Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10945 of 2021

(Arising out of OIA-VAD-EXCUS-001-APP-063-2021-22 dated- 20/10/2021 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

ATMIYA ENGINEERING AND PLASTICS **........Appellant**
244/2 3 4 5 Gidc Waghodia
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-I **........Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat - 390007

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Respondent
Shri Ghanshyam Soni, Jt. Commr.(Authorized Representative) for the Appellant

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

FINAL ORDER NO. A/ 10311 /2022

DATE OF HEARING: 05.04.2022
DATE OF DECISION: 05.04.2022

RAMESH NAIR

The issue involved is whether the appellant is entitled for interest in respect of the refund claim already granted.

2. The brief facts of the case are that the appellant has claimed remission of duty in respect of goods destroyed. In the said process, they were asked to reverse the Cenvat Credit of inputs contained in the destroyed goods. Accordingly, they reversed the credit some part of it from PLA and some part of it from Cenvat account, thereafter, they claimed refund of the said reversal on the belief they were not supposed to reverse the credit. The appellant filed a refund claim on 11.06.2018 which was rejected and subsequently Commissioner (Appeals) allowed the refund claim. Thereafter, the appellant approached the department by way of a letter with reference to their

earlier refund claim filed on 11.06.2018, the department has sanctioned the refund claim on 14.06.2018. The appellant being of bonafide belief that they are entitled for the interest from the three months after the filing of refund claim, the claimed the interest, which was rejected on the ground that since, the refund claim was granted within 3 months from the date of the Commissioner (Appeals) order, no interest is payable. Being aggrieved by the rejection of claim of interest, the appellant filed an appeal before the Commissioner (Appeals). Learned Commissioner (Appeals) also concurred with the view of original authority and dismissed the appeal. Therefore, the present appeal filed by the appellant.

3. Shri. Saurabh Dixit, Learned Counsel appearing on behalf of the appellant submits that it is a settled law in various judgments that as per Section 11BB, the interest is payable on the delayed refund after three months from the date of filing of the application of refund. Therefore, the appellants are entitled for the interest. He placed reliance on the following judgements:-

- Ranbaxy Laboratories Ltd. 2011 (273) ELT 3(SC)
- Humdard (Waqf) Laboratories 2016 (333) ELT 19 (SC)
- M&B Footwear P. Ltd. 2018 (8) GSTL 179 (Tri. All.)
- National Engineering Industries ltd. 2019 (28) GSTL 264 (Tri.Del.)
- Rajlakshmi Textile Processors Ltd. 2008 (221) ELT 38 (Mad.)
- Reliance Industries Ltd. 2010 (259) ELT 356 (Guj.)
- Reliance Industries Ltd. 2011 (274) ELT A110 (SC)

4. Shri. Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order. He also submitted written submissions along with various case laws vide letter dated 11.03.2022 which was taken on record.

5. I have carefully considered the submission made by both the sides and perused the records.

6. I find that there is no dispute in the fact that the appellant had filed a refund claim on 11.06.2018 which was though rejected by the original authority but allowed by the Commissioner (Appeals). The interest was claimed under Section 11BB which is reproduced below:-

> "**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 per cent] and not exceeding thirty per cent per annum as is for the time being 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 :
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> **Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.
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> ***Explanation***. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal [, National Tax 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 [National Tax 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.]"

From the plain reading of the above Section 11BB, it is clear that under any circumstances the refund should be disposed of within a period of three months and if there is delay after three months from the date of filing application, the assessee shall be entitled for interest from the date after three months up till the date of sanction of refund. Though there is no ambiguity in Section 11BB, however, the issue has been considered elaborately by the Hon'ble supreme Court in the following cases which held as under:-

In case of Ranbaxy Laboratories Ltd., 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."

In case of Humdard (Waqf) Laboratories, Hon'ble Supreme Court held as under:-

"13. To appreciate the controversy in proper perspective, it is seemly to refer to the provisions dealing with refund and interest. Section 11B deals with claim for refund of duty and interest, if any, paid on such duty. The said provision reads as under :-

"Section 11B. Claim for refund of duty and interest, if any, paid on such duty - (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

> (2) *If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund* :
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> Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -
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> (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
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> (b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;
>
> (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
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> (d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
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> (e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
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> (f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :
>
> Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.
>
> (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2)." (Emphasis added)

7. In view of the above settled position by the Hon'ble Supreme Court if there is any delay in sanction of the refund claim from the date of filing application, the appellant is entitled for the interest from the date of filing of refund claim till the date of sanction.

8. The Revenue's contention is that they have granted the refund within three months form the date of Commissioner (Appeals) order. In this regard, I am of the view that once the Commissioner (Appeals) has allowed the refund, the appellant was entitled for the refund right from the date of filing of the application. Therefore, for the purpose of interest, it is not the date of Commissioner (Appeals) order, but it is the date of filing of refund application needs to be taken.

9. Accordingly, the appellant is entitled for the interest on the refund. Hence, the impugned order is set aside, the appeal is allowed, with consequential relief.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

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