

SPEED POST



F. No. 195/11/2022-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 14/9/22

Order No. 38/22-Cx dated 14-09-2022 of the Government of India passed by Sh. Sandeep Prakash, 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. 30/RAN/2022 dated 17.03.2022, passed by the Commissioner (Appeals), CGST & Central Excise, Ranchi.

Applicant : M/s Jindal Steel & Power Ltd., Ramgarh

Respondents : Commissioner of CGST & Central Excise, Ranchi

ORDER

Revision Application No. 195/11/2022-RA dated 21.06.2022 has been filed by M/s Jindal Steel & Power Ltd., Ramgarh (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 30/RAN/2022 dated 17.03.2022, passed by the Commissioner (Appeals), CGST & Central Excise, Ranchi. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the letters dated 06.01.2021 and 22.06.2021 of the Deputy Commissioner, CGST and Central Excise Division, Ramgarh denying interest on delayed payment of 10 rebate claims filed by the Applicants herein, under Rule 18 of the Central Excise Rules, 2002.

2. Briefly stated, the Applicants herein exported excisable goods on payment of Central Excise Duty and filed 10 rebate claims for varying amounts during the years 2015-2016. The original authority sanctioned two rebate claims for reduced amounts and rejected the balance 08 claims. Upon separate appeals filed by the Applicants herein, the Commissioner (Appeals) allowed the appeals against rejection of 08 rebate claims and ordered consequential relief. Thereafter the original authority sanctioned these balance 08 refund claims as well, which were rejected initially, albeit for reduced amounts in certain cases. The details are tabulated below:

S. No	Amt involved (Rs.)	Date of filing	Initial OIO date	Allowed/ Rejected	OIA No & date	Sanctioning OIO date	Amount sanctioned (Rs.)
1.	9,46,97,376	12.03.2015	10.06.2015	Rejected	42/RAN/2015-16 dt.04.03.2016	03.06.2016	9,46,97,376
2.	6,45,01,209	18.03.2015	14.08.2015	Rejected	01/RAN/2016-17 dt.05.05.2016	17.10.2016	5,11,98,792
3.	4,22,51,651	25.04.2015	28.09.2015	Rejected	02/RAN/2016-17 dt.05.05.2016	14.10.2016	4,17,34,893
4.	3,40,17,443	26.12.2015	16.01.2017	Allowed			2,59,04,293
5.	1,28,70,846	30.03.2016	08.08.2016	Allowed			1,26,37,100
6.	3,21,26,447	29.06.2016	10.03.2017	Rejected	01/RAN/2018 dt.17.01.2018	19.04.2018	3,21,26,447
7.	2,00,43,107	29.09.2016	03.03.2017	Rejected	02/RAN/2018 dt.17.01.2018	19.04.2018	2,00,43,107

8.	7,35,20,123	26.03.2016	10.03.2017	Rejected	230/RAN/2018 dt.15.05.2018	30.07.2018	7,35,20,123
9.	9,34,56,061	29.12.2016	02.05.2018	Rejected	468/RAN/2018 dt.30.10.2018	01.01.2019	9,31,64,967
10.	1,14,19,974	31.03.2017	09.02.2018	Rejected	551/RAN/2018 dt.18.12.2018	09.04.2019	76,95,156

Thereafter, the Applicants, vide letters dated 19.08.2020 followed by letter dated 10.05.2021, requested the original authority to pay interest on delayed payment of rebate claims, under Section 11BB of the Central Excise Act, 1944. These requests were rejected by the original authority, vide aforesaid letters dated 06.01.2021 and 22.06.2021. Aggrieved by the rejection of their request for payment of interest, the Applicants herein preferred appeal before the Commissioner (Appeals) who has rejected the appeal, vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that interest under Section 11BB is attracted automatically for refunds sanctioned beyond three months; that the period of three months for the purpose of Section 11BB ought to be considered from the date of receipt of refund claim; that the appellate authority has traversed beyond the scope of the appeal by holding that since the refund claims were not complete the relevant date for the purpose of refund application would be the date on which refund application free of the defects, comes on record of the department; the Commissioner (Appeals) has failed to apply the ratio of Order-in-Appeal No. 426/RAN/2019 dated 28.11.2019 passed by his predecessor; that interest is payable for delay in sanction of all the 10 claims in question; and that entitlement of interest under Section 11BB is a statutory right which cannot be waived by the Applicant. Accordingly, it has been requested that the impugned Order-in-Appeal may be set aside with consequential relief. The respondent department, vide letter F. No. V(30)11/T&R/Misc.Corres/Ran/2022-23 dated 05.08.2022, submitted that they have no additional facts to submit and that no personal hearing was required.

4. The personal hearing, in virtual mode, was held on 07.09.2022. Sh. Vishal Agrawal, Advocate and Ms. Tuhina Srivastava, Advocate appeared for the Applicant. Sh. Vishal Agrawal, Advocate reiterated the contents of the RA with the help of compilation emailed on 07.09.2022. He highlighted that:

- (i) The interest is being claimed on actually sanctioned amount and not on the originally claimed amount wherever lesser amount has been sanctioned.
- (ii) The interest is a statutory right which cannot be given up by way of letters.

He undertook to file an issue wise summary of claims and share it with the department, within 02 days. Sh. Kishore Barwa, AC submitted that the refund claims have been sanctioned within three months from the date of order of Commissioner (Appeals). Hence the action taken by the department is correct.

5. Pursuant to the personal hearing, the Applicants filed additional submissions on 12.09.2022. While reiterating the submissions made in the RA, the Applicants relied upon the judgment of Hon'ble Supreme Court in UOI vs. Hamdard (Waqf) Laboratories {2016 (333)ELT193(SC)} to submit that if the refund is sanctioned beyond period of three months from the date of filing of the refund application, irrespective of the reason for delay, interest is required to be paid. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. vs. UOI {2011(273)ELT3(SC)} to submit 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 the application for refund under Section 11B(1) of the Act and not on the expiry of a period of three months from the date on which the order of refund is made. It has been further submitted that a statutory right of interest under Section 11BB flows automatically and cannot be extinguished. Reliance has been placed upon the judgment of Hon'ble Allahabad High Court in the case of Shree Balaji Aromatics (P.) Ltd. vs. Union of India {2014(45)GSTL695 (Allahabad)} in this regard.

6. Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the claim for interest, broadly, for the following reasons:

- (i) The refund claims have been sanctioned within a period of three months pursuant to the earlier Orders-in-Appeal, as may be applicable. Therefore, claim of interest does not arise.
- (ii) The refund claims were incomplete/ deficient and/or reduced downwards by the Applicants themselves in the course of proceedings before the original authority. This coupled with the large amounts involved, delay in sanctioning of the claims cannot lead to the liability to interest.
- (iii) In one of these cases the Applicant had themselves, vide their letter dated 02.06.2016, requested the original authority to release the refund on or before 03.06.2016 and if the same is not released then interest will be applicable on delayed refund. It has, therefore, been held that since Applicants themselves had stated that the interest liability would arise w.e.f. 03.06.2016 onwards, they cannot claim interest for the preceding period.

7. The basic issue involved for adjudication of the present revision application is the date from which the liability to interest under Section 11BB would arise in case order of refund is made by Commissioner (Appeals) etc. For this purpose, the Explanation under Section 11BB is relevant and is, accordingly, extracted below:

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

It is observed that the matter came up for consideration of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. (supra). After examination of the provisions of Section 11BB including the Explanation thereunder, the Hon'ble Supreme Court 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".*

Thus, the issue is not res-integra and it is settled that the liability to pay interest under Section 11BB "commences from the date of expiry of three months from the date of

receipt of application under Section 11B(1) of Act and not on the expiry of said period from the date on which order of refund is made." Accordingly, the Government finds that the Commissioner (Appeals) has erroneously held that since refund has been paid within three months of the earlier order of Commissioner (Appeals), interest shall not payable. *Lhe*

8. Another ground that led the Commissioner (Appeals) to reject the appeal viz. that the refund claims were incomplete/ deficient and/or were reduced by the Applicants themselves also stands considered and decided by the Hon'ble Supreme Court in matter of Hamdard (Waqf) Laboratories (supra). In the said case, the Apex Court has held as under:

"21..... It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in Ranbaxy Laboratories Limited (supra) commends us and we respectfully concur with the same".

Thus, in the present case, it was open to the department to reject the refund claims if these were incomplete or deficient. However, following the ratio of Hamdard (Waqf) Laboratories (supra), such incompleteness or deficiency cannot be used to deny the interest if the refund is ultimately sanctioned. It would also be relevant to highlight here that in most of the subject refund claims, the deficiency memos and the consequent adjudication proceedings prolonged much beyond the period of three months even after the order of the Commissioner (Appeals) granting consequential refund. To illustrate, in the case at Serial No. 3 of the table in para 2, rebate claim of Rs. 4,22,51,651/- was filed online on 25.04.2015 which was rejected on 28.09.2015 i.e. much beyond the period of three months and, thereafter, in pursuance of the Order-in-Appeal dated 05.05.2016 the refund was sanctioned for Rs. 4,17,34,893/- on 14.10.2016 i.e., again much after the period of three months even beyond the date of order of Commissioner (Appeals). It is further noted that the Commissioner (Appeals) has heavily relied upon a decision of the Tribunal in the case of Malwa Cotton Spinning Mills Ltd. vs. CCE, Ludhiana,

{2013(2)ECS(86)(Tri-Del)} to state that the refund claim shall be treated as complete on the date when it has been filed with all the supporting documents and against which no deficiency memo has been raised by the department. However, the Government is not persuaded to accept this position in view of the dictum of the Hon'ble Supreme Court, as extracted above holding that if the Applicant fails to remove the deficiencies within the specified period the department can proceed to reject the application for refund but the adjudicatory process cannot be carried on beyond three months.

9. In one of the cases relating to refund claim of Rs. 9,46,97,376/- filed on 18.03.2015, which was sanctioned on 03.06.2016 pursuant to the OIA dated 04.03.2016, it appears that the Applicants herein, vide letter dated 02.06.2016, requested the original authority to release the refund amount on or before 03.06.2016, failing which interest may be applicable. The Commissioner (Appeals) has on this basis held that since the refund was sanctioned on 03.06.2016, as requested by the Applicant herein, the question of interest would not arise. The Applicant has submitted that interest under Section 11BB is a statutory right which flows automatically from the statute and cannot be waived by them. The judgment of a Division Bench of Hon'ble Allahabad High Court, in the case of Shree Balaji Aromatics (P) Ltd. (supra) has been relied on, in this regard. The Government finds that in the said case the Hon'ble Allahabad High Court has held as under:

"8. A bare perusal of Section 11BB of the Act, reveals that the payment of interest is not depended on the claim by the party. It is automatic. In case, if refund is not paid within three months from the date of receipt of the application, the authority concerned is under obligation to pay the interest. In Section 11BB of the Act the word used is "there shall be paid to the applicant." It means that it is not discretionary and has to pay. The waiver of the interest by the party has no relevance and on the said ground payment of interest cannot be denied."

Therefore, the order of Commissioner (Appeals) cannot be sustained on this count as well.

10. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Jindal Steel & Power Limited, At
P.O. Balkudra, Patratu, Dist. – Ramgarh-
829143 (Jharkhand)

G.O.I. Order No. 38 /22-CX dated 14-09-2022

Copy to: -

1. The Commissioner of CGST & CE, 6th Floor, Central Revenue Building, 5-A, Main Road, Ranchi-8340001(Jharkhand)
2. The Commissioner (Appeals), CGST & Central Excise, Grand Emerald (2nd & 3rd Floors), Ashok Nagar, Kadru-Argorah Main Road Ranchi- 834002.
3. M/s. TLC Legal, Advocates, 7th Floor, Mohan Dev Building, Tolstoy Marg, CP, New Delhi – 110001.
4. The Deputy Commissioner, GST & Central Excise, Ramgarh, 1st Floor, Trinity Commercial, Old NH – 33, Marar, Ramgarh, Jharkhand – 829117.
5. PS, to AS (RA).
6. Guard File.
7. Spare Copy

ATTESTED



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