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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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

195/1449/12-RA/3842

Date of Issue: 10.8.2020

ORDER NO. 494/2020-CX (WZ)/ASRA/MUMBAI DATED 08.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

- Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. BC/316/Mum-III/2012-13 dated 28.09.2010 passed by the Commissioner (Appeals), Central Excise, Mumbai - III.
- Applicant : M/s Uni Deritend Ltd., Mumbai.
- Respondent : The Commissioner, CGST, Thane Commissionerate.



## ORDER

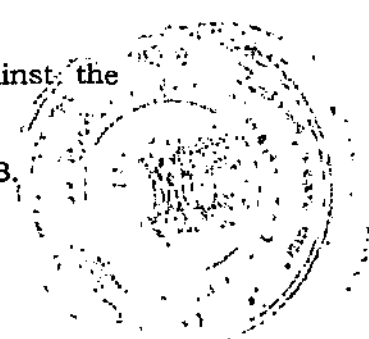
This Revision application is filed by M/s. Uni Deritend, Liberty Building, Sir Vithaldas Thackersey Marg, Mumbai - 400 020 (hereinafter referred to as 'applicant') against the Order in Appeal No. BC/316/Mum-III/2012-13 dated 28.09.2010 passed by the Commissioner (Appeals), Central Excise, Mumbai - III.

2. The brief facts of the case is that the applicant had filed three rebate claims for Rs. 2,71,771/- (Rupees Two Lakh Seventy One Thousand Seven Hundred Seventy One Only) on 14.10.2008 under the provisions of Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. The said rebate claim was decided vide Order in Original dated 13.01.2009 wherein part amount of Rs.51,300/- (Rupees Fifty One Thousand Three Hundred only) was sanctioned and the remaining amount of Rs. 2,20,471/- (Rupees Two Lakh Twenty Thousand Four Hundred and Seventy One only) was rejected. Aggrieved by the said Order in Original the applicant preferred an appeal before Commissioner (Appeals) against the said Order who vide Order in Appeal No. RKS/22/BEL/2010 dated 24.05.2010 rejected the appeal filed by the applicant. The applicant filed an appeal against the said Order-in-Appeal before Revision Authority. The Government of India vide Revision Order No. 438/2012-CX dated 13.04.2012 allowed appeal and thereby the claim of rebate to the applicant.

3. The applicant vide letter No. UD/CAO/2012-13/261 dated 05.06.2012 submitted the copy of the Revision Order dated 13.04.2012 to the Rebate Sanctioning Authority with a request to pay them the balance refund amount of Rs. 2,20,471/- along with interest under Section 11BB of the Central Excise Act, 1944 with effect from 15.01.2009. The rebate sanctioning authority vide order No. 22(R)/W-II/2011-12 dated 12.07.2012 sanctioned the rebate amount of Rs. 2,20,471/- to the applicant not including interest. The amount of rebate was paid to the applicant on 23.07.2012. Aggrieved by the said Order dated 12.07.2012, the applicant preferred an appeal before Commissioner (Appeals) who vide his Order in Appeal No. BC/316/M-III/2012-13 dated 19.10.2012 rejected the appeal filed by the applicant.

The applicant has filed the instant Revisions Application against the said Order in Appeal dated 19.12.2012 on the following grounds :-

1. The applicant are entitled for the interest under Section 11BB.



4.2 Contention that the explanation to Section 11BB does not apply to the orders of remand for the purposes of interest under its provision does not bar or impair the applicant's right to interest.

4.3 Contention that the refund was paid within three months of filing refund claim afresh is without appreciation of facts on record.

4.4 The applicant relied on the following case laws :

- a) Ranbaxy Laboratories vs. UOI 2011(273) ELT 3 (SC).
- b) J.K. Cement Works vs. ACC 2004(170) ELT 4 (Raj.)
- c) Reliance Industries LTd. - 2012-(281)-ELT-0132-GOI

6. A Personal hearing in the matter was fixed on 03.10.2019. Mrs. Nidhi Aggarwal, Authorized Representative appeared for the personal hearing on behalf of the applicant. No one was present from the respondent's side (Revenue). The applicant reiterated the submissions filed in the revision application.

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.

9. Government observes that in the instant case, the issue involved is whether interest liability under Section 11BB of Central Excise Act arise after three months of the order passed by Revision Authority or after 3 months of the date of filing refund application. In this regard, Government observes that once the rebate claim is held admissible under Section 11B of the Central Excise Act, 1944, interest liability starts after the expiry of three months of the date of receipt of application for rebate in the Divisional Office in terms of Section 11BB *ibid*. The relevant Section is reproduced below for ready reference :

**"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 percent and not exceeding thirty per cent per annum as is for the time being in 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.

Provided .....

*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 or Dy. Commissioner of Central Excise under sub-section (2) of Section 11B, the order passed by the Commissioner Appeals, Appellate Tribunal as the case may be, the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."



Government observes that as per Explanation to Section 11BB, where the refund/rebate claim is allowed consequent to the order of appellate authority or any Court against the order of the Asstt./Dy. Commissioner, Central Excise, the order of the appellate authority/Court shall be deemed as an order passed under sub-section (2) for the purposes of this Section.

10. Government notes that Hon'ble Supreme Court in the case of *M/s. Ranbaxy Laboratories Ltd. v. UOI* reported on [2011 (273) E.L.T. 3 (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).

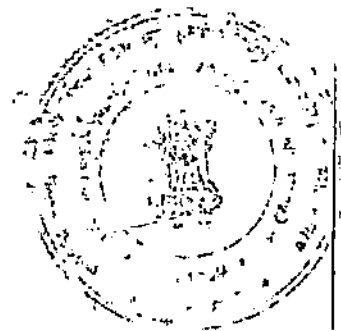
11.

12.

13.

14.

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 said judgment has held in unambiguous terms that liability of the Revenue to 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(I) 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 holds that the impugned Order-in-Appeal No. BC/316/Mum-III/2012-13 dated 28.09.2010 passed by the Commissioner (Appeals), Central Excise, Mumbai - III is not just and is liable to be set aside.

12. In view of above discussion, Government sets aside impugned order in Appeal and remands back the instance case to the original authority which shall pass appropriate orders on the issue based on merits as discussed above in accordance with law after giving proper opportunity of hearing to the applicant.

13. Revision application thus succeeds in above terms.

14. So, ordered.



(SEEMA VARORA)  
Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 494/2020-CX (WZ) /ASRA/Mumbai DATED, 08.06.2020

To,  
M/s Uni Deritend Limited,  
Liberty Building,  
Sir Vithaldas Thackersey Marg,  
Mumbai - 400 020.

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST, Thane Commissionerate, Navprabhat Chambers, 4<sup>th</sup> floor, Ranade Road, Dadar (W), Mumbai - 400 028.
2. The Commissioner of Central Goods & Service Tax, Thane Mumbai (Appeals-I), 9<sup>th</sup> Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400 012.
3. Sr.-P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

