

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

F. NO. 195/271/17-RA

1273

Date of Issue:

01.03.23

ORDER NO. 95 /2023-CX (WZ) /ASRA/Mumbai DATED 27.02.23 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. Indian Oil Corporation Ltd.,  
Mktg. Division, Western Region,  
Indian Oil Bhavan, 7<sup>th</sup> Floor,  
Plot No. C-33, "G" Block,  
Bandra Kurla Complex,  
Bandra (East), Mumbai - 400 051.

M/s. Indian Oil Corporation,  
Airport Terminal Manager,  
Aviation Fuel Station,  
SVP International Airport,  
Ahmedabad.

**Respondent :** Commissioner of CGST & Central Excise, Rajkot.

**Subject :** Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RAJ-EXCUS-000-APP-006-2017-18 dated 02.05.2017 passed by the Commissioner (Appeals-III) Central Excise, Rajkot.

**ORDER**

This Revision Application has been filed by M/s. Indian Oil Corporation, Airport Terminal Manager, Aviation Fuel Station, SVP International Airport, Ahmedabad (hereinafter referred to as "the applicant") against the Order-in-Appeal No. RAJ-EXCUS-000-APP-006-2017-18 dated 02.05.2017 passed by the Commissioner (Appeals-III) Central Excise, Rajkot.

2. The brief facts of the case are that the applicant had filed the rebate (refund) claim on 19.12.2006 before the lower adjudicating authority. The deficiency memo was communicated to the applicant vide letter dated 26.12.2006 which was complied by the applicant vide their letter dated 13.01.2007. SCN has been issued to the applicant on 27.02.2007 which was decided and the claim was rejected by lower adjudicating authority on 03.10.2007, on the ground that they have failed to follow the procedure prescribed under Rule 18 of the Central Excise Rules, 2002 readwith Notification No. 40/2001-CE(NT) dated 26.06.2001 as amended. Being aggrieved by the then Order-In-Original issued by the lower adjudicating authority, the applicant filed the appeal before the then Commissioner (Appeals), Rajkot which was rejected vide OIA No. 73/2008/Commr (A)/Raj dated 26/27.03 2008. Thereafter, the applicant filed a Revision Application (RA) before the Government of India which was also rejected vide Order No. 1668/10-CX dated 02.11.2010 passed by the Joint Secretary to the Government of India. Thereafter, Special Civil Application No. 12703 of 2011 was filed by the applicant before the High Court of Gujarat. The High Court vide Order dated 15.12.2011 set aside the Order of the Revision Authority with a direction to decide the matter afresh. Subsequently, the Revision Authority remanded back the case to original authority vide Order No. 738/2012-CX dated 06.07.2012. Consequent upon the Order of RA, the lower adjudicating authority sanctioned the rebate claim vide Rebate Order No. 01/2014-15 dated 01.04.2014, but rejected the claim of interest. Being aggrieved by the then Order-in-Original issued by the lower adjudicating

authority, the applicant filed the appeal before the then Commissioner (Appeals), Rajkot which was allowed vide OIA No. RJT-Excus-000-APP-205-14-15 dated 26.09.2014. The lower adjudicating authority vide letter/order F. No. V/27/(18)271/Rebate/2013-14 dated 22.06.2016 granted the interest on delayed refunds for the period from 25.01.2013 to 31.03.2014.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals-III) Central Excise, Rajkot. The Commissioner (Appeals) vide Order in Appeal No. RAJ-EXCUS-000-APP-006-2017-18 dated 02.05.2017 (impugned Order) upheld the letter/order F. No. V/27/(18)271/Rebate/2013-14 dated 22.06.2016 and rejected the appeal filed by the applicant.

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

4.1 Learned Commissioner (A) vide Order-in-Appeal No. RAJ EXCUS-000-APP-006-2017-18 dated 02.05.2017 upheld the Order- in-Original based on the findings that, the statutory requirement is treated to be fulfilled 25.10.2012 considering the compliance of the direction of the Hon'ble High Court and hence this day would be considered for the purpose of granting the interest.

4.2 The Applicants say that Ld. Commissioner (Appeals) has erred in passing the impugned Order without appreciating the fact that all the supporting documents were available with the department on 02.08.2007 itself and without considering the submissions made, provisions of law & supporting judgments on the issue etc.

4.3 The complete refund claim alongwith all supporting documents was available with the department on 02.08.2007 itself, and therefore the date 25.10.2012 considered by adjudicating / appellate authority is not correct.

The submissions made hereinafter would further substantiate that the impugned Order is not correct and needs to be set aside.

4.4 The correct date of filing complete refund claim is '02.08.2007' only and not '25.10.2012' as considered by the Adjudicating as well as Appellate Authority. The Applicants vide letter dated 13.01.2007, had submitted the self attested copies of invoices / AV-7, letter from Air India and mail from M/s. Reliance etc. in support of the refund claim. Vide letter dated 02.08.2007, all required documents were submitted before the adjudicating authority. These documents were duly acknowledged by the office of the Assistant Commissioner of Central Excise, Jamnagar on 02.08.2007. Therefore, it is clear that on 02.08.2007 itself, all the supporting documents essential for processing the refund claim were available with adjudicating authority and hence this date must be considered as the date of filing of complete refund claim.

4.5 The adjudicating authority has considered these documents on record and on perusal, the verification of the 54 shipping bills was also sought from the customs authorities of Ahmedabad Airport. On scrutiny of the documents, the Asstt. Commissioner, Customs, Air Cargo Complex, Ahmedabad vide his letter F. No. VIII/48-05/Misc/ACC/06-07 dated 23.08.2007, had confirmed the genuineness of the documents submitted on 02.08.2007 by the Applicants. The observations / allegations made by the then adjudicating authority was mainly technical/procedural lapses by the Applicants and the export of duty paid ATF to AI-191 flight has never been disputed by the department. The main criteria for sanction of rebate which is more important and required to be fulfilled is that there should be export of dutiable goods and duty must have been paid on it. Since these facts were well established before the then adjudicating authority during 2007, the Applicants were entitled for the refund in 2007 itself after condoning the technical/procedural lapses, if any, based on settled judgments.

4.6 However, since the refund was rejected vide Order In Original dated 03.10.2007, the Applicants contested the matter before the Commissioner (Appeals), JS-GOI and Hon'ble High Court of Gujarat. The issue was remanded back to the JS by the Hon'ble High Court vide Order No. O/43803/2011 dated 22.12.2011 and vide Order No. 738/ 2012-CX dated 29.06.2012 the Ld. JS, GOI set aside earlier Orders and remanded back the issue to original adjudicating authority

4.7 During subsequent proceedings, the Applicants, vide their letter Ref. AHD-AFS/AI-191/RIL/JAM/PH/ARE-1 dated 05.09.2012, submitted Original (blue) copies of all the 54 ARE-1 for which Original (white) and (Yellow) copies were already submitted on 02.08.2007. Therefore, No fresh or further supporting documents were submitted during 2012 and hence the date considered by the Ld. Adjudicating authority for granting interest on the delayed refund claim ie. 25.01.2013 is not correct. Any subsequent documents called for, by the Maritime Commissioner /Asstt. Commissioner (Tech) for processing the refund claim subsequent to remand orders, cannot be made ground for non- payment of interest from three months from the initial date of filing of complete refund claim.

4.8 The remand proceedings carried out during 2012-13 were subsequent to High Court's /JS's Orders and by any stretch of imagination the date '25.10.2012' cannot be considered as a date of filing of complete refund application when all documents were submitted on 02.08.2007 and were available with the department for sanction of the refund claim.

4.9 In this connection, the Applicants relied on the following judgments:

- (i) 2014 (307) E.L.T. 608 (G.O.I.)- IN RE: SANKET FOOD PRODUCTS P. LTD
- (ii) 2011 (24) STR 17 (Bom) Shroff United Chemicals Ltd. V/s. Union of India.
- (iii) Ranbaxy Laboratories Ltd. V/s. UOI reported at 2011 (273) E.L.T. 3 (S.C.)

- (iv) C.C., AIR PORT & ACC, BANGALORE v/s. PFIZER PRODUCTS INDIA P. LTD reported at 2015 (324) E.L.T. 259 (Kar.).
- (v) UOI V/s. Hamdard (WAQF) Laboratories reported at 2016 (333) ELT 193 (SC).
- (vi) Commissioner v. Tata Chemicals Ltd, reported at 2016 (334) E.L.T. A53 (Guj.)
- (vii) 2008 (225) ELT 375- VBC Industries Ltd. V/s. Commissioner of C. EX. & Cus., Visakhapatnam.
- (viii) 2014 (34) S.T.R. 579 (Tri- Mum) State Bank Of India v/s Commissioner Of Service Tax, Mumbai-1.
- (ix) 2015 (317) E.L.T. 621 (Tri. - Ahmd.) - Commr. Of Customs (Prev.), Jamnagar V/S. Reliance Industries Ltd.

In view for the above submissions, the Applicants pray that they are entitled for interest from 02.11.2007 till 24.01.2013. Directives may please be issued accordingly to the departmental authorities to sanction the differential interest to the Applicants with effect from 02.11.2007.

5. The applicant vide additional written submissions dated 17.10.2022, reiterated the submissions in the revision application and made following additional submissions :-

5.1 In support of the contention that the Applicants are eligible and entitled for interest from 02.11.2007 (three months from 2.8.2007) to 31.03.2014, as the relevant date of filing refund claim is 02.08.2007 (date of filing complete refund claim) and not 25.10.2012 (date of re-submission of documents along with refund claim), the Applicants make the following submissions:

5.1.1 Actual date of filing refund claim with all requisite documents was on 2.8.2007 and hence, interest would reckon from 02.11.2007 (three months from 2.8.2007) to 31.03.2014; that original refund claim was filed on 19.12.2006 and on rejection by Dept. revised refund claim with complete documents was filed on 02.08.2007; that SCN as well as the lower authorities rejected the refund claim on

merits and not on deficiency of documents; that Hon'ble Gujarat High Court vide Order dated 21.12.2011 remanded the matter only for re-examining the facts based on the documents already submitted; that Ld. Revisionary Authority vide Order dated 29.06.2012 again remanded the matter to Original Adjudicating Authority for deciding the matter afresh since all the documents were already available with the Adjudicating Authority which substantiates that the refund claim was complete in all respects; that Ld. Adjudicating Authority after considering the documents and the report of Assistant Commissioner has sanctioned the refund claim; that once revised refund claim has been filed, interest has to be allowed from three months from the said revised claim; In view of the aforesaid undisputed factual position, the Applicants are eligible and entitled for interest under Section 11BB of CEA i.e. for the period from 02.11.2007 (three months from 2.8.2007) to 31.03.2014.

#### 5.2 Judgments in support:

The Applicants' claim interest under Section 11BB of CEA from 02.11.2007 (three months from 2.8.2007) to 31.03.2014, gets substantiated from the ratio of following judgments:

- a) Shroff United Chemicals Ltd.-2011 (24) STR 17 (Bom)
- b) Central Mine Planning & Design Institute - 2021 (53) GSTL 396(Tri-Del)
- c) State Bank of India-2014 (34) S.T.R. 579 (Tri-Mum)

5.3 It may relevantly be brought on record that in their own cases, authorities have allowed interest in the orders of sanction of refund, without making separate application claiming interest, as detailed below:

- i. Order-in-Original No. EF/Refund/09/2016-17 dated 25.11.2016 - Indian Oil Corporation Ltd., Sewree;
- ii. Order-in-Original No. EF/Refund/01/2017-18 dated 21.6.2017 - Indian Oil Corporation Ltd., Wadala;

5.4 That re-submission of refund claim at a later date i.e. 25.10.2012 cannot be considered as revised and complete refund claim when the same has been submitted and accepted by the Dept. at an earlier date i.e. 02.08.2007.

5.5 That when Dept. itself vide Order dated 29.06.2012 has accepted that documents were already on record with it, in that case, re-submission of the refund claim cannot be considered as revised claim and interest cannot be allowed from three months from the said date of revised claim.

6. A Personal hearing in this Revision Application was held online on 20.10.2022 which was attended by Ms. Mansi Patil, Advocate, on behalf of the applicant. She submitted that complete rebate claim was submitted in 2007 therefore, they should have been sanctioned interest 3 months after their original date of submission. She stated that sanctioning of interest from 2012 was incorrect. She requested to allow the claim.

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. Government observes that in the instant case, the issue involved is whether the applicant is entitled to the interest 3 months after the date of filing complete refund claim i.e. '02.08.2007', on delayed sanction of rebate claims which has been denied by the Commissioner (Appeals).

9. In the case of CCE, Vapi Vs. Manisha Pharma Plast Pvt. Ltd. (2005(191) E.L.T.297(Tri.-Mumbai) CESTAT, Mumbai vide its Order dated 12.01.2005 dismissed Revenue appeal and upheld Commissioner (Appeals) Order wherein it was held that incidence of duty had not passed on to customer and therefore, amount of refund claim is payable to assessee and not creditable to Consumer Welfare Fund. Subsequent to this Order dated 12.01.2005, the appellant Manisha Pharma Plast Pvt. Ltd. filed miscellaneous application seeking order from the Tribunal (Mumbai) to direct the department to comply with its order dated 12-1-2005 to the extent



that the statutory amount of interest due on the refund sanctioned amounting to Rs. 2,53,81,156.02 be ordered to be paid to them which was being denied by the department. The CESTAT (Mumbai) while dismissing the Misc. application filed by the appellant vide its Order dated 05.10.2006 [2007 (5) S.T.R. 11 (Tri. - Mumbai)], observed as under :

4. We have considered the submissions. We find that the Tribunal has vide its earlier Order Nos. M/71-72/WZB/2005-C-III/EB dated 22-8-2005 clearly held that there were no direction for grant of interest by any of the authority i.e. the adjudicating authority, Commissioner (Appeals), Tribunal or Hon'ble Gujarat High Court. We cannot sit in judgment over the above finding given by a co-ordinate Bench. As regards plea of automatic sanction of refund without requiring the applicants to make a specific claim for interest, we find that all these facts including Rajasthan High Court Order and the Board's Circular were in existence prior to issue of Tribunal order and have also been brought to the notice of the Tribunal at the time of filing the first miscellaneous application seeking similar relief. No new fact has come into existence. We further note that as observed by the Rajasthan High Court and also clarified by the Board vide its circular dated 1-10-2002 the interest has to be automatically granted and there is no requirement for the applicant to seek any relief from the appellate authorities. In such circumstance the applicant should seek interest from the department and on their failure to do so should ask for issue of an appealable order and should follow the appeal procedure seeking relief against such denial of interest. The recent Tribunal's order cited by the applicant is not relevant as in that case the Revenue has come in appeal against the order of Commissioner (Appeals) who has specifically ordered grant of interest which order was upheld by the CESTAT. In the present case, there is no order for payment of interest by Commissioner (Appeals) or the Tribunal in their earlier orders as has also been held by the Tribunal vide its earlier order dated 22-8-2005 on the first miscellaneous application filed by the applicant.

9.1 In the aforesaid case the application for refund was filed on 30-12-1999 - On 21-12-2001 order passed whereby Department admitted refund, but transferred it to Consumer Welfare Fund, However, Appeal against this was allowed by Commissioner (Appeals), on 1-10-2003 holding that there was no unjust enrichment. Against this, Department's appeal before CESTAT, Mumbai was dismissed on 12-1-2005 (2005(191)E.L.T. 297(Tri-

Mumbai). - Further appeal of Department filed before High Court Gujarat was dismissed on 18-7-2005 [2008(222)E.L.T. 511 (Guj.)]. Department paid refund amount to assessee on 26-6-2005. The applicant thereafter filed Special Civil Application before Hon'ble Gujarat High Court claiming that they reserved their right to claim interest in terms of Section 11B of the Central Excise Act, 1944.

9.2 While dismissing the Special Civil Application/petition, vide its judgment dated 19.12.2008 [2010 (262) E.L.T. 165 (Guj.)], their Lordships observed as under :-

**30.1** *It is not in dispute that order dated 5-10-2006 was not challenged by the petitioners by filing an appeal under Section 35G of the Central Excise Act, 1944 at the relevant time and it is only belatedly that the same is made a subject matter of challenge in a writ petition under Article 226 of the Constitution of India. This Court is of the opinion that in view of the liberty reserved by order dated 21-2-2007, passed in Civil Application No. 2738 of 2008, it is open for the revenue to question the maintainability to the challenge to order dated 5-10-2006 in a writ petition. To allow the challenge to order dated 5-10-2006 by amendment in a pending petition will amount to do away with the bar created by delay, laches and acquiescence. A fact which cannot be denied by the petitioners is that order dated 5-10-2006 was not challenged by them until the same was sought to be challenged by moving amendment in a pending petition in the year 2007. This Court is conscious of the fact that while allowing the application for amendment by order dated 21-2-2007, the Court reserved liberty in favour of the revenue to question the challenge to the said order before this Court. Allowing to challenge either order dated 22-8-2005 or order dated 5-10-2006 will amount to doing away with the statutory period prescribed for filing an appeal against such order, which is 180 days.*

**31.** *Coming to the crux of the matter, what is required to be seen is that the petitioners filed application for refund on 30-12-1999; on the said application, an order was passed on 21-12-2001, whereby the department admitted the refund, but transferred the amount to Consumer Welfare Fund; being aggrieved by that order, the petitioners filed an appeal before the Commissioner (Appeals), which was allowed by order dated 1-10-2003 holding that there was no unjust enrichment on the part of the petitioners; against this order, the department filed an appeal before the CESTAT; in the said appeal, the petitioners filed cross*

*objections; the CESTAT by order dated 12-1-2005 dismissed the appeal filed by the department and allowed the cross-objections; against that order, the department filed before the High Court and that appeal was finally dismissed by the High Court on 18-7-2005. That being so, the petitioners finally became entitled to refund on 18-7-2005, whereas the department has already paid refund amount to the petitioners on 26-6-2005. That being so, the interest which can be allowed to be paid to the petitioners is only from the final adjudication in the matter (as the decision of the High Court was not carried further in appeal), i.e. from 18-7-2005, whereas the department has already paid the amount of refund to the petitioners on 26-6-2005 and therefore, there is no question of passing any order of payment of interest to the petitioners. Otherwise also, for a substantial period, the amount was lying with the Consumer Welfare Fund and not with the department.*

**32.** *In the result, the petition fails. The petitioners are not entitled to receive any interest amount on the refund amount, as after the High Court dismissed the appeal of the department's appeal on 18-7-2005, the finality was achieved by the controversy, whereas the department had already refunded the amount on 26-6-2005 and therefore, no relief can be granted to the petitioners.*

**32.1** *As discussed earlier, the challenge to orders dated 22-8-2005 and 5-10-2006 also fails. As discussed hereinabove, in view of the order passed by this Court on the applications for amendment, it was open for the department to question the maintainability of challenge to these orders and relying upon the averments of paras-5 to 9 of the affidavit filed by the department, the entertainment to the challenge to these two orders will amount to not only condoning the delay, laches and acquiescence on the part of the petitioners but will also amount to rendering nugatory the provisions of filing an appeal within the stipulated period of 180 days. Rule is discharged. No costs.*

9.3 Being aggrieved by the aforesaid judgement of Hon'ble Gujarat High Court, M/s Manisha Pharmo Plast Pvt. Ltd. filed Civil Application 4432 of 2009 before Hon'ble Supreme Court which came to be decided in favour of the applicant vide judgment dated 06.08.2020.[2020(374)E.L.T.145(S.C.)]. While allowing the appeal filed by M/s Manisha Pharmo Plast Pvt. Ltd. Hon'ble Supreme Court observed as under :-

**2.** *The High Court, vide impugned judgment [2010 (262) E.L.T. 165 (Guj.)], has denied relief of statutory interest payable to the appellant*

under Section 11BB of the Central Excise Act, 1944 read with the Circular No. 670/61/2002-CX.8, dated 1-10-2002 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs, New Delhi. The High Court noted that the appellant had filed application for refund on 30-12-1999 but denied the relief of interest on the finding that the adjudication of the claim attained finality only after dismissal of the proceedings before the High Court on 18-7-2005; whereas the Department had already paid refund amount to the appellant on 26-6-2005. These facts are not in dispute.

3. In light of these facts and the exposition in paragraph 17 in *Ranbaxy Laboratories Ltd. v. Union of India & Ors.* [(2011) 10 SCC 292 = 2011 (273) E.L.T. 3 (S.C.) = 2012 (27) S.T.R. 193 (S.C.)], it was not open to the Department to deny the relief of statutory interest. Paragraph 17 of the said decision reads thus :-

“17. ....

4. The approval of the dictum of the Rajasthan High Court [2004 (170) E.L.T. 4 (Raj.)] in paragraph 17 referred to above, directly deals with the claim of the appellant before this Court who had made application for refund on 30-12-1999 and, therefore, the statutory interest ought to commence after non-payment within three months from the date of application, being the starting point envisaged by Section 11BB of the Act. We find no reason to deviate from the view so taken in *Ranbaxy Laboratories Ltd.* (supra).

5. Hence, this appeal should succeed. The claim of the appellant regarding statutory interest under Section 11BB of the Act is allowed in the above terms. The amount be calculated and paid expeditiously and not later than three months from today. The impugned judgment of the High Court in this regard is set aside. Appeal is allowed in the aforementioned terms. There shall be no order as to costs.

10. As the facts of the present case are akin to case law discussed above and therefore, relying on the Hon'ble Supreme Court's Judgment discussed supra as well as relying on Hon'ble Supreme Court's judgment in the case of *M/s. Ranbaxy Laboratories Ltd. vs. UOI* reported on [2011 (273) E.L.T. 3 (S.C.)] wherein Hon'ble Supreme Court 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, Government holds that the impugned Order-in-Appeal is not just & legal and is liable to be set aside.

11. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. RAJ-EXCUS-000-APP-006-2017-18 dated 02.05.2017 passed by the Commissioner(Appeals) and allows the instant Revision Application.

  
(SHRAWAN KUMAR)

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

ORDER No. 95 /2023-CX (WZ) /ASRA/Mumbai DATED 27 02, 23

To,

M/s. Indian Oil Corporation Ltd.,  
Mktg. Division, Western Region,  
Indian Oil Bhavan, 7<sup>th</sup> Floor,  
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M/s. Indian Oil Corporation,  
Airport Terminal Manager,  
Aviation Fuel Station,  
SVP International Airport,  
Ahmedabad.

Copy to:

1. Principal Commissioner of CGST & Central Excise, Rajkot.
2. Commissioner (Appeals-III) CGST & Central Excise, Rajkot.
3. Shri M.H.Patil, M/s. Cen-Ex Services (Advocates & Consultants), Post Office Building, 2<sup>nd</sup> Floor, J.B.Nagar, Andheri(East), Mumbai – 400 059.
4. Sr. P.S. to AS (RA), Mumbai.
5.  Guard file.
6.  Spare Copy.