims ought to be expiry of three months from the initial filing of the same on 25/10/2001 and any other interpretation or hypothesis would be in teeth of the ratio of binding precedents in case of Ranbaxy Laboratories Ltd

V. Union (Supra) and Shelf Drilling International Inc (supra). Thee above settled position is law is reinforced by the Supreme Court in a recent ruling in case of Manisha Pharma Plast Pvt. Ltd. V. Union [2020(374) ELT 145 (SC)] that the interest shall be computed from the date the Revenue ought to have refunded the money due to tax payer (i.e. three months from the date of application) and not from the date when the matter attained finality.

- The reliance of the impugned order on the provisions contained in Section 11B(5)(B)(ec) of the Act which were inserted by virtue of Section 117 of the Finance Act 2007 with effect from 11/05/2007 to hold that the amended Section 11B necessitates filing of a fresh refund application when the refund is consequent to a judicial pronouncement, is also misconceived, for more than one reason. First, the above provision applies to those cases where the refund application was not already filed prior to the Order of the appellate authority and the refund subsequently arises due to such order of the appellate authority necessitating filing of the refund application. In case the above amended provision is interpreted to apply even to those cases where refund application was filed before the Order of the Appellate Authority, the same would have effect of rendering the provisions of Section 11B(5)(B)(a)(i) [i.e. filing of refund/rebate claim within one year from the date of leaving of vessel/aircraft carrying export cargo] nugatory or otiose. It is a settled law that an interpretation which renders any other provision of the statute nugatory or otiose ought to be avoided and all the provisions of the statute ought to be construed harmoniously with each other. Applying the basic cannon of harmonious construction; at the highest, the aforesaid amendment contained in clause (ec) of Section 11B (5)(B) of the Act could be interpreted to mean that the same provides for the outer time-limit for filing of refund/rebate claim and does not require again filing of a fresh refund/rebate claim pursuant to the order of the Appellate Authority in as much as neither such requirement is specifically mentioned in Section 11B(5)(B)(ec) of the Act nor the same would be consistent with the provisions of Section 11B (5) (B) (a)(i) of the Act and the judgement of the Supreme Court in case of Ranbaxy Laboratories Ltd V. Union and the CBEC Circular dated 01/10/2002. Second, the clause (ec) was inserted in Section 11B (5) (B) of the Act with effect from 11/05/2007 by virtue of Section 117 of the Finance Act 2007, while the subject rebate claims were filed on 25/10/2001 much prior to coming into force of the above amendments and hence, the same are inapplicable insofar as subject rebate claims are concerned. Third, the above findings of the appellate authority are beyond the scope of findings in the Order of the adjudicating authority and are therefore, unsustainable.
- The impugned order erroneously records that the Applicant has assumed that the interest becomes due from the date of the Order-in-Appeal No. 11/2007 (V-I) CE dated 14/01/2007. Their stand has been consistent from the very beginning of the adjudication proceedings that the interest becomes due to them from expiry of three months from the date of filing of rebate claim

application on 25/01/2001 as borne out from the documents on record which are annexed to the Memorandum of Revision Application.

- The impugned order has erred in confirming the findings of the Adjudicating Authority that the refund application/rebate claim of the Applicant as initially filed was deficient for the defects pointed out in the deficiency memo issued by the Adjudicating Authority on 15/2/2012 and the same was complied by them only on 05/07/2012 which implies that the rebate claim was filed on 05/07/2012 and sanctioned on 20/07/2012 within a period of three months from filing of the complete application. The above finding of the impugned order is contrary to the facts recorded in the Adjudication Order and the directions contained in CBEC Circular No. 130/41/95-CX dated 30/05/1995, the relevant excerpts of which are as follows: (The applicant has reproduced para 2 (a to g) of the said Circular).

In light of the direction/clarification contained in the above CBEC Circular, following facts are uncontroverted in the present proceedings and also specifically recorded in the Adjudication Order/s:

(a) All relevant documents required for scrutiny of the subject rebate claim were enclosed with the application dated 25/10/2001 of the Applicant and therefore, a dated acknowledgement was issued by the Adjudicating Authority on the face of the above application in terms of the directions contained in the above CBEC Circular;

(b) The exports in respect the above rebate claims were duly effected, as recorded in the examination report of the Range Officer bearing O.C. No. " 371/2001 dated 15.11.2001, which clearly establishes that the substantive condition for grant of above rebate claim stood satisfied;

(c) Duplicate ARE 1-in-Original was submitted with the subject rebate claims and the triplicate ARE 1-in-Original were forwarded to the Adjudicating Authority by the Range Officer along with its examination report dated 15/11/2001;

(d) The Deficiency Memo dated 15/07/2012 only sought some further documents which were (a) Original ARE-1/indemnity bond and (b) Bank Realization Certificates. Nothing restrained the Respondent from seeking the above documents within 48 hours of filing of rebate claims filed by them as provided in the above CBEC Circular and in any case the above documents were not material to adjudication of rebate claim; since the duplicate, triplicate and quadruplicate ARE-1s-in-Original were always available for scrutiny of rebate claims with the Respondent and the Bank Realization Certificates is not imperative for sanction of rebate claims in respect of export of goods.

(d1) The initial refund claim was not rejected on the ground that the requisite documents were not submitted; but on a ground that the goods which were exported were not manufactured in their factory premises.

(e) The Respondent sat on the rebate claims by initiating frivolous litigation and did not bother to scrutinize their refund claim despite a specific direction contained in the Order-in-Appeal No. 11/2007 (V-I) CE dated 14/01/2007 to dispose of the subject refund claim within 30 (thirty) days of the aforesaid order which as a matter of fact was never stayed by any higher authority as to the implementation thereof. Therefore, the finding in the impugned Order that the rejection of the departmental Revision Application on 10/03/2011 results in enlivening of the rebate claim is completely untenable-in-law and on facts.

(f) The above facts show that the delay if any in sanction of refund claims squarely attributable to the Respondent and the same ought to be compensated in terms of interest in consonance with the letter and spirit of Section 11BB of the Act.

(g) The above Circular specifically directs that the date of issue of acknowledgment shall be treated as the date of running of time-line for interest stipulated in Section 11BB of the Act, which in present case was on 25/10/2011 and therefore the supply of any further documents at a later date is inconsequential insofar the claim for interest under Section 11BB of the Act is concerned.

It was clear that the impugned order is fraught with legal and factual infirmities and the same ought to be quashed and set aside in limine and (a) the impugned order be quashed and set aside on the above grounds and (b) they ought to be granted interest on the sanction rebate claims from the date of filing of the refund application till the disbursal of the subject rebate claims.

8. 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.

9. The facts in this case lie within a narrow compass. The rebate claims filed by the applicant on 25.10.2001 had been rejected by the rebate sanctioning authority. On appeal by the applicant, the Commissioner(Appeals) had remanded the matter back to the original authority. The Department filed revision application against the OIA which was rejected as time barred. Thereafter, the applicant pursued the sanction of rebate claim and rebate claims totally amounting to Rs. 33,51,967/- were sanctioned to them by the Deputy Commissioner vide OIO dated 20.07.2012. While sanctioning the rebate claims, the Deputy Commissioner rejected the applicants claim for grant of interest. The three main grounds for rejecting interest were that the applicant had not filed any application for rebate or interest after the passing of OIA dated 14.01.2007; that the application for rebate and interest had effectively been filed on 05.07.2012 when the deficiencies in the rebate claim had ostensibly been cured and that the applicant had

not produced original copy of ARE-1 alongwith rebate claim which is one of the mandatory documents.

10.1 Government observes that the findings of the lower authorities concerning the rejection of interest are based on the interpretation of the Explanation appended to Section 11BB of the CEA, 1944 and the definition of relevant date Section 11B(5)(B)(ec) of the CEA, 1944. Explanation (A) appended below Section 11B(5) of the CEA, 1944 specifically states that refund includes rebate of duty of excise on excisable goods exported. The provisions of Section 11BB of the CEA, 1944 had been inserted vide Section 75 of the Finance Act, 1995 to compensate the applicant for delay in sanction of refund beyond a period of three months from the date of filing refund claim. From the day of its insertion on 26.05.1995, the Section 11BB of the CEA, 1944 contained an Explanation which reads as under.

“Explanation. – Where any order of refund is made by the Commissioner(Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner(Appeals), Appellate 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.”

10.2 In the present case, the OIA dated 14.01.2007 had remanded the matter back to the adjudicating authority with directions to allow the rebate claim if otherwise found in order. It was not an order of refund made by the Commissioner(Appeals) which could be deemed to be an order of refund passed under sub-section (2) of Section 11B of the CEA, 1944. This finding in the impugned order cannot be repudiated.

11.1 Going further, the Commissioner(Appeals) has discussed the explanation at Section 11B(5)(B)(ec) of the CEA, 1944 stipulating the relevant date for filing refund claim and concluded that since the applicant had filed fresh claim only after 11.05.2007 when the said clause was inserted in the explanation, they would be entitled to interest only three months after rebate claims which were complete in all respects were filed. It would be apposite to make reference to the said clause to understand it fully.

“(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;”

11.2 Government observes that the refund claims covered under this clause would be those claims where excess payment of duty is established subsequently by the order of a Court or an appellate authority while settling disputes regarding classification of goods, valuation of goods or rate of duty etc. In such cases, the refund arises due to an order of such Court or appellate authority. The origin of such cases is not a refund claim. This clause has been introduced to set a time frame for claiming refund in cases where the duty paid by the assessee becomes refundable due to a judgment or decision and such duty paid by the assessee can no longer be retained in the Government account as duty of central excise.

12.1 In the present case, the original cause of action for all the subsequent litigation before the Commissioner(Appeals), CESTAT and the Revisionary Authority is the filing of rebate claims for refund of duty paid on exported goods. The clause relevant for refund of rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of exported goods is specified at clause (a) of Section 11B(5)(B) of the CEA, 1944 has been reproduced hereinafter.

“(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 dispatch of goods by the Post Office concerned to a place outside India;”

12.2 The reasoning employed by the Commissioner(Appeals) in the impugned order is that the filing of appeal/revision has transformed the proceedings concerning the admissibility of rebate claim into a judgment/decision due to which the duty became refundable. Such a contorted interpretation cannot be given any credence. Merely because the Department has preferred appeals will not alter the nature of the refund

sought by the applicant. Government therefore holds that the finding of the Commissioner(Appeals) that the relevant date for filing refund claim would be covered by clause (ec) of the Explanation for relevant date in Section 11B of the CEA, 1944 is untenable. The duty of excise has become refundable as duty paid on the exported goods as rebate and will remain covered under clause (a) of the Explanation for relevant date in Section 11B of the CEA, 1944 till the time of sanction.

13.1 With regard to the findings of the lower appellate authority regarding the date when the interest liability would commence, Government finds that this aspect has been discussed at length by the Apex Court in its judgment in the case of Ranbaxy Laboratories Ltd. vs. UOI[2011(273)ELT 003(SC)]. Paras 11 and 12 of the judgment are extracted below.

“11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted “automatically” for any refund sanctioned beyond a period of three months. The Circular reads thus :

“Circular No. 670/61/2002-CX, dated 1-10-2002

F. No. 268/51/2002-CX.8

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one

case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, *Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months.* The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX., dated 2-6-98 [1998 (100) E.L.T. T16] wherein *Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application.* Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed.”

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.”

13.2 The observations of their Lordships with regard to the Board Circular referred are very precise; viz. interest liability would be attracted on expiry of three months from the date of receipt of application under Section 11B(1) of the CEA, 1944. At the conclusion of the judgment, at para 15 thereof, the Hon'ble Court has reiterated this observation as the answer to the question framed while taking up the Civil Appeals for decision.

14. Government observes that the original rebate claim had been filed by the applicant in October, 2001. After the rebate claim was rejected by the original authority, the matter was remanded back by the Commissioner(Appeals) in January, 2007. However, the remand proceedings were delayed for 5 years because of the appeal/revision filed by the Department against the OIA dated 14.01.2007. It would be a travesty of justice if the applicant has to forego their right to interest on delayed refund under Section 11BB of the CEA, 1944 because the Department had doubts about the admissibility of the rebate claim which was finally found to be admissible. It is absurd to suggest that the applicant would be required to file fresh rebate claim at every stage after the decision of an appellate authority. The original rebate claim is

sufficient till the culmination of proceedings. Insofar as the contentions regarding the rebate claim being incomplete are concerned, the rebate claim was not rejected for being incomplete at any stage. Moreover, if the rebate claim could be considered complete merely by filing indemnity bond, it was a formality which the adjudicating authority could very well have completed by calling for it from the applicant and processed the claim.

15. Without prejudice to the observations recorded hereinbefore, Government finds that although the present case does not fit into the category of "order of refund" passed by appellate authorities/court finding mention in the Explanation to Section 11BB of the CEA, 1944 the applicant cannot be put to a greater disadvantage than another assessee whose rebate claim has directly been sanctioned by an appellate authority or court to deny him interest for delayed refund. On the contrary, the authority passing the refund order being the same refund sanctioning authority of the jurisdictional Division Office, the applicant directly becomes eligible for interest in view of the contents of the Section 11BB of the CEA, 1944 without having resort to the Explanation appended thereto and the order passed by the Deputy Commissioner is an order passed under Section 11B(2) of the CEA, 1944.

16. In the light of the observations recorded hereinbefore, Government modifies the OIA No. 06/2014(V-I)CE dated 04.03.2014 by holding that the applicant is entitled to interest under Section 11BB of the CEA, 1944 at the applicable rates from the expiry of three months from the date of receipt of application for refund under Section 11B(1) of the CEA, 1944 till the date of sanction of the rebate claim. The rebate sanctioning authority is directed to pay the interest to the applicant within eight weeks of receipt of this order.

17. Revision application filed by the applicant is disposed off.


2018/21

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

ORDER No 2617/2021-CX (WZ) /ASRA/Mumbai DATED 20.08.2021

To,
M/s Grasim Industries Ltd.,
(Successor of Aditya Birla Nuvo .Ltd.)
Aditya Birla Centre, A Wing, 2nd Floor, S.K. Ahire Marg,
Worli, Mumbai 400 030.

1. Principal Commissioner of Central Goods & Services Tax, Visakhapatnam, GST Bhavan, Port Area, Visakhapatnam-
2. Commissioner Of Central Goods & Services Tax, Visakhapatnam Appeals, Sub-Office At Visakhapatnam, 4th Floor, Customs House, Visakhapatnam
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.