



**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**  
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Mumbai- 400 005

F. No. 195/28/2022-RA / 18479

Date of Issue: 15.12.2023

ORDER NO. 401/2023-CX (WZ) /ASRA/MUMBAI DATED 15.12.2023 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. Asian Paints Ltd.  
Respondent : Commissioner of CGST & CX, Vadodara-II  
Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-002-APP-152-2022-23 dated 25.07.2022 passed by the Commissioner, GST & Central Excise (Appeals), Vadodara.

**ORDER**

This revision application has been filed by M/s Asian Paints Ltd. (hereinafter referred to as "the applicant") against Order-in-Appeal (OIA) No. VAD-EXCUS-002-APP-152-2022-23 dated 25.07.2022 passed by the Commissioner, GST & Central Excise (Appeals), Vadodara.

2.1 Brief facts of the case are that the applicant is *inter-alia* engaged in the business of manufacturing and distribution of paints, varnishes, thinners and allied products. The applicant was also clearing dutiable goods on payment of excise duty to Nepal under claim of rebate in terms of Rule 18 of the CER, 2002 and the conditions, limitations and safeguards mentioned in Notification No. 19/2004-CE(NT) dated 06.09.2004. The applicant had filed several refund claims w.e.f. 01.03.2012.

2.2 In pursuance to Revision Order no. 91-92/ 2021-CX(WZ)/ ASRA/MUMBAI dated 17.02.2021, whereby the Revision Applications filed by the applicant, against the OIA dated 04.06.2014 and 30.10.2015, upholding the rejection of the rebate claims on the grounds that the goods were exported to Nepal without issuing proper invoice under Rule 11 of the CER, 2002, were allowed, the applicant had filed a request letter with the jurisdictional Division for grant of refund of Rs. 1,12,51,383/- along with consequential relief.

2.3 However, the jurisdictional Deputy Commissioner of CGST & CX, vide Order-in-Original No. Ank-VIII/DC-YGP/09/REF/2021-22 dated 09.02.2022, while granting refund amount Rs.99,88,579/-, rejected refund amount of Rs.12,62,804/- contending that the concerned order-in-original dated 11.12.2014 was not appearing in the list of OIOs mentioned in the concerned OIA dated 30.10.2015 and hence it remained unchallenged and as such had attained finality.



2.4 Aggrieved, the applicant filed an appeal to the extent of refund rejected and interest amounting to Rs. 41,05,617/- being not sanctioned to them on the principal refund amount Rs.99,88,579/- granted. However, the Appellate authority rejected their appeal vide impugned OIA No. VAD-EXCUS-002-APP-152-2022-23 dated 25.07.2022.

3. Hence, the applicant has filed the instant revision application mainly on the following grounds :

- a. that the Commissioner Appeals, Vadodara in his order dated 25.07.2022 has not made any observation with respect to eligibility of interest amount on the Refund of Rs. 99,88,579/-. The order is completely silent on this.
- b. that the applicant would like to place their reliance on the judgement of Supreme Court of India in the matter of Ranbaxy Laboratories Ltd. Vs Union Of India 2011-TIOL-105-SC-CX wherein it was held that where duty is found refundable and if the same is not remitted within the timeline mentioned as per the statute, refund amount alongwith interest should be remitted to the applicant.
- c. that the above settled position of law is further followed/relied upon in the following decisions: Kamakshi Tradexim Vs. UOI 2017 (351) ELT 102(GUJ.); CCE vs. Hindustan Equipment Pvt Ltd 2017 (347) ELT 300 (Tri - Del.); Ashok Shetty & Associates C.A. vs CCE 2017 (4) GSTL 53 (Tri-Bang); Haldia Petrochemicals Ltd vs. Joint Secretary, MoF 2017 (345) ELT 619 (Cal.).
- d. that interest in the subject matter should be granted to them from the expiry of 3 months from the date of their applications made for the subject refund claims in terms of Section 11BB of CEA,1944.
- e. that in Circular dated 01-10-2002, issued by the Central Board of Excise and Customs, New Delhi, 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 11- BB of the Act. Significantly, the Board has stressed that the provisions of Section 11-BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months.

- f. The applicant placed reliance upon the judgments/decisions in the case of Dabur India Ltd. Versus Union of India 2017 (346) E.L.T. 75 (All.); Commissioner Vs Tata Chemicals Ltd 2015-TIOL-1800-HC-AHM-CX; Pet Metal Pvt Ltd Vs Commissioner of Central Excise and Service Tax, Vadodara-II 2015-TIOL-2047-CESTAT-AHM; Jindal Drugs Pvt Ltd. Vs. The Union of India (2016-VII-561-Bom-CE; The Commissioner of Central Goods and Service Tax & Central Excise Daman Vs. Alfa Packaging; Commissioner of Central Excise, Pune-III Vs. Ballapur Industries Limited and submitted that they are eligible for the interest on the said refund from the expiry of three months from the date on which the application has been made.
- g. that the remand back order given by Commissioner Appeals, Vadodara is incorrect since the Commissioner appellate by themselves have power to adjudicate matter as adjudication authority and that remand back powers were no longer kept with the Commissioner Appellate. In this regard, the applicant relied upon the case of M/s MIL India Ltd Vs. Commissioner of Central Excise, Noida 2007-TIOL-30-SC-CX wherein it was observed by the Apex court that the power of remand by the Commissioner (A) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration.
- h. That the above judgment is much later to the Gujarat High Court ruling in CCE v. Medico Labs. 2004 (173) ELT 117 (Guj.), on which the Commissioner appellate has relied upon in the instant case. Further, the judgment in MIL India case is of Supreme Court, hence, in all sense the



judgment of MIL India will prevail with respect to incorrect remanding back of matters to lower adjudication authorities by the Commissioner Appeals.

4. The personal hearing in the matter was held on 08.09.2023. Ms. Akanksha Bansal, Ms. Unnati Jani and Mr. Rajmohan Asokan, Manager Taxation, appeared on behalf of the applicant and submitted that the application has two issues, one regarding rejection of rebate on typographical error and second is regarding grant of interest. They requested to allow the application.

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 the main issue involved in the instant Revision Application is whether interest under section 11BB of the Central Excise Act, 1944(CEA) would be payable to the applicant for delayed payment of rebate?

7. Government observes that once the rebate claim is held as admissible under Section 11B of the CEA, interest liability starts after the expiry of three months from the date of receipt of application for rebate in the office of rebate sanctioning authority, in terms of Section 11BB *ibid*, which is reproduced hereunder:

***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.*

Thus, Government observes that the Statute in very unambiguous terms allows for interest to be paid for any delay beyond 3 months, from date of receipt, in sanction of rebate under Section 11B *ibid*.

8. Government observes that the case law relied upon by the applicant, viz. *Ranbaxy Laboratories Ltd. v. Union of India — 2011 (273) E.L.T. 3 (S.C.)* has been the basis of numerous subsequent judgments. One such judgment passed recently is *Lavino Kapur Cotton Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai [(2023) 2 Centax 306 (Bom.) [02-12-2022] (2023)]* wherein Hon'ble Bombay High Court has held as under:

**13.** *The question which arises for our consideration is whether 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 the application for refund under section 11B(1) of the Act or the date on which the Order of refund is made?*

**14.** *The date of filing of application for refund before the Authority is not in dispute. Assuming that the Assistant Commissioner of Central Excise, in the present case, had proceeded to accept the claim of the Appellant for refund and proceeded to pass an Order in terms of Section 11B(2) of the Act, then in case the amount was not refunded despite such an Order, the Appellant would be entitled to interest on the delayed payment of the refund after the expiry of three months from the date of such an Order. Section 11B, therefore, does not at all envisage an application to be filed seeking refund. The only application, which Section 11B envisages is an application for refund in terms of Section 11B(1) and the only Order that the said Section 11B envisages is an Order under section 11B(2), where if satisfied, the Assistant Commissioner of Central Excise or Deputy Commissioner may make an Order for refund of the whole or any part of the duty of excise and interest if any paid on such duty paid by the Appellant.*

**15.** *With a view to ensure that despite an Order being passed in terms of Section 11B(2), the amount of refund is not withheld for an unreasonably*



long period of time, Section 11BB envisages payment on of interest on delayed refund beyond the period of three months from the date of receipt of an application under sub-section (1) of Section 11B. The rate of interest which is payable is at a rate not below 5 per cent and not exceeding 30 per cent per annum, which may be fixed by the Central Government in an official gazette.

The explanation appended to Section 11BB clearly takes care of a situation, where an Order of refund is made by the Commissioner of Appeals, the Appellate Tribunal or any Court against an Order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under sub-section (2) of Section 11B, such an Order would be deemed to be an Order passed under the said sub-section (2) of Section 11B for the purposes of Section 11BB, that is payment of interest on delayed refund.

**16.** A reading of the aforementioned provisions makes it clear that in a case where the Order is passed by the Appellate Tribunal, as has been done in the case of the Appellant, by virtue of its Order dated 13 October 2017, the said Order is deemed to be an Order under sub-section (2) of Section 11B and interest would be liable to be paid on delayed refund and therefore, interest would be liable to be paid in terms of Section 11BB on delayed refund as if it was an Order passed under sub-section (2) of Section 11B if the amount was not refunded within three months from the date of receipt of the application under sub-section (1). This issue, however, is no longer res integra.

**17.** The Apex Court in *Ranbaxy Laboratories Limited (supra)* has held as under :

"19. 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 11-BB 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 the order of refund is made."

**18.** *In our view, therefore, the tribunal, in its Order impugned wrongly applied the judgement of the Apex Court supra for purposes of denying the benefit of interest on delayed refund by holding that it was not entitled to the same from the date of the application under section 11B(1), but only after the expiry of three months from the date of the Order of the tribunal dated 10 February 2016, if such applications were filed in terms of the said Order and were disposed of within three months thereof.*

**19.** *Be that as it may, we allow the appeals and answer the question in favour of the Appellant.*

Therefore, Government finds that the interpretation of original authority, conveyed to the applicant vide letter dated 02.05.2022, that the refund of Rs.99,88,579/-, sanctioned vide OIO No. Ank-VIII/DC-YGP/09/REF/2021-22 dated 09.02.2022, was within the statutory time limit of three months, as stipulated in Section 11BB of CEA, considering letter dated 29.11.2021 filed by the applicant consequent to impugned RA Order dated 17.02.2021, is incorrect and unfounded and allows the Revision Application in this regard.

9.1 In the other issue raised in the instant revision application, based on the judgment of the Hon'ble Apex Court in the case of M/s. MIL India Ltd., the applicant has contended that the appellate authority had no power to remand back the case. Government observes that the case of M/s. MIL India Ltd. has been distinguished in several cases including in case of Bacha Motors, which has been relied upon by the appellate authority, wherein it was held that:

*.....After considering all these decisions, I find that in the case of M/s. MIL India the main issue before Hon'ble Supreme Court was entirely different and hence it was only observation during the course of discussion of the issue wherein Hon'ble Supreme Court mentioned about the amendment of the Section. It cannot be said that Hon'ble Supreme Court laid down the law in that case. Whereas in the case of M/s. Medico Lab, Hon'ble Gujarat High Court was dealing with the issue of remand only and after*



considering the issue in detail, Hon'ble High Court had come to the conclusion that the Commissioner has powers to remand. In view of the fact that there are contradictory decisions of the Tribunal and other than the decision of Hon'ble High Court of Punjab & Haryana there is no other decision holding a contrary view to that of Hon'ble Gujarat High Court in *Medico Lab*, I conclude that as far as Gujarat State is concerned, the decision of Hon'ble Gujarat High Court is binding and accordingly Commissioner has power to remand the matter and therefore no interference is called for.

9.2 In the case of Commissioner of C.Ex., Meerut-II Versus Honda Seil Power Products Ltd. [2013 (287) E.L.T. 353 (Tri.-Del) [07-11-2012]], while rejecting the appeal filed by the department, it was held as follows:

5. *Erstwhile Section 128A(2) of the Customs Act, 1962 and amended Section 35A(3) of the Excise Act respectively deals with the powers of the Commissioner (Appeals). Both the sections use similar language which is reproduced thus :-*

*"(3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".*

6. *Interpretation of above provision came up before the Supreme court in the matter of UOI v. Umesh Dhaimode (supra) [1998 (98) E.L.T. 584 (S.C.)] and the Supreme Court after analyzing the provision held that power to remand the matter to the authority below for fresh decision is inbuilt in the aforesaid provision. The relevant observation of Supreme Court is reproduced thus :-*

*"2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls*

*the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision.”*

**7.** *As regards the judgment in the matter of MIL India Ltd. (supra) relied upon by the department, we may note that issue before the Supreme Court in the said matter was entirely different. However, the Supreme Court while dealing with the matter observed thus :-*

*“In fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11-5-2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (Appeals) to remand matters back to the adjudicating authority for fresh consideration”.*

**8.** *The aforesaid observation of the Supreme Court in the matter of MIL India Ltd. (supra) are in the nature of passing remarks on the scope of powers of Commissioner (Appeals) hearing an appeal under Section 35A(3). Therefore, aforesaid observation of the Supreme Court in our view cannot take precedence over the finding of the Supreme Court in the matter of Union of India v. Umesh Dhaimode (supra) based on the analysis of the provision itself.*

**9.** *The Gujarat High Court in the case of CCE, Ahmedabad v. Medico Labs reported in 2004 (173) E.L.T. 117 (Guj.) has also held that Commissioner (Appeals) continues to have power of remand even after the amendment of Section 35A(3) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11-5-2001.*

**10.** *Otherwise also Section 35A(3) of the Act as amended confers powers on the Commissioner (Appeals) to annul the order-in-original and also*



*to pass just and proper order. There may be circumstances where only just and proper order could be remand of the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assessee or without permitting him to adduce evidence in support of his case then only order-in-appeal by the Commissioner (Appeals) could be to set aside the impugned order on the ground of failure of justice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the show cause notice. Therefore, only just and proper order in such a case would be the order of remand to adjudicate the matter de novo after giving due hearing to the assessee. Thus, we are of the view that power to remand the matter back in appropriate cases is inbuilt in Section 35A(3) of the Central Excise Act, 1944.*

**11.** *From the above, it is apparent that the Commissioner (Appeals) have power to remand the matter back to the original adjudicating authority even after the amendment of Section 35A(3). Thus, we do not find any merit in the appeal filed by the department*

10. In the instant matter the appellate authority has remanded back the matter, in the interest of natural justice, to enable the applicant to submit any document/rectification order from the concerned issuing authority w.r.t. their contention regarding typographical error in OIO No. and date in the Annexure to concerned OIA dated 30.10.2015. Government, therefore, finds no reason to differ on this aspect with the appellate authority.

11. The Revision Application is disposed of on above terms.

  
( SHRAWAN KUMAR )

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

ORDER No. ~~401~~/2021-CX (WZ) /ASRA/Mumbai DATED ~~15.12.23~~

To,

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Copy to:

1. The Commissioner of CGST & CX,  
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2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~