



**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.195/20/WZ/2022-RA

16516

Date of Issue: 25.09.2023

ORDER NO. 349/2023-CX (WZ) /ASRA/Mumbai DATED 30.08.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 135EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s PSL International,
147, Mittal Estate No.6, Andheri Kurla Road,
Andheri (E), Mumbai - 400 059.

Respondent : Commissioner of CGST & Central Excise, Belapur,
1st floor, CGO Complex, CBD Belapur,
Navi Mumbai - 400 614.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
DL/47/RGD APP/2022-23 dated 13.06.2022 passed by
Commissioner of Central Tax, Central Excise & Service Tax
(Appeals), Raigarh Commissionerate.

ORDER

The subject Revision Application has been filed by M/s PSL International, Mumbai (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 13.06.2022 which decided an appeal by the applicant against the Order-in-Original dated 29.03.2022 passed by the Assistant Commissioner, Maritime Rebate, CGST & Central Excise, Belapur Commissionerate.

2. Brief facts of the case are that the applicant, a merchant exporter, had made a claim for rebate of Rs.8,16,294/- on 01.02.2017 and the same was sanctioned to them vide Order-in-Original dated 11.03.2022. The applicant requested for interest on the delayed payment as provided for by Section 11B of the Central Excise Act, 1944. Thereafter, the original authority sanctioned interest @ 6% per annum amounting to Rs.2,40,460/- on such delayed payment of the rebate claim. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) on the grounds that they should be paid interest at the rate of 15% p.a. and not @ 6% p.a., as done by the original authority. The Commissioner (Appeals) vide the impugned Order-in-Appeal upheld the Order-in-Original and rejected the appeal of the applicant.

3. Aggrieved, the applicant has filed the subject Revision Application on the following grounds: -

(a) That the observations of the Department are casual and only on trivial points; that the claim for interest is payable from 5% to 30% for delayed payments and that they were eligible for higher rate of interest; that the view of the lower authorities was incorrect and relied on the following decisions in support of their contention:-

- Karur K.C.P. Packagings Limited vs Commissioner of Customs, Tuticorn dated 03.12.2014 [2015 (324) ELT 58 (Mad.)] wherein interest of 18% interest was allowed on delayed payment;
- The Hon'ble High Court of Madras in the case of Adluri foods vs AC, Customs in W.P. No.30212 of 2016 had allowed interest @ 24% on delayed payment;

(b) That the Article 14 of the Indian Constitution safe guards equality before law and hence denying interest @ 18%/24% to them was clearly

discriminatory and ultra vires to the Indian Constitution; that they should be allowed due interest without falling into practice which was contrary to that followed with respect to other exporters;

(c) That when there is a delay on the part of the exporters to pay any money due to the Government it would charge interest @ 15% for the delayed period; that equity and natural justice should prevail and hence they too should be granted interest @ 15%;

(d) That there was inordinate delay in finalizing the pending claims; that the delay was solely due to the departmental handling of the issue and on that ground alone they were eligible for the highest rate of interest on the delayed payment.

In view of the above, they submitted that the impugned Order-in-Appeal be allowed and they be granted interest at the highest rate.

4. Personal hearing in the matter was granted on 06.06.2023 and 20.06.2023. The applicant vide their mail dated 02.06.2023 informed that the facts of the case and the grounds of the application were clearly mentioned in the Revision Application and requested that formalities like personal hearing may be avoided and the case be decided on merits. No one appeared on behalf of the Respondent.

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

6. Government finds that the issue involved pertains to the rate at which interest has to be paid on the delayed payment of the rebate. Government notes that the original authority had sanctioned interest @ 6% p.a. and this decision was upheld by the Commissioner (Appeals) while rejecting the claim of the applicant for interest at a higher rate. The applicant is of the view that they should be paid interest @ 18%/24% p.a. or the highest permissible rate. In this connection, Government finds that payment of interest in such cases is governed by Section 11BB of the Central Excise Act, 1944. The relevant portion of Section 11BB is reproduced below: -

Section 11BB - *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 above Section stipulates that interest would be payable at the rate fixed by the Government by virtue of a notification applicable during the period in question. Government finds that notification no.67/2003-CE(NT) dated 12.09.2003 prescribed the rate of interest for the period in question and the same is reproduced below: -

*“In exercise of the powers conferred by section 11BB 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 (N.T.), dated the 13th May, 2002 [GSR 353(E), dated the 13th 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.”*

A harmonious reading of the above reproduced Section and notification clearly indicates that the interest payable for the delayed payment of rebate during the period in question will be at six per cent per annum. Government finds that both the lower authorities have come to a similar conclusion and hence does not find any infirmity in the finding of the Commissioner (Appeals) on this count.

7. Government finds that decisions cited by the applicant in support of their claim for interest at a higher rate will not find traction here as the facts of the cases cited were different from the instant case. Government finds that this issue was examined by the Hon'ble High Court of Karnataka in the case of CCE, Bangalore vs Hindustan Granites [2015 (323) ELT 708 (Kar.)] wherein the Order of a Single Judge of the same Court granting interest at the rate of 9% was set aside and interest was granted at 6% in terms of Section 11BB of the Central Excise Act, 1944 and notification no.67/2003-CE (NT). Relevant portion of the said Order is reproduced below:-

“ This appeal is preferred by the Revenue challenging only that portion of the order of the learned Single Judge where he has directed payment of interest at 9% on the amount to be refunded, if any.

2. The notification dated 12-9-2003 bearing No. 67/2003-C.E. (N.T.) issued under exercise of the powers conferred by Section 11BB of the Central Excise Act, 1944, (hereinafter referred to as 'the Act'), fixes the rate of interest at 6% per annum for the purpose of the said Section. The interest payable in terms of Section 11BB of the Act, which in turn is with reference to the notification referred above. This aspect has not been considered by the learned Single Judge. In that view of the matter the rate of interest is to be reduced to 6% from 9%. Accordingly, we pass the following :

ORDER

Appeal is partly allowed.

3. The rate of interest is reduced to 6% from 9% on any amount to be refunded if any after determination of the Tribunal."

Government finds that similar view was expressed by the Hon'ble High Court of Madras in the case of C. Padmini Chinnadurai vs A.C. C.Ex., Tirunveli [2010 (257) ELT 538 (Mad)] wherein the Court held that as far as payment of interest was concerned, the provisions of Section 11BB of the Central Excise Act alone was having its application and that under such provision, Notifications have been issued, determining the rate of interest. In light of the above, Government finds that the applicant will be eligible to interest on the delayed payment of rebate at the rate of six per cent per annum as held by the lower authorities and accordingly holds so.

8. The subject Revision Application is rejected.


30/8/23
(SHRAWAN KUMAR)

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

ORDER No. 349/2023-CX (WZ) /ASRA/Mumbai dated 30.08.2023

To,

M/s PSL International,
147, Mittal Estate No.6, Andheri Kurla Road,
Andheri (E), Mumbai - 400 059.

Copy to:

1. Pr. Commissioner of CGST, Belapur Commissionerate, 1st floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
2. Commissioner of Central Tax, C.Ex. & Service Tax, Raigarh (Appeals), 5th flr, CGO Complex, CBD Belapur, Navi Mumbai - 400 0614.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.

