

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. 195/07/WZ/2022-RA | 7345 Date of Issue: 12.10.2023

ORDER NO. 376 /2023-CX(WZ)/ASRA/MUMBAI DATED 13.10.23 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. Alembic Pharmaceuticals Ltd.,
Panelav Baska, Tal Halol,
Dist. Panchmahal,
Gujarat.

Respondent : Commissioner of CGST, Vadodara-II.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-APP-126-2021-22 Dated 31.01.2022 passed by the Commissioner of CGST & Central Excise, Appeals, Vadodara.

ORDER

This Revision Application has been filed by M/s. Alembic Pharmaceuticals Ltd., Panelav Baska, Tal Halol, Dist. Panchamahar, Gujarat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. VAD-EXCUS-002-APP-126-2021-22 Dated 31.01.2022 passed by the Commissioner of CGST & Central Excise, Appeals, Vadodara.

2. The brief facts of the case are that the applicant had filed five rebate claims amounting to Rs. 19,21,966/- which were appropriated by the department vide OIO's dated 30.09.2005 towards outstanding interest claim. Subsequently refund was given to the Applicant of the said appropriated amount vide OIO No. Div HLL 1/05/Ref/14-15 dated 13.04.2015 based on the Final Order of the CESTAT, Order No. A/11388-11387 dated 16.07.2014 and rectification Order No. M/14161-14162 dated 23.09.2014. The Applicant vide their letter dated 12.05.2015 submitted to the adjudicating authority that the amount, which is wrongfully appropriated against a demand, which is later allowed by the final order, is liable to be refunded along with interest from the date when the same was wrongfully appropriated. The Applicant's claim for interest was rejected by the department vide OIO No. Ref/HLL-1/19/2015-16 dated 05.01.2016 on the ground that it was not a case of pre-deposit against any demand rather it was amount of interest which was subsequently refunded. The Applicant had filed an appeal with Commissioner (Appeals), Central Excise, Customs & S. Tax, Vadodara. The said appeal was disposed-off by the Commissioner (Appeals) vide OIA No. VAD-EXCUS-002-APP-111/2-16-17 dated 16.05.2016 wherein the matter was remanded back to the adjudicating authority for deciding the case afresh. The adjudicating authority rejected the claim of interest Order-In-Original No. Div. HLL1/04/Ref/17-18 dated 21.06.2017 amounting to Rs. 11,04,524/- under Section 11B read with Section 11BB of the Central Excise Act, 1944.

3. Being aggrieved, the applicant filed appeal before the Commissioner of CGST & Central Excise, Appeals, Vadodara vide the impugned Order-in-Appeal Dated 31.01.2022 rejected the appeal and upheld the Order dated 21.06.2017.

4. Being aggrieved with the impugned Order in appeal, the applicant has filed this revision application mainly on the following grounds :-

4.1 That the short issue involved in the present appeal is whether the Applicant is eligible to claim interest under Section 11BB of CEA, 1944 on wrongful appropriation of five sanctioned rebate claims against an alleged outstanding demand of interest under Section 11AB confirmed, which demand eventually was set aside in appeal proceedings. Essentially the interest under Section 11BB is claimed on "rebate sanctioned but wrongly withheld/appropriated" against demand which happens to be interest demand and which demand was admittedly set aside later on. As such, since the Applicant was deprived of legitimate rebate claim on account of premature recovery made by revenue towards some extraneous demand which was later on set aside anyway, they are eligible to claim such interest under Section 11BB of CEA, 1944.

4.2 That the CESTAT Order dt. 12.7.05 did not confirm interest demand but only upheld demand of duty, while reducing penalty and remaining silent about interest. That rebate sanctioning authority ought not to have suomotu assumed interest liability on such demand confirmation and appropriate such un-quantified interest from rebate claims unilaterally, especially when such interest demand eventually was anyway set aside. This led to extreme delay of 3496 days in physically receiving of rebate by the Applicant, on which interest under Section 11BB is mandatorily payable to them.

4.3 Secondly, while mis-representation is sought to be made out in the OIO as also the impugned order, suffice it to say, the interest under Section 11BB

is not claimed on any "interest amount" and hence this is not a case of "interest on interest". Instead, the interest under Section 11BB is claimed on belated sanctioning/paying of rebate claims to the Applicant after delay of 3496 days from original sanction, which in the interim were wrongly appropriated against other demand (which demand happens to be of interest under Section 11AB). As such, claim is for interest on delayed payment of rebate and nothing else. If revenue appropriate rebate against alleged non-existing interest demand, which demand was later on anyway quashed and set aside, it is irrational to assume that since this is "interest on interest", there is no provision to sanction any such interest to the Applicant under Section 11BB. This clarification is required at the threshold to avoid any confusion in the matter as such.

4.4 They relied on the following decisions:

- M/s. Jubilant Organosys Ltd, 2014(301) ELT 542 (Tri-Del)
- M/s. Intas Pharmaceuticals Ltd 2012(276) ELT 251 (Tri-Ahm).
- M/s. Sales Cylinders Pvt. Ltd 2011(274) ELT 566 (Tri- Chennai)
- M/s. Ranbaxy Laboratories Ltd 2011(273) ELT 3 (SC).

4.5 That under identical circumstances, where refund was appropriated against interest/penalty demand, which was later on set aside, interest under Section 11BB stood granted to the claimant, by clearly stating that it is not the same thing as interest on interest, but having appropriated refund against interest/penalty claim, the delay in refund remains delay under Section 11BB and interest on such appropriation must be paid under the said Section 11BB. They relied on the following decisions:

- Panasonic Energy India Co. Ltd 2018(12) GSTL 180 (Tri-Ahm).
- Kothari Products Ltd.- 2010(262) EL.T. 329 (Tri.-Del.).

4.6 That mere "sanctioning rebate" is not sufficient, but actually paying it to the claimant is what matters qua interest liability under Section 11BB. That since rebate was sanctioned already, merely not paying it to the Applicant does not attract interest obligation under Section 11BB, which is

not in good taste. Whether rebate was rejected and later on allowed or rebate is sanctioned, wrongly appropriated and later on, such unilateral action of wrongly appropriating interest is found erroneous and hence, rebate actually paid to the Applicant belatedly, are all situations well covered under Section 11BB. When the Applicant was deprived and kept away from legitimate rebate claim being paid to them for over a decade, and interest being compensatory in nature, the due interest must be paid to the Applicant as such.

5. A Personal hearing in this Revision Application was held on 13.07.2023 which was attended by Shri Saurabh Dixit, Advocate, on behalf of the applicant. He submitted that the matter pertains to payment of interest on the amount appropriated against the interest liability which was subsequently set aside by the CESTAT. He requested to allow the application.

6. The applicant made additional written submissions dated 20.06.2023, wherein they reiterated their earlier submissions and contended that-

6.1 That the short issue involved in the present revision applications is whether the Applicant is eligible to claim interest under Section 11BB of CEA, 1944 on wrongful appropriation of five sanctioned rebate claims against alleged outstanding demand of interest under Section 11AB which was not even confirmed at the time of appropriation and which was later on dropped/vacated by Hon'ble CESTAT by virtue of appellate process.

6.2 The Applicant had assailed the matter both on the "demand front", i.e. the demand of interest it was eventually set aside vide CESTAT Order No M/14161-14162/2014 dated 23.9.14 readwith earlier Order No. A/11366-11367/2014 dated 16.7.14, as well as the wrongful appropriation front, which too was challenged, and the Hon'ble CESTAT vide its final Order No. A/10607-10611/2015 dated 19.5.15, held that such rebate had to be paid back to the Applicant when the demand itself was eventually set aside. The said CESTAT

order dated 19.5.15 allowed the appeal with consequential relief and hence, the interest on delayed sanction and payment of rebate must be given to the Applicant under Section 11BB ipso facto.

6.3 They relied on the following decisions:

- Ranbaxy Laboratories Ltd. [2011 (273) E.L.T. 3 (S.C.)
- Humdard (Waqf) Laboratories 2016(333) ELT 193(SC).
- NATIONAL ENGINEER INDUSTRIES LTD. 2019 (28) G.S.T.L. 264 (Tri. - Del.)
- GHATAMPUR SUGAR CO. LTD.2011 (274) E.L.T. 395 (Tri. - Del.),

7. 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.

8. The facts in this case lie within a narrow compass. The issue in this case revolves around the applicant's claim for interest on an amount that was initially appropriated by the department but later refunded to the applicant based on a final order by the CESTAT, as well as a rectification order. The applicant has contended that when funds are wrongfully appropriated against a demand that is later allowed by a final order, interest should be paid on the wrongfully appropriated amount from the date of such appropriation. The core issue, therefore, centers on whether the applicant is entitled to receive interest on the wrongfully appropriated amount that was later refunded, based on the provisions of the Central Excise Act, and whether the department's rejection of this claim is legally justified.

9.1 Government observes that the findings of the lower authority rejected the claim for interest made by the applicant as it did not involve a pre-deposit against any demand. Instead, it was related to an amount of interest that was subsequently refunded to the applicant. In essence, he argued that the

provisions related to pre-deposit under the Central Excise Act, 1944, did not apply to the situation in question. The rejection was made under Section 11B read with Section 11BB of the Central Excise Act, 1944. These sections deal with the refund of amounts, but they may not cover the specific circumstances of interest being refunded when previously appropriated by the department. The adjudicating authority interpreted these sections to exclude the payment of interest in this case. The adjudicating authority's decision to reject the claim for interest was primarily based on the interpretation that the case did not fall within the provisions of pre-deposit and refund as outlined in the Central Excise Act, and therefore, interest was not deemed payable in this situation.

9.2 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 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. 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, which were purportedly sanctioned and appropriated against an

outstanding interest amount. 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;”

11. In the present case the Commissioner(Appeals) has rejected the claim for interest on a rebate claim amounting to Rs. 19,21,966 erroneous because the rebate claims had been sanctioned to the Applicant on 30.09.2005, and this was within the stipulated time period. The sanctioned rebate amount was appropriated against an outstanding interest amount, which was recoverable based on specific orders (OIO No. 28/BRC-II/MP/2004 & 29/BRC-II/MP/2004) dated 25.06.2004. Since there was no stay on the recovery of this interest amount, the department rightfully adjusted and appropriated the rebate amount to cover the interest. The contention of the Applicant that the rebate claims were sanctioned or paid belatedly was deemed incorrect. The adjudicating authority concluded that once the appropriation was made for the interest amount, any refund arising from it was essentially interest. Therefore, he found that the view of the adjudicating authority on this matter was correct, and no further interference was necessary. This decision appears to be based on their interpretation of the facts and applicable regulations, emphasizing that the appropriated amount was interest, not the rebate, and that the appropriation was in accordance with the law. Such a contorted

interpretation cannot be given any credence. The rebate claims were initially sanctioned to the Applicant on 30.09.2005, and according to the standard procedure, they should have received the payment. However, instead of disbursing the sanctioned rebate amount, it was utilized to offset an outstanding interest amount, which was recoverable based on specific orders dated 25.06.2004. Subsequently, this appropriated amount was refunded to the applicant based on a final order by the CESTAT and a rectification order. The adjudicating authority's conclusion that any refund resulting from the initial appropriation essentially constituted interest is flawed. This is because the amount in question was originally granted as a rebate, which should have been rightfully paid to the Applicant but was erroneously appropriated.

12.1 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.”

12.2 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.

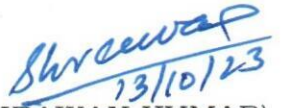
13. Government observes that the original rebate claim had been filed by the applicant and were sanctioned on 30.09.2005, and the funds should have been paid to them. However, instead of making the payment, the sanctioned rebate amount was used to offset an outstanding interest amount, which was recoverable based on specific orders dated 25.06.2004. Subsequently, the department refunded this appropriated amount to the Applicant based on a final order by the CESTAT and a rectification order. The adjudicating authority concluded that any refund arising from the initial appropriation essentially constituted interest. This conclusion is contested because the funds were originally meant to be a rebate payment to the Applicant but were wrongly appropriated for outstanding interest. 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 wrongly appropriated the amount.

14. 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, but the applicant cannot be put to a greater disadvantage than another assessee whose rebate claim has directly been sanctioned to deny him interest for wrongful appropriation. 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.

15. In the light of the observations recorded hereinbefore, Government modifies the OIA No. VAD-EXCUS-002-APP-126-2021-22 Dated 31.01.2022 by holding that the applicant is entitled to interest under Section 11BB of the CEA, 1944 at the applicable rates from 30.09.2005 till the date of payment. The rebate sanctioning authority is directed to pay the interest to the applicant within eight weeks of receipt of this order.

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


13/10/23
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 376/2023-CX (WZ) /ASRA/Mumbai DATED 13.10.23

To,
M/s. Alembic Pharmaceuticals Ltd.,
Panelav Baska, Tal Halol,
Dist. Panchmahal,
Gujarat.

1. Commissioner of CGST, Vadodara-II.
2. Commissioner of CGST & Central Excise, Appeals, Vadodara.
3. Mr. Saurabh Dixit, Advocate, B-216/217, Monalisa Business Centre, Besides Old More Megastore Campus, Manjalpur, Vadodara – 390 011.
4. Sr. P.S. to AS (RA), Mumbai
5. Spare Copy.