



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.198/194/2012-RA / 1978

Date of Issue: 20/11/10

ORDER NO. 349/2018-CX (WZ)/ASRA/MUMBAI DATED 30.10.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner, Central Excise & Customs, Aurangabad

Respondent : M/s Sanket Food Products P. Ltd

Subject :Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. AGS(81)3/2012
dated 08.05.2012 passed by the Commissioner(Appeals), Central
Excise & Customs, Aurangabad.



ORDER

This revision application is filed by the Assistant Commissioner, Central Excise and Customs, Nanded (hereinafter referred to as "the applicant") against the Order-in-Appeal No. AGS(81)3/2012 dated 08.05.2012 passed by the Commissioner(Appeals), Central Excise & Customs, Aurangabad.

2. The issue in brief is that M/s Sanket Food Products P. Ltd is engaged in the manufacture of Pan Masala Gutkha falling under Chapter Heading No.24039990 of the schedule to Central Excise Tariff Act, 1985. They were working under Compounded levy scheme and following the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 as Notified under Notification No.30/2008-CE(NT) dated 01.07.2008. They were paying duty as prescribed under Rule 7 of the said Rules read with Notification No.42/2008-CE dated 01.07.2008 on the number of operating packing machines in the factory during the relevant month.

2.1. The Respondent had filed ten Rebate claims amounting to Rs. 6,46,70,545/-. All the claims were rejected by the Assistant Commissioner, Central Excise and Customs, Nanded vide Order-in-Original No. 50/R/2009 dated 12.03.2010.

2.2 Being aggrieved, the respondent filed an appeal with the Commissioner (Appeals), Aurangabad, who vide Order-in-Appeal No. AGS(137)64/2010 dated 12.7.2010 upheld the Order-in-Original dated 12.03.2010.

2.3 Being aggrieved, the respondent filed a Revision Application to the Central Government. The Joint Secretary, Revision Application vide Order No. 198/2011-CX dated 24.02.2011, wherein the Order-in-Original dated 12.03.2010 and Order-in-Appeal dated 12.7.2010 were set aside and the Revision Application of the respondent was allowed.



- 2.4 In compliance to Government of India Order No. 198/201 I-CX dated 24.02.2011, all their claims were sanctioned vide Order-in-Original No. 20/RBT/DC/2010-11 dated 07.03.2011.
- 2.5 The respondent vide letter dated 05.04.2011 made a request to pay the interest amounting to Rs. 38,05,820/- on the delayed payment of Rebate of Rs. 6,46,70,545/- which was sanctioned due to the Govt. of India, Order No. 198/201 I-CX dated 24.02.2011. That request was turned down by the Assistant Commissioner, Central Excise and Customs, Nanded vide their letter F.No. V(18)22/Ref/Sanket. Int/2010-11/92 dated 13.04.2011.
- 2.6 Being aggrieved by the department's letter dated 13.04.2011, the respondent filed an appeal before the Commissioner (Appeals), Aurangabad. The Commissioner (Appeals), Aurangabad vide Order-in-Appeal No. AGS(143)76/2011 dated 04.08.2011 decided the matter in favour of the respondent.
- 2.5 The Assistant Commissioner, Central Excise and Customs, Nanded vide the impugned Order-in-Original No. 12/CEX/AC/2011 dated 02.12.2011 sanctioned the interest of Rs. 34,37,585/- to the respondent. It was also ordered to appropriate and adjust the sanctioned amount against the defaulted duty amount of Rs.13.45 Crores due against the respondent for the month of September 2011, October 2011 and November 2011.
- 2.6 The Assistant Commissioner, Central Excise and Customs, Nanded then issued corrigendum dated 22.12.2011 to the Order-in-Original dated 02.12.2011, wherein it was stated that the sanctioned amount is adjusted against the interest payable on account of delayed payment of monthly duty.
- 2.7 Being aggrieved by the Order-in-Original dated 02.12.2011, the Department then filed appeal with the Commissioner(Appeal). The



Commissioner(Appeal) vide Order-in-Appeal No. AGS(81)3/2012 dated 08.05.2012 dated rejected the departmental appeal.

3. The applicant, then filed the Revision Application to the Central Government on the following grounds :

3.1 In this case, in compliance to Government of India Order No. 198/201 I-CX dated 24.02.2011, all their refund claims were sanctioned vide Order-in-Original No. 20/RBT/DC/2010-11 dated 07.03.2011 well within 3 months from the date of Revision Order.

3.2 As per Explanation to Section 11BB of the Central Excise Act, 1944, it is imperative that where any order of refund made by the Commissioner(Appeals), Appellate Tribunal, National Tax Tribunal or any Court against order of Assistant/ Deputy Commissioner, Central Excise & Customs 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 said sub Section (2) for the purpose. As the case is covered under the said explanation and accordingly rebate/refund of duty has been originally sanctioned/ granted to the assessee by the competent authority i.e. Deputy Commissioner, Central Excise & Customs, Nanded Division within 3 months from the date of receipt of Govt. of India order and as as such there is no delay in sanction or grant of rebate by the competent authority. Hence there is no question of interest on the refund/ rebate sanctioned and paid to the assessee.

3.3 Hon'ble CESTAT's decision in the case of Samarth Engineering Co. Pvt. Ltd reported in 2008 (226) ELT 122 (Tri Kolkatta) is squarely applicable in this case wherein it is held that

“Interest on delayed refund on pre-deposit - Even if refund of pre-deposit can be considered as refund of duty, since the refund cheque dated 27.5.2000 has been issued within three months of appellants applying for refund pursuant to



Tribunal's order dated 12.1.2000 entitling them to such refund, interest cannot be allowed on such refund made within three months from date of application – Section 11BB of Central Excise Act, 1944”

3.4 Further, rebate itself is not admissible and Department had filed Writ Petition in the Hon'ble High Court, Bombay, Bench at Aurangabad against the Revision Application Order No. 198/2011 CX dated 24.2.2011 and as such interest cannot be admissible to the respondent.

3.5 In view of the above, the Order-in-Appeal No. AGS(81)3/2012 dated 08.05.2012 is not legal, proper & correct and hence needs to be set aside.

4. A personal hearing in the case was held on 08.02.2018. Shri Anil Kalamkar, Supderindent, Jalna Rural Range, Division Jalna, Aurangabad Commissionerate appeared on behalf of the Applicant.. The Applicant pleaded reiterated the submission filed in Revision Application and pleaded that the instant Revision Application be allowed and the Order-in-Appeal be set aside.

5. 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.

7. On perusal of records, Government observes that the appellant had filed 10 rebate claims totally amounting to Rs. 6,62,22,485/- under Rule 18 of Central Excise Rules, 2002. Before going into detail Government consider it necessary to write chronology of events based on the copy of various evidences submitted in the case records. The chronology is as under :

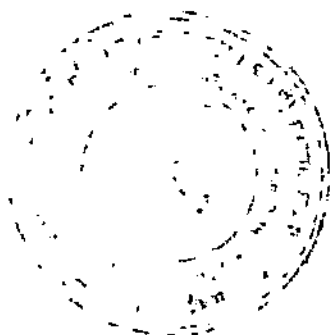
Sr.No.	Date	Event	Remarks
1	22.12.2009	10 Rebate claims	
2	29.12.2009		
3	24.04.2010		
4	12.03.2010	OIO No. 50/R/2009	Rejected
5	12.7.2010	OIA No. AGS(137)64/2010	Rejected



6	24.02.2011	GOI Order No.198/2011-CX	Allowed
7	07.03.2011	OIO No. 20/RBT/DC/2010-11	Sanctioned Rebate
8	05.04.2011	Respondent letter for interest amounting to 38,05,820/-	
9	13.04.2011	A.C. Nanded letter V(18)22/Ref/Sanket. Int/2010-11/92	Rejected interest and applicant file appeal
10	04.08.2011	OIA No AGS(143)76/2011	Allowed interest
11	02.12.2011	OIO No.12/CEX/AC/2011	sanctioned the interest of Rs.34,37,585/-
12	16.08.2012	Revision Application filed by the Applicant/Department	

8. Government notes that the Section 11BB of the Central Excise Act 1944 provides that if any duty ordered to be refunded under Section 11 B within three months from the date of receipt of application under sub section (1) of that Section, interest at such rate as fixed from time to time by the Central Government 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. There is also an explanation to the above provision which is reproduced as under:

"Explanation: Where any order is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise, Deputy 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 purpose of this section."



The above Explanation to Section 11BB takes care of situation where the Assistant Commissioner of Excise rejects the claim for refund of duty. However, the Commissioner of Central Excise (Appeals) or Appellate Tribunal or Court set aside the same and allows the refund of duty. The explanation stipulates that such order of Commissioner (Appeals), Tribunal or Court will be deemed as an order passed under Section 11B(2) by the Assistant Commissioner of Central Excise. Thus, Explanation to Section 11BB statutorily incorporates that the order of refund passed by the Appellate Authority or Court will relate back to the date of passing of the refund order by Assistant Commissioner or Deputy Commissioner and would be construed as an order of the Assistant Commissioner under Section 11B(2). The true purport of the explanation is that once the Appellate Authority or the Court grants the refund, interest will be payable for the period from the expiry of 3 months from the original date of the filing of the refund claim till the date of payment of refund.

9. Government places its reliance on GOI Order Nos. 89-90/2014-CX, dated 19-3-2014 order in the Respondent own case - In RE: Sanket Food Products P Ltd – 2014 (307) ELT 608 (GOI) where in it was held that “Once rebate claim held admissible under Section 11B of Central Excise Act, 1944, interest liability starts after expiry of three months of date of receipt of application filed for rebate”. The relevant paras of the said order are reproduced below:-

10. Government notes that Hon'ble Supreme Court in the case of *M/s. Ranbaxy Laboratories Ltd. v. UOI* reported on [2011-TIOL-105-S.C.-CS = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)] has categorically held as under :

“9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act then the applicant shall be paid interest at such rate, as may be fixed by the



Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

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 v. Inland Revenue Commissioners [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax (2010) 8 see 739 = (2010-TJOL-66-S.C.-JT).

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12.....

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15. In view of the above analysis, our answer 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. "

11. Government observes that Hon'ble Supreme Court in the above judgment has held in unambiguous terms that liability of the Revenue



pay interest under Section 11BB of Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) ibid and not from the expiry of said period from the date on which order of refund is made. In view of the principles laid down in above said judgment of Apex Court, Government finds no infirmity in the Order-in-Appeal No. 143/2011, dated 4-8-2011 and therefore upholds the same.

10. In the present case Government observes that the rebate was held admissible by the GOI Order No.198/2011-CX dated 24.02.2011 and in view of the case laws mentioned at Para 8 & 9 supra and as per Explanation to Section 11BB of Central Excise Act, 1944, Government holds that the respondent is eligible for interest from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) ibid.

11. In view of above discussions, Government upholds the impugned Order-in-Appeal No. AGS(81)3/2012 dated 08.05.2012 passed and dismisses the instant Revision Application as being devoid of merit.

11. So, ordered.

Ashok Kumar Mehta
30.7.14

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 349/2018-CX (WZ)/ASRA/MUMBAI DATED 30.10.2018

To,
The Commissioner of Central Excise,
GST, Town Central, N-5, CIDCO,
Aurangabad - 431 003.

Copy to:

1. M/s Sanket Food Products P. Ltd, (Unit-II0, Gut No. 186, Dawalwadi, Tal. Badanapur, Dist Jalna, 431 203.
2. The Commissioner(Appeals), Central Excise & Customs, Aurangabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.



ATTESTED
S.R. Hirulkar
20.11.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)