REGISTERED
SPEED POST

F.No. 195/1392-1393/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 20.3.13

Order No. 285-286 /13-Cx dated 20.03.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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. US/470 & 471/M-II/12 dated 06.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.
Applicant	:	M/S Vinergy International Pvt. Ltd. Mumbai.
Respondent	:	Commissioner of Central Excise, Mumbai-II

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ORDER

These revision applications have been filed by the applicant M/s Vinergy International Pvt. Ltd., Mumbai against orders-in-appeal No. US/470 & 471/M-II/12 dated 06.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Chembur-II, Mumbai-II..

2. Brief facts of the case are as under:-

2.0 Brief facts of cases are that the applicants are merchant exporters, and engaged in supply of furnace oil to the foreign going vessels. Supply of provision or stores for use on board a ship going to a foreign port is considered as export by virtue of explanation to Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.04 and accordingly, rebate of duty paid thereon is admissible. They purchased duty paid furnace oil from M/s Bharat Petroleum Corporation Ltd. (BPCL) and supplied the same to various foreign going vessels at Mumbai Port. The furnace oil manufactured by BPCL at their Mahul Refinery was cleared on payment of duty to their Sewree Terminal registered with Central Excise Department as a First Stage Dealer. They purchase duty paid furnace oil from BPCL's Sewree Terminal who issued their Central Excise Invoices, evidencing payment of duty. It has been stated that the furnace oil was moved directly from BPCL's refinery at Mahul to the port of exportation for supply to the foreign going vessels/ships in 5 cases out of total 55 cases. In remaining 50 cases, the furnace oil was procured from M/s BPCL-Sewree Terminal. The said furnace oil was supplied by BPCL, Sewree in tanker-lorries and such supplies were also made directly from BPCL-Sewree to a foreign going vessel, through Mallet Bunker, Mumbai Docks, under the cover of ARE-1, Central excise Invoices and other export documents. The duty on said furnace oil

was claimed to have been paid by M/s BPCL Mahul, Mumbai who are the manufacturers of furnace oil.

2.1 Thereafter, the applicants filed their rebate claims vide their letters after having obtained NOC from BPCL along with requisite documents like ARE-1, CE Invoices, shipping bills, bill of lading, bunker delivery note, etc. The jurisdictional Assistant Commissioner after due process of law rejected the same for not following the procedure laid down in CBEC Circular No. 294/10/97-CX dated 30.01.97. On being aggrieved by these orders of the original adjudicating authority, the applicant filed appeals before the Commissioner (Appeals) who after due consideration rejected all of them vide order-in-appeal No. YDB/155-209/M-II/2009 dated 19.11.09.

2.2 The applicant had then filed 55 Revision Applications No.195/227-281/10-RA u/s sec 35EE of the Central Excise Act, 1944 before the Government of India challenging the said Order-in- Appeal dated 19.11.2004. Government of India vide Revision Order No. 612 to 666/2011-CX dated 31.05.2011 decided the issue mainly holding that duty paid goods have been exported and therefore rebate claims were admissible and accordingly, remanded the cases back to the original authority to sanction the claims after verification of payment of duty as stated in AREs-1 forms.

2.3 The Assistant Commissioner after getting the duty payment particulars verified from the jurisdictional Range Superintendent of BPCL's Mahul refinery sanctioned all the 55 Rebate claims vide a common Order-in-Original No. UVD/ Rebate/ 9-63-R/ CH-I/ 2011-12 dated 14.11.2011 without interest u/s 11 BB saying that a separate order will be passed by him for interest as had been agreed to by the applicant also. He later on passed a separate Order- in-Original No. UVD/ Rebate/ 65-R/CH-I/2011-12 dated 27.03.2012 denying claim for interest on the

ground that the department had lodged a Writ petition in Hon'ble Bombay High Court challenging the Order dated 31.05.2011 and when the eligibility of rebate was in dispute, the interest could not be paid.

2.4 The Commissioner of Central Excise, Mumbai-II filed an appeal before the Commissioner (Appeals) against Order-in Original dated 14.11.2011 sanctioning the claims and the applicant filed an appeal against the Order-in- Original dated 27.03.2012 rejecting the claim for interest.

3. The Commissioner (A) vide his impugned Orders-in-Appeal dated 06-08-2012 allowed the departmental appeal against the Order-in-Original dated '14.11.2011 and rejected the appeal filed by the applicant.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The Commissioner (A) has erred in holding that the adjudicating authority had failed to carry out the remand order properly saying that the Range Superintendent had only verified the particulars of duty paid by BPCL, Mahul without going into the correlation of goods cleared from BPCL's Mahul refinery payment of duty and the goods cleared from BPCL Sewree for export. He ought to have appreciated that the aspect of correlatability had already been accepted by the Hon'ble Government of India in para 11 itself saying *"Government. thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant.* "and that the matter was remanded to the original authority *"to sanction the claims after verifying the duty deposit particulars as stated in ARE-1 forms".* The original authority scrupulously followed the direction given to him by the Government of India

by getting the duty deposit particulars mentioned in ARE-1 forms verified from the Range Superintendent who had confirmed the same. Moreover the department had filed its appeal mainly on the ground that the adjudicating authority was well aware of the fact that the said Order of the Revisionary Authority (R.A.) was not accepted by the department and since the said order of R.A. was under review before Hon'ble High Court, in the interest of natural justice, he should have discussed the views of the department and objections against the R.A. order and should have given his findings for rejection of department's view in the order-in-original dated 14.11.2011 which was issued after filing of the writ petition.

4.2 Commissioner (A) has erred firstly in relying upon a portion of the report dated 18.08.2011 of the Range Superintendent and then in inferring that verification of duty paid by BPCL was meaningless without verification of the correlation of the goods cleared from the BPCL Mahul and the goods cleared from BPCL Sewree for export submitted by VIPL. It is pertinent to note that the Commissioner (A) has himself rejected the department's plea in his impugned order itself saying that the Order dated 14.11.2011 of the adjudicating authority *"is not illegal per se as in the absence* of *any stay, the order* of *Revisionary Authority was effective and binding and for the same reason, the issues involved in present appeal which have been decided by the Revisionary Authority and are subject' matter* of *the Writ Petition pending in the Hon'ble High Court cannot be entertained'.* After arriving at this conclusion, he ought to have. appreciated that the' Revisionary Authority had already decided that the goods cleared from the factory of BPCL on payment of duty were exported by the applicant and the matter was remanded back to the adjudicating authority to sanction the claim after verification of duty deposit particulars as given on the AREs-1 forms and hence the adjudicating authority could not go into the issue of correlatability already settled by the Revisionary Authority and that the Adjudicating authority. had rightly

mentioned in its order dated 14.11.2011 that he was left to decide only 2 issues i.e (i) sanctioning of rebate claims after quantification and (ii) interest.

4.3 The Commissioner (A) erred in referring to and taking decision on the basis of the Range Superintendent's report dated 18.08.2011 and the letter F.No.V/CH-I/Tech-III/20-7/ Vinergy Int. Ltd dated 3rd July 2012 because these documents were never provided to the applicant to enable him present his side and by placing reliance the same, he has grossly violated of the principles of natural justice. Moreover these documents were not the subject matter of the departmental appeal and by referring to these documents, the Commissioner (A) has traversed beyond the scope of the appeal before him.

4.4 Without prejudice to the above, it is submitted that even from the report dated 18.08.2011 of the Range Superintendent stating that the goods before delivery were stored in the BPCL's tanks along with the goods meant for sale in domestic market and were never stored in tank Nos. 5 and 6 dedicated for export, it cannot be inferred that duty was not paid on the goods cleared for export by the applicant. The Tank Nos. 5 & 6 dedicated for exports were the tanks meant for storage of the material cleared from refinery by BPCL for its own exports only because clearance of petroleum products without payment of duty from the refinery is allowed for storage in a warehouse meant only for exports whereas the material cleared for further sale to third parties including the merchant exporters is cleared from the BPCL's refinery only after payment of duty and stored in other tanks of BPCL only. It is rather proved that the goods were cleared from the BPCL's refinery only after payment of duty against the Excise Invoices, the particulars of which have been given in the invoices issued by BPCL Sewree to the applicant.

4.5 It was not open for the Commissioner (A) to broaden the scope of remand order issued by his superior appellate authority by opening the issue of correlation between the goods cleared from the BPCL's refinery on payment of duty and the goods cleared for export from the BPCL's Sewree Terminal and subsequently exported when the Hon'ble Revisionary Authority had given clear findings on this issue with a clear conclusion in paragraphs 9.2 to 9.9, 10 and 11 of the Order dated 31.05.2011 that it was not disputed that the goods were removed from the Mahul refinery of BPCL on payment of duty and stored in their own installation BPCL Sewree Terminal whose Central Excise Invoices contain the reference of corresponding Central Excise Invoice issued by BPCL Refinery and that the goods cleared from the BPCL's Sewree Terminal had been exported and the rebate claims were admissible to the applicant. The matter was remanded only because the factual position regarding verification of the Duty Payment by Central Excise Range Superintendent had not been brought on record by the department. Commissioner (A) has not disputed that the goods cleared from the BPCL's Sewree Terminal on payment of duty had been exported. He has raised doubts as to whether the goods cleared from the BPCL's Terminal were the same which were removed from the BPCL's refinery on payment of duty despite clear findings having been given by the Hon'ble Revisionary Authority in Order dated 31.05.2011 in favour of the applicant as stated above.

5. Personal hearings scheduled in this case on 04.03.2013 was attended by Shri Ashok Aggarwal, Consultant and Manav Purohit, consultant and they reiterated grounds of revision applications. Shri Anand V. Rao, Superintendent Central Excise attended hearing on behalf of the respondent department relied upon their counter argument submitted during personal hearing, wherein, the department has mainly relied upon contents of impugned orders-in-appeal. He further stated that GOI order No. 612-666/11-CX dated 31.05.2011 has been

challenged by the department before Hon'ble Bombay High Court by way of W.P. No. 447/13.

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

7. On perusal of case records, Government notes that applicant merchant exporters were supplying the furnace oil to foreign going vessels at Mumbai Port as stores for use on Board a ship going to foreign port after procuring the same from M/s BPCL Mahul Refinery (Factory) as well as M/s BPCL – Sewree Terminal (First Stage Dealer registered under Rule 9 of Central Excise Rules). The applicants filed 55 rebate claims in respect of furnace oil exported as stated above. The Assistant Commissioner of Central Excise rejected these rebate claims on the ground that the procedure prescribed under CBEC Circular 294/10-97-CX dated 30.01.97 was not followed in as much as the goods were not cleared from BPCL – Sewree Terminal under Central Excise Supervision, due to which the identity of exported goods can not be co-related with orders-in-appeal No.YDB/155 to 259/M-II/2009 dated 19.11.2009 the identity of goods cleared from factory. Commissioner (Appeals) had upheld the said 19 orders-in-original. The applicant then filed revision applications Nos. 195/227-281/10-RA against said orders-in-appeal dated 19.11.2009. The Govt. of India decided the said revision applications vide Order No.612-666/11-Cx dated 31.5.2011 by holding that the duty paid goods had been exported and rebate claims were admissible to the applicant. The cases were remanded back to original authority to sanction the rebate claims after verifying the duty deposit particulars as stated in ARE-1 forms. The Assistant Commissioner after getting the duty payment particulars verified from the jurisdictional Range Superintendent of BPCL's Mahul refinery sanctioned all the 55 Rebate claims vide a common Order-in-Original No.UVD/ Rebate/9-63-R/CH-I/2011-12 dated 14.11.2011 without

interest u/s 11 BB saying that a separate order will be passed by him for interest as had been agreed to by the applicant also. He later on passed a separate Order- in-Original No. UVD/ Rebate/ 65-R/CH-I/2011-12 dated 27.03.2012 denying claim for interest on the ground that the department had lodged a Writ petition in Hon'ble Bombay High Court challenging the Order dated 31.05.2011 and when the eligibility of rebate was in dispute, the interest could not be paid. The Commissioner of Central Excise, Mumbai-II filed an appeal before the Commissioner (Appeals) against Order-in Original dated 14.11.2011 sanctioning the claims and the applicant filed an appeal against the Order-in- Original dated 27.03.2012 rejecting the claim for interest. Commissioner (Appeals) allowed the department's appeal and rejected applicant's appeal with reference to grant of interest. Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

8. Government observes that the department is mainly contesting that co-relatibility of goods exported in this case has not been conclusively processed and hence, the applicant having failed to comply with this mandatory requirement, is not eligible for rebate claims. Government finds during first round of revisionary proceedings when the applicant filed revision application Nos.195/227-281/1-RA before this authority, this issue was contested by the applicant. This authority while deciding the issue had considered this aspect in Revision Order No.612-666/11-Cx dated 31.5.2011, wherein following observations were made:

"

9. As regards other 50 rebate claims pertaining to other ARE-1s where clearance has taken place from M/s BPCL – Sewree Terminal. Commissioner Appeals has upheld the impugned order-in-original on the ground that "the condition of direct export from the factory is waived subject the condition that the exporter desiring to export duty paid excisable goods (capable of being

clearly identified) which are in original factory packed condition should make an application to the jurisdictional Superintendent of Central excise who on verification, if satisfied, about the identity of goods, duty paid character and duty payment is got verified from the originating Ranges where duty was paid. The identity of the goods cannot possibly be verified after they have been cleared for export.

Government notes that the claim of the applicant has been rejected on the below mentioned two basic objections/contraventions :

(i) Goods were not cleared directly from the (registered) factory or warehouse

(ii) The applicant has not followed vide Board's Circular No. 294/10/47 dated 30.01.97.

9.1 Regarding first objection, applicant has contended that M/s BPCL - Sewree Terminal is duly registered under Rule 9 of Central Excise Rules, 2002 and the same is a warehouse of the manufacturer M/s BPCL in terms of definition of warehouse under Rule 2(h) of Central Excise Rules, 2002 and hence the CBEC Circular F.No.294/10/47 dated 30.01.97 is not applicable in their case as they have cleared good direct from warehouse, In this regard the relevant statutory provisions are required to be looked into. As per condition No. 2(a) of Notification No. 19/04-CE(NT) dated 6.09.04 the excisable goods shall be exported after payment of duty directly from a factory or warehouse except as otherwise permitted by CBEC. Warehouse is defined under Rule 2(h) of Central Excise Rules, 2002 as any place or premises registered under Rule 9 of Central Excise Rules. The said premises of M/s BPCL – Sewree Terminal are registered under Rule 9 and therefore it is covered under the definition of warehouse. Further, as per para 3(a)(i) (procedures) of said notification, the manufacturer exporters registered under Central excise Rules, 2002 and merchant exporters who procure and export goods directly from factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by Central

Excise officer or under self-sealing. In this case, exporter has opted for self sealing procedure. Department has not disputed the claim that goods were cleared from warehouse. In view of this position, first objection does not sustain.

9.2 Now, the Government takes up the ground of rejection as mentioned at 2 above for consideration of the case matter. Now, while keeping all the above submissions of the applicant in background, Government notes that the lower authorities has rejected the rebate claims on the core reason that the applicant did not submit/get endorsed the triplicate copy of the ARE-1s to / from the jurisdictional Range Superintendent of Central Excise so as to certify the duty paid nature and corelatable status of the export goods (furnace oil) as the goods were not cleared directly from the factory of manufacturer and goods were not examined by the Central Excise officer as required. Thus contravening the conditions discussed elaborately till this stage of the case matter.

9.3 The applicant has submitted the detailed chart as stated in para 6.1.1 above, along relevant document to establish that there is a perfect correlation between the goods cleared from factory and goods finally exported. In this regard, it is observed that in all the Central Excise Invoices, issued by M/s BPCL Sewree Terminal, particulars like name of the Foreign Going (FG) vessel to which furnace oil (FO) was supplied, Central Excise Registration No., quantity and registration No. of Tanker Truck(TT) (to be used for transportation) and Central Excise Invoice No. / date issued by M/s BPCL Refinery Mahul on which duty was paid, were invariably mentioned. Each Tanker Truck was sealed by M/s BPCL Seal and Seal No. was mentioned on the invoice. The ARE-1 contained all the particulars of Central Excise Invoice, the destination as ships-vessel name, in addition to other particulars. The ARE-I/Invoice details are mentioned on the Shipping Bills which match with each other. The customs officers have physically checked the goods in the Tanker Truck and supervised the supply of furnace oil to the foreign going vessels. In part B of ARE-I, Customs have certified that the consignment (mentioned in ARE-I) was shipped under their supervision under specified Shipping Bill No. and its date was mentioned. Further, the

Masters/Chief Engineers of the vessels had also signed the ARE-I and issued Bunker Delivery Notes (BDNs) Certifying the receipts of the furnace oil in the vessel. The quantity of furnace oil received in the foreign going vessel as per BDN match with the relevant ARE-I.

9.4 Government further observes that the procedure for examination of the goods at the place of export has been prescribed in para 7 of Chapter 8 of CBEC's Central excise Manual of Supplementary Instructions, 2005. The relevant Page 7.3 and 7.4 reads as under :

> *7.3 The goods are examined by the Customs for the purposes of Central Excise to establish the identity and quantity, i.e. the goods brought in the Customs area for export on an ARE-1 are the same which were cleared from the factory. The Customs authorities also examine the goods for Customs purposes such as verifying for certain export incentives such as drawback, DEEC, DEPB or for determining exportability of the goods.*
>
> *7.4 For Central Excise purposes, the officers of Customs at the place of export shall examine the consignments with the particulars as cited in the application (ARE-1) and if he finds that the same are correct and the goods are exportable in accordance with the laws for the time being in force (for example, they are not prohibited or restricted from being exported), shall allow export thereof. Thereafter, he will certify on the copies of the ARE-1 that the goods have been duly exported citing the shipping bill number and date and other particulars of export.*

In the instant case, the goods have been examined by the Customs at the Place of export of port as per provision of para 7.3 and 7.4 of the Chapter 8 as enumerated above. The Customs Officer has duly endorsed the original and duplicate copy of the ARE-1s, after satisfying himself about the fact that the

goods intended for export are the same which were cleared on the relevant ARE-1s. The relevant Shipping Bill No. against which goods were exported was also mentioned in the Customs endorsement on each ARE-I Part-B.

9.5 The above stated factual position is not disputed by department keeping in view all the documentary evidence and particulars / details stat ed therein especially ARE-I, Central Excise Invoice, Shipping Bill, and Bunker delivery note and the Customs Certification in the Part-B of ARE-I clearly establish that the furnace oil cleared from the BPCL – Sewree Terminal was ultimately exported.

9.6 The applicant reiterated that the order No. 204-205/09 of the Government of India which has been relied upon by the Ld. Commissioner of Central Excise (Appeals) is not at all relevant for this case as in that case the material of BPCL and HPCL was stored in the same tank and it was not possible to identify the export goods. Moreover, it was not a warehouse of the manufacturer registered under Rule 9 of Central Excise Rules, 2002. Government notes that in the instant case the tank in Sewree Terminal is the exclusive tank of BPCL and in that particular tank only Furnace Oil cleared from the factory of BPCL only was stored. Secondly, the export goods were examined by the customs officers at the port and the entire operation of supply of furnace oil to the foreign going vessels at the port was carried out under the supervision of the jurisdictional Customs Officers who have also signed on Part-B of each ARE-1 which was not done in the cited case. As such the ratio of GOI Order No. 204-205/09 cannot be made applicable to this case.

9.7 Further, it has been held by the Government of India in RE.: Cotfab Exports 2006 (205) ELT 1027(GOI) that :

"Export – Rebate – Discrepancies in particulars in documents – Goods held as not exported and excise duty demanded – Quality of goods, marks and numbers common in all documents – Export clearance verified by Range Superintendent – Endorsement in AR 4 as to goods shipped under Customs Supervision –

Contention of applicant that blended fabrics exported but description inadvertently noted as 100% Polyester Printed Fabrics accepted Procedural infractions to be condoned if exports had taken place. Fundamental requirement for rebate is manufacture and export Broad description tally with invoices, ARE-1 and shipping bills as also with other collateral evidences like purchase order and bank realization certificate – Demand not enforceable merely on account of difference in description in AR4s and shipping bills impugned order seeking duty on export goods set aside – Section 11A of Central Excise Act, 1944 – Rule 18 of Central Excise Rules, 2002 [paras 2.4, 5.1, 5.2, 5.3 6,7,8,9]"

In the referred juidgement, goods were treated to have been exported, despite mismatch in the description of goods as given in ARE-I/Invoice and Shipping Bill relying on the certification by Customs Officer in Part-B of ARE-I that consignment (mentioned in ARE-I) was shipped under their supervision under Shipping Bill No.....(Shipping Bill No. was mentioned in ARE-I by Customs).

9.8 Applicant has contended that their 3 identical claim had been sanctioned by Asstt. Commissioner Central Excise Mumbai-I vide order-in-original No. 21/R/10 dated 30.04.10. The order was accepted by department. In the said order Asstt. Commissioner Central Excise has accepted the duty paid nature of goods exported which got co-related with the goods cleared from factory / warehouse Terminal through the collateral evidences. The sanction of these rebate claims in fact also strengthen their case.

9.9 Regarding certification of duty payment on the goods, Government notes the furnace oil cleared on payment of duty on Central Excise Invoices by M/s BPCL Refinery Mahul and stored in their own installation BPCL Sewree Terminal whose Central Excise Invoice contain the reference of corresponding Central Excise Invoice issued by BPCL Refinery. The Asstt. Commissioner Central Excise has mentioned that the applicant had received said goods from M/s BPCL Sewree Terminal and duty of said goods was originally paid by M/s BPCL (Refinery)

Mahul. This factual position as stated in the order-in-original is not denied by the department. Further, M/s BPCL Mahul has given Disclaimer Certificate in each case to the applicant certifying the duty payment on the said goods and stating that they have no objection to M/s Vinergy International Pvt. Ltd. claiming Excise refund/rebate of duty paid on furnace oil supplied to foreign going vessels.

The triplicate copy of ARE-I was required to be certified by Range Superintendent regarding duty payment and forwarded to Asstt. Commissioner Central Excise. The factual position has not been brought on record regarding certification by Central Excise Range Superintendent.

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11. In view of above circumstances and keeping in view the existence of enough adduced evidence here in above, Government is of the considered opinion that what is compulsorily required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatibility specifically when there is nothing on record to out rightly negate the claim of applicant that duty paid goods cleared from M/s BPCL Sewree Terminal were exported. Government, thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant. Thus, the impugned orders-in-appeal are hereby set aside and case is remanded back to the original authority to sanction the rebate claim after verifying the duty deposit particulars as stated in ARE-I forms. A reasonable opportunity of hearing will be afforded to the applicants."

8.1 In the said GOI order, the issue has been discussed in detail and findings are given in para 9.1 to 9.9. Further in para 11 also, the concluding observation is that "Government thus holds that duty paid goods have been exported in this case and rebate claim is admissible to the applicant". The case was remanded back for sanction of rebate claim after verifying duty deposit particular as stated

in ARE-1 Forms. The Commissioner (Appeals) has erred in ignoring the said findings of Government by making a erroneous interpretation of Revision order. Department in their appeal before Commissioner (Appeals) has not raised any such ground. Rather department had contended that original authority did not take into account the grounds raised by department in Writ Petition filed in High Court. The said GOI order is neither set aside nor stayed by the Hon'ble Bombay High Court. Under such legal scenario the principle of judicial discipline demands that the order of higher authority is to be strictly implemented by the lower authorities. Hon'ble Supreme Court has held in the case of U.O.I. Vs. Kamalakshi Finance Corporation Ltd. 1991(55) ELT 433 (SC), that orders of higher appellate authorities should be unreservedly followed by subordinate authorities unless operation of same has been stayed by competent court.

8.2 Government finds that the case was remanded back to original authority to sanction rebate claims after verifying the duty deposit particulars. The Range Superintendent vide his report S.No.CEX/R-01/Ch-1/Refund/2008-11 dated 18.8.2011 has verified the duty payment particular and accordingly, by taking into account this verification report, the original authority sanctioned the rebate claim. As such, the Government finds that the original authority's order of sanctioning rebate claims is legal and proper and do not suffer from any legal infirmity.

9. Government further observes that in the instant case, rebate claims were sanctioned by the original authority in compliance to GOI order No.612-666/11-Cx dated 31.5.2011. However, the original authority rejected the interest claim on such delayed payment of rebate claims by observing that said order of GOI has been challenged by the department before Hon'ble Bombay High Court and hence interest cannot be given to the applicant.

10. Government notes that on delayed payment of refund/rebate claim interest is payable after the expiry of three months of the date of receipt of application for rebate in terms of Section 11BB of Central Excise Act, 1944. This very issue is already decided by Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories Ltd. vs. UOI reported as 2011-TIOL-105-SC-EX. Ho'ble Supreme Court has categorically held as under :

10.1 *"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1)of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.*

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision, there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate Vs. Inland Revenue Commissioners [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax (2010) 8 SCC 739 = (2010-TIOL-66-SC-IT).

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15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

10.2 In another case of M/s Jindal Drugs, Government vide its GOI Order No. 247/2011-CX dated 17.03.11 passed in revision application No. 198/184/08-RA-CX filed by Commissioner Central Excise, Raigad against order-in-appeal No. SRK/455-460/RGD-08 dated 24.07.08 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II, had upheld the impugned orders-in-appeal and held that in terms of Section 11BB interest is payable after expiry of three months from the date of receipt of refund / rebate application. Department contested the said GOI Order dated 17.03.11 by filing WP No. 9100/2011 in Bombay High Court who in its judgment dated 30.01.2012 has upheld the GOI Order No. 247/2011-CX dated 17.03.11. The observations of Hon'ble High Court in para 2,3 of said judgment are reproduced below:

"2. Counsel appearing on behalf of the Petitioner submitted that the entitlement of the Respondent to a rebate was crystallized only on 6 December 2007 when the notice to show cause was dropped by the Commissioner of Central Excise. The rebate claims were sanctioned within a period of three months thereafter by the Assistant Commissioner (Rebate) and hence, no interest was payable. On the other hand, it has been urged on behalf of the respondent that the law has been settled by the judgment of the Supreme Court in Ranbaxy Laboratories Ltd. vs. Union of India and consequently no interference in the exercise of the jurisdiction under Article 226 of the Constitution is warranted.

3. The Supreme Court in its decision, in Ranbaxy (supra) considered the provisions of Section 11B and 11BB of the Central Excise Act, 1944 and held that Section 11BB lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B, then the applicant shall be entitled to interest at such rate as may be fixed by the Central Government. The Supreme Court observed that the explanation to Section 11BB introduces a deeming fiction to the effect that where the order for refund is not made by the Assistant Commissioner but by an appellate authority or the Court,

then for the purposes of the Section the order passed by the appellate authority or the Court shall be deemed to be an order under sub-Section (2) of Section 11B. Having observed as aforesaid the Supreme Court also held that the explanation does not effect a postponement of the date from which interest becomes payable under Section 11BB and interest under the provision would become payable if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Hence, it is now a settled position in law that the liability of the Revenue to pay interest under Section 11BB commences from the expiry of three months from the date of receipt of the application for refund under Section 11B(1) and not on the expiry of the said period from the date on which an order for refund is made. The submission which has been urged on behalf of the revenue is directly in the teeth of the law as laid down by the Supreme Court. The order passed by the Commissioner (Appeals) granting interest and as confirmed by the revisional authority does not hence fall for interference under Article 226 of the Constitution. The Petition is accordingly dismissed."

11. In view of above judgements, the observation of lower authorities are not legally tenable as the ratio of said judgements is squarely applicable to this case. As such since the rebate claims were sanctioned belatedly, interest is payable under section 11BB from the date of expiry of three months from the date of filing of said claims.

11. In view of above discussions, Government sets aside impugned orders-in-appeal and allows revision application of the applicant with consequential relief.

12. Revision Applications thus succeed in above terms.
13. So, ordered.

(D P Singh)
Joint Secretary (Revision Application)

M/s Vinergy International Pvt. Ltd.,
Shivsagar Estate, 'A' Block
1st Floor, South Wing,Dr. A.B.Road, Worli,
Mumbai-400 018.

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
Assistant Commissioner
(Revision Application)
Ministry of Finance (Deptt of Rev.)
Government of India

G.O.I. Order No. 285-286 /2013-Cx dated 20.03.2013

Copy to:-

1. M/s Vinergy International Pvt. Ltd., Urmi Chambers, 3rd Floor, Apsara Complex, DB Marg, Grant Road (E), Mumbai-400 007.
2. Commissioner of Central Excise, Mumbai-II Commissionerate, 9th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012.
3. The Assistant Commissioner of Central Excise Chamber-II Division, Mumbai-II Commissionerate, Ganges Ink Building, 2nd Floor, 110, L B S Marg, Vikhroli (W), Mumbai-400 083.
4. The Commissioner of Central Excise (Appeals), Mumbai-II Zone, Utpad Shulk Bhavan, 3rd Floor, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
5. Shri Ashok Aggarwal, Consultant, Flat No. 2, Ground Floor, Kanta Nivas, 1st Road, Madhu Park, Khar (West), Mumbai – 400 052.
6. PS to JS(RA)
7. Guard File
8. Spare Copy.

(Bhagwat P. Sharma)
OSD(RA)