

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.195/21/WZ/2022-RA

/ 6217

Date of issue: 18.08.2023

ORDER NO. 340 /2023-CX (WZ)/ASRA/MUMBAI DATED 16.8.2023  
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.

Applicant : M/s. Angoora International

Respondent : Commissioner of CGST, Belapur

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
DL/51/RGD APP/2022-23 dated 13.06.2022 passed by the  
Commissioner (Appeals), Central Tax, Raigad.

## ORDER

This Revision Application is filed by the M/s. Angoora International having their office at 53, 147/149, Gaiwadi Sadan, Dr. Viegas Street, Kalbadevi, Mumbai - 400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. DL/51/RGD APP/2022-23 dated 13.06.2022 passed by the Commissioner (Appeals), Central Tax, Raigad.

2. Brief facts of the case are that the Applicant, was granted rebate claim of Rs. 1,39,827/- under Rule 18 of the Central Excise Rules, 2002 vide order-in-original dated 4<sup>th</sup> March, 2022. However, as the matter pertained to rebate claim filed on 25.04.2005, which had been sanctioned in pursuance of the Revisionary Authority order, the applicant requested for interest under Section 11-BB of the Central Excise, Act, 1944. Accordingly, the Adjudicating Authority sanctioned an amount of Rs.1,40,003/- vide Order-in-Original (OIO) No. 14/AC(AA)/2022-23/Belapur dated 29.03.2022. However, the applicant filed an appeal, claiming interest at a higher rate than the rate of 6% p.a. at which it had been granted, which was rejected by the Appellate Authority vide the impugned OIA.

3. Accordingly, the Applicant filed the impugned Revision Application mainly on the following grounds:

- a) The Applicant states that, the law regarding claim of interest clearly provides that interest at rates 5% to 30% is payable, it provides 30% as the highest interest rate for the delayed payments. In the instant case the Applicant was provided only @ 6% for the delayed payment, which is unsustainable.
- b) In this connection Applicant rely on the following High Court Orders / Judgements clearly revealing that allowed rate of interest is 18% & 24% on delayed payment:
  - 2015 (324) E.L.T. 58 (Mad.) — Karur K.C.P. Packagings Ltd. vs. Commissioner of Customs, Tuticorin dated 3-12-2014-

to allowed Rate of interest @ 18% on delayed payment. In the instant case the Applicant is also eligible for the same.

- The Hon'ble High Court of Madras in the case of M/s. Adluri Foods vs The Assistant Commissioner of Customs WP No.30212 of 2016 judgment dated 06.06.2019, allowed Rate of interest @ 24% on delayed payment. In the instant case the Applicant is also eligible for the same.
- c) The Applicants state and submit that Article 14 of the Indian Constitution safeguards equality before law and by denying @18% / @24% interest on delayed payment to the Applicant and release of payment to other exporters is clearly discriminatory and ultra virus to the Indian Constitution. The Applicants may therefore be allowed their due interest amount immediately without falling into any contrary to the practice followed in respect of other exporters. It is an established fact of our democratic system to ensure that LAW IS SEEN TO BE DELIVERED. There cannot be any disparity between one exporter and another. The Impugned orders are therefore manifestly bad in law and required to be modified.
- d) Further, the Applicant states that a point to be considered that when there is a delay on the part of exporters to pay any money due to the Government it will charge interest @ 15% for the delayed period. The equity and natural justice should prevail, the Appellants should be granted interest @ 15%. Therefore, the impugned Orders should be modified on this ground also.
- e) The Applicant states that there was inordinate delay in finalizing the pending claim. The said claim was misplaced/lost from the department; consequently, this file had to be reconstructed. From the above it is evident that the delay is solely due to departmental mishandling of the issue and on that count alone the Applicant is eligible for the highest rate of interest on delayed payment.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 06.06.2023/20.06.2023. However, the applicant vide letter received on 02.06.2023 submitted that the facts and grounds of the case are clearly mentioned in their Revision Application and they don't have anything further to submit. Hence, they requested to avoid formalities like more personal hearings and decide the matter on merits.

4.1 Since the applicant does not wish to avail the opportunities for personal hearing, the matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that that the main issue involved in the instant matter is whether the rate of interest of 6% p.a., at which interest for delayed rebate was given to the applicant is appropriate as per law?

7. Government gathers from the records of the case that consequent to the Order of Revisionary Authority, the rebate claim dated 25.07.2005 for Rs.1,39,827/- was sanctioned vide OIO dated 04.03.2022. Subsequently, on request of applicant, an interest amounting to Rs.1,40,003/- was sanctioned vide impugned OIO dated 29.03.2022 for the delayed period. The interest was calculated @6% per annum as per Notification No.67/2003-CE(NT) dated 12.09.2003 issued under Section 11BB of the Central Excise Act,1944. The applicant challenged the impugned OIO on the grounds that higher rate of interest should be allowed to them. However, the Appellate authority rejected their application.

8. Government observes that the relevant Section 11BB ibid reads as under:

*Section 11BB. Interest on delayed refunds. -*

*If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.....*

The concerned Notification No.67/2003-CE(NT) dated 12.09.2003 reads as under:

*In exercise of the powers conferred by Section 11 BB of the Central Excise Act, 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.17 / 2002 Central Excise (NT) dated the 13<sup>th</sup> May, 2002 (G.S.R 353 (E), dated the 13<sup>th</sup> May, 2002), except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at **six percent per annum** for the purpose of the said section.  
(F.No.04/07/2003 - Cx. I)*

*Sd/xxx  
(Sanjiv Srivastava)  
Deputy Secretary to the  
Government of India*

Thus, Government finds that the lower authorities had taken the decision in consonance with the prevailing Law. It is a settled fact that the law enforcing officers cannot go beyond the scope of the Statute.

9. Further, Government observes that on this issue, relying on the judgment of Apex Court in the case of Khazan Chand v. State of Jammu and Kashmir, the Hon'ble Bombay High Court in the case of Sharp Menthol India Limited v. Union of India [2012 (26) S.T.R. 162 (Bom.)] held as under:

*This petition is filed to challenge the action of the respondents in paying interest @ 6% on the refund amount as per Section 11BB of Central*

*Excise Act, 1944. According to the petitioner, the refund must be paid with interest @ 13% as per Notification No. 66/2003-C.E.(N.T.) dated 12-9-2003. The said Notification deals with the interest payable by a party to the revenue and not other way round. Counsel for the parties state that similar contentions raised before the Apex Court have already been rejected in the case of Khazan Chand, etc. v. State of J&K and Ors. reported in AIR 1984 Supreme Court, 762. In this view, the petition is dismissed with no order as to costs.*

10. As regards the judgments relied upon by the applicant, Government observes that in the case of Adluri Foods, the Hon'ble Madras High Court observed that despite orders in favour of Petitioner and several reminders being given, entire amount was not refunded. Further, the issue involved was no more res integra as various Courts including Hon'ble Supreme Court had clarified that delay in refund on duty attracts interest. Facts of this case are distinguishable from the facts of instant case. Government further notes that unlike officers created under the Statute, Supreme Court/High Court can take a view which goes beyond the Statute, considering specific facts of the case.

11.1 Government further observes that in a recent judgment in the case of Qualcomm India Pvt. Ltd. v. Union of India [2021 (50) G.S.T.L. 269 (Bom.)], Hon'ble High Court allowed the petition to grant interest @ 6% p.a. on delayed refund for the period after expiry of three months from the date of application till the date of actual refund under section 11BB of the Central Excise Act, 1944.

11.2 Hon'ble CESTAT in the case of Devendra Udyog vs Commissioner of CGST, Jodhpur [2020 (372) ELT 385 (Tri.-Del.)] held that - *In Section 11BB, to clarify the rate of interest in the range of 5% to 30%, the statute itself has empowered the Central Government to fix any rate of interest for the time being by way of a notification. This clarifies that once there is a notification of Central Government fixing 6% as the rate of interest same has to be followed as having power of statute.*

12. In view of the findings recorded above, Government upholds the impugned Order-in-Appeal No. DL/51/RGD APP/2022-23 dated 13.06.2022 passed by the Commissioner (Appeals), Central Tax, Raigad and rejects the instant Revision Application.

*Shrawan*  
*16/8/23*  
(SHRAWAN KUMAR)

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

ORDER No. *310* /2023-CX (WZ)/ASRA/Mumbai dated *16.8.23*

To,  
M/s. Angoora International,  
53, 147/149, Gaiwadi Sadan,  
Dr. Viegas Street, Kalbadevi,  
Mumbai-400 002.

Copy to:

1. The Commissioner of CGST,  
Belapur Commissionerate,  
1<sup>st</sup> Floor, CGO Complex,  
C.B.D. Belapur, Navi Mumbai - 400 614.

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

