

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, Cuff Parade,
Mumbai- 400 005

195/384/14-RA / 1318

Date of Issue:

24.02.2021

ORDER NO. 79 /2021-CX (SZ)/ASRA/MUMBAI DATED 11.02.2021 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.

- Subject : Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal No.
TNL-CEX-000-APP-162/2014 dated 17.09.2014 passed by
the Commissioner (Appeals), Central Excise, Madurai.
- Applicant : M/s Sesa Sterlite Ltd.,
Sipcot Industrial Complex,
Madurai Bypass Road,
T.V. Puram, Tuticorin - 628 002.
- Respondent : The Commissioner, CGST, Madurai.



ORDER

This Revision application is filed by M/s. Sesa Sterlite Limited, Sipcot Industrial Complex, Madurai Bypass Road, T.V. Puram, Tuticorin - 628 002 (hereinafter referred to as 'applicant') against the Order in Appeal No. TNL-CEX-000-APP-162/2014 dated 17.09.2014 passed by the Commissioner (Appeals), Central Excise, Madurai.

2. The brief facts of the case is that the applicant are manufacturer of Copper Products falling under Chapter 74 of Schedule to the Central Excise Tariff Act, 1985. The applicant had filed the rebate claims for Rs. 14,16,25,793/- (Rupees Fourteen Crores Sixteen Lakhs Twenty Five Thousand Seven Hundred Ninety Three Only) on 15.05.2012. The Rebate Sanctioning Authority vide Order in Original No. 45/2012 (Rebate) daed 02.08.212 sanctioned an amount of rebate of Rs. 7,42,72,891/- (Rupees Seven Crores Forty Two Lakhs Seventy Two Thousand Eight Hundred Ninety One Only) and rejected the claim for an amount of Rs. 6,73,52,902/- (Rupees Six Crores Seventy Three Lakhs Fifty Two Thousand Nine Hundred Two Only) stating that the duty paid on the Anode Slime is not duty in terms of The Central Excise Act, 1944 read with Cenvat Credit Rules, 2004. Aggrieved by the said Order in Original, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Madurai, The Appellate Authority vide Order in Appeal No. 264/2013 dated 24.12.2013 held that the applicant are eligible for rebate of duty paid by them in respect of Anode Slime. The applicant had revived their claim by submission of claim on 10.01.2014 and the rebate claims was sanctioned by the Rebate Sanctioning Authority Vide Order in Original No. 09/2014 (Rebate) dated 01.04.2014. However, the claim of interest made by the applicant for delayed payment of rebate claim was rejected.

3. Being Aggrieved by the Order in Original No. 09/2014 (Rebate) dated 01.04.2014, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Madurai. The Appellate Authority vide Order in Appeal No. TNL-CEX-000-APP-162/2014 dated 17.09.2014 rejected the claim of the applicant and upheld the Order in Original. The appellate authority while passing the said Order in Appeal observed that :-

3.1 As per clause (ec) inserted to EXP-B to Section 11B of the Central Excise Act, 1944, where duty becomes refundable as a consequence of judgement decree,



order or direction of appellate authority, CESTAT or any court, date of such judgement, decree, order or direction will be 'relevant date' for filing refund claim.

3.2 The rebate claim is required to be filed if appeal is decided in favour of assessee. In that case, interest will be payable only if refund is not granted within 3 months after fresh refund claim is filed subsequent to OIA. In the instant case, the applicant had filed refund claim on 10.01.2014 and the Assistant Commissioner had processed the refund claim within 3 months and finalized vide OIO No. 09/2014 (Rebate) dated 01.04.2014 which is very much within the 3 months prescribed period.

3.3 The case law of M/s Ranabaxy Lab Ltd. Vs. UOI [273 ELT 3 (SC)] is related to aspect when refund was sanctioned. In the case in hand the facts are different as it is consequential refund. So also reliance on CBEC's Circular No. 670/61/2002-CEX dated 01.10.2002 is also not helpful.

4. The applicant has filed the instant Revisions Application against the impugned Order in Appeal dated 17.09.2014 on the following grounds :-

4.1 It is settled law laid down by Allahabad High court in case of Siddhant Chemicals Vs. UOI - 2014 (307) ELT 44 (All.) that interest under Section 11BB has to be paid automatically and it is also held that interest under said section become payable on expiry of 3 months from date of receipt of refund application under Section 11B(1).

4.2 The applicant also relied upon following case laws in support of their claim :-

a) Benny Impex Pvt. Ltd. - 2007(208) ELT 305 (GOI)

b) Ranabaxy Laboratories Ltd. Vs. UOI [2011 (273) ELT 0003 (SC)]

4.3 The CBEC vide its Circular No. 670/61/2002-CX dated 01.10.2002 has clearly laid down that when refund / rebate is sanctioned beyond the prescribed period of 3 months from the date of filing of the same, interest thereon will be paid at the notified rate and that the jurisdictional Central Excise Officers are not required to wait for instructions.

4.4 The department had in impugned order erred in misreading Section 11B and Section 11BB and concluding that it is the date of the order which is relevant for grant of rebate.

4.5 If there is delay in sanction of the refund / rebate claim, interest is statutorily payable.



4.6 The letter dated 10.01.2014 was filed for implementation of Order in Appeal and not a fresh rebate claim / revival of earlier claim.

5. A Personal hearing in this case was held on 27.01.2021 through video conferencing and the Counsel of the applicant appeared on line and requested for payment of interest on rebate amount from three months from the date of receipt of application as held by the Hon'ble Supreme Court in Ranabaxy Case and in several cases decided by Hon'ble High courts.

6. 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. 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 Appellate Authority or after 3 months of the date of filing refund application.

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 118, 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.



8. 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 dear 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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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. "

9. 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. TNL-CEX-000-APP-162/2014 dated 17.09.2014 passed by the Commissioner (Appeals), Central Excise, Madurai is not just & legal and is liable to be set aside.

10. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. TNL-CEX-000-APP-162/2014 dated 17.09.2014 passed by the Commissioner (Appeals), Central Excise, Madurai and allows the instant Revision Application.

Shrawan
11/02/2021

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 79/2021-CX (SZ) /ASRA/Mumbai DATED, 11.02.2021

To,
M/s Sesa Sterlite Ltd.,
Sipcot Industrial Complex,
Madurai Bypass Road,
T.V. Puram, Tuticorin - 628 002.

Copy to:

1. The Commissioner of GST & Central Excise, Madurai Commissionerate No. 4, Lal Bahadur Sashtri Road, Revenue Buildings, B.B.Kulam, Madurai-625 002..
2. The Commissioner (Appeals), CGST, Coimbatore, No.6/7, A.T.D. Street, Race Course Road, Coimbatore-641018
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED



अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai