

SPEED POST



F.No. 195/04/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 29/12/21

Order No. 29/21-Cx dated 29-12-2021 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 34/HAL/CE/2020-21 dated 02.02.2021, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : M/s Indian Oil Corporation Ltd., Haldia.

Respondent : The Commissioner of CGST & Central Excise, Haldia.

**ORDER**

A Revision Application No. 195/04/2021-RA dated 07.04.2021 has been filed by M/s. Indian Oil Corporation Ltd., Haldia (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 34/HAL/CE/2020-21 dated 02.02.2021, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has, on an appeal filed by the Applicants herein, directed the original authority to pay interest under Section 11BB of Central Excise Act, 1944, if there was any delay in sanction of refund beyond the period of 03 months from the date of receipt of Hon'ble Calcutta High Court's order in WP No. 5208 (W) of 2013.

2. The facts leading up to the present revision application are that the Applicants herein submitted rebate claims, totally amounting to Rs. 22,90,265.72/-, on 31.10.2005, 27.12.2005 and 05.05.2006, in respect of central excise duty paid on ATF supplied to foreign going Airlines. The said rebate claims were rejected by the original authority, vide Order dated 02.06.2008. On an appeal filed by the Applicants herein, the Commissioner (Appeals) allowed the rebate, vide Order-in-Appeal No. 35/HAL/2010 dated 08.04.2010. The department, in turn, filed a revision application before the Government, which was allowed, vide GOI Order No. 732/2012-Cx. dated 29.06.2012. Being aggrieved, the Applicants herein filed the aforesaid WP before the Hon'ble Calcutta High Court, which was allowed, vide Order dated 05.03.2020. Pursuant to the High Court's order, the original authority, vide Order-in-Original No. R-01/Tech/Refund/Hal-I/2020-21 dated 18.09.2020, sanctioned the rebate amounting to Rs. 22,90,265.72/-, but did not grant interest under Section 11BB *ibid*. The impugned Order-in-Appeal came to be passed in respect of the appeal filed by the Applicants herein, before the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the authorities below have wrongly taken a view that the Explanation appearing below the proviso to section 11BB would operate to postpone the commencement of the date for the purpose of the calculation of interest; that in the case of *Ranbaxy Laboratories Ltd. Vs Union of India (2011-TIOL-105-SC-CX)*, the Hon'ble Supreme

Court has held that the interest on refund is payable on expiry of 03 months from the date of application for refund; that the Explanation below Section 11BB does not postpone the date to any other date like the date of any order passed by any Appellate Authority; that, therefore, the period of 03 months in terms of section 11BB shall be counted from the date of receipt of application. The Respondent department, vide letter C.No. V(18)35/Rebate/IOCL/CGST&CX/Tech/Hal-I/2019-20 dated 26.07.2021, submitted that there are no additional submissions to make and waived the personal hearing.

4. Personal hearing, in virtual mode, was held on 27.12.2021. Sh. Hemant Karnani, Manager (Fin.) made submissions on behalf of Applicants and requested that Written Submissions filed on 27.12.2021 by email may be taken on record. He reiterated the contents of RA and Written Submissions dated 27.12.2021. The respondent department has waived PH, vide letter dated 26.07.2021.

5. The Government has carefully examined the matter. The issue involved herein is whether in a case of sanction of rebate/refund pursuant to the order of a Court, the interest will be payable under section 11BB, from the date of expiry of 03 months from the date of receipt of the application of refund or on expiry of 03 months from the date of the Court's order. The Government observes that this issue is no longer res-integra. In the case of *Ranbaxy Laboratories Ltd. (supra)*, the Hon'ble Supreme Court has answered this question 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*

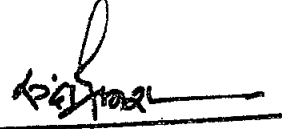
*Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement 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.*

*15. 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 11BB of the Act commences from the date of expiry of the 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."*

The Hon'ble Supreme Court has followed the judgment in Ranbaxy Laboratories Ltd. (supra) in the case of *Manisha Pharmo Plast Pvt. Ltd. vs. Union of India* {2020 (374) ELT 145 (SC)} and held that the "statutory interest ought to commence after non-payment within three months from the date of application, being the statutory point envisaged by Section 11BB of the Act." The Applicants have in their written submissions dated 27.12.2021 also relied upon the judgment of Hon'ble Gujarat High Court in the Tax Appeal No. 381 of 2015 whereby the Hon'ble High Court has upheld the decision of CESTAT in the case of *Tata Chemicals Ltd.* [2016 (334) E.L.T 133] which has been accepted by the department, vide CBIC Circular No.1063/2/2018-CX dated 16.02.2018. The Government observes that the Board has vide the aforesaid Circular dated 16.02.2018, clarified that, as per the order in *Ranbaxy Pharmaceutical Ltd.* (supra), "the law to pay the interest commences from

the date of expiry of three months from the date of receipt of application and not from the decision." As such, the impugned Order-in-Appeal cannot be sustained.

6. In view of the above, the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

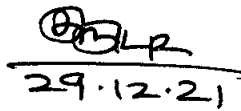
M/s Indian Oil Corporation Ltd.,  
Marketing Division, Haldia Installation,  
P.O.- Haldia Oil Refinery, West Bengal-721606.

Order No. 291/21-Cx dated 29-12-2021

Copy to:

1. The Commissioner of CGST & Central Excise, Haldia, 15/1, Strand Road, M. S. Building, Kolkata-700001.
2. The Commissioner (Appeals-II), CGST & Central Excise, Kolkata, Bamboo Villa, 3<sup>rd</sup> Floor, 169, A.J.C Bose Road, Kolkata- 700014.
3. PA to AS (RA).
4. Guard File.
5. Spare Copy.

ATTESTED



29.12.21

(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi