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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10678 of 2020

(Arising out of OIA-CCESA-SRT-APPEALS-PS-731-2019-20 dated 27/04/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

SHRI KHEMISATI POLYSACKS PVT LTD ....**Appellant**
S.No. 99/14, Madhuban Industrial Estate, Madhuban Dam Road, Village Rakholi
Silvassa, Dadra And Nagar Haveli

VERSUS

C.C.E. & S.T.-DAMAN ....**Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
Ms. Padmavati Patil, Advocate for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10516 /2022

DATE OF HEARING: 12.05.2022
DATE OF DECISION:12.05.2022

RAJU

This appeal has been filed by Shri Khemisati Polysacks Pvt Ltd. against denial of interest on refund granted to the appellant.

02. Learned counsel for the appellant pointed out that there was a dispute with audit regarding admissibility of the credit of SED taken by them paid on inputs received from EOU. Due to audit objection the appellant had reversed the said credit. Thereafter, on receipt of certain decisions of Courts the appellant sought refund of the said credit on 5th August, 2011. A show cause dated 15.06.2012 notice was issued seeking to reject the refund on the grounds that the said credit was not admissible to the appellant. A separate Show cause notice was issued seeking to deny credit. The matter of admissibility of credit was finally settled by Order-In-Original dated 30th August, 2019 in appellant's favour. Thereafter, a show cause notice issued for denial of refund was decided and the refund was granted without interest. When the refund order was challenged before the learned

Commissioner (Appeals), it was held that since the refund was granted within three months from 30th August, 2019, no interest is admissible to the appellant. Aggrieved by the said order, the appellant is before this tribunal. Learned counsel relied on the following decisions:-

- RANBAXY LABORATORIES- 2011 (273) ELT 3 (SC)
- HAMDARD LABORATORIES- 2016 (333) ELT 193 (SC)
- TATA CHEMICALS- 2016 (334) ELT 133 (T)
- FIVE STAR AGRICO- 2022-TIOL-296-HC-AHM-CX
- RED HAT- 2016 (44) STR 451 (Tri)
- GHATGE PATIL- 2016-TIOL-1970-CESTAT-MUM
- CESTAT ORDER NO.A/91159-91160/2017 dated 30.11.2017 in the case of INDIAN OIL CORPORATION LTD.

She particularly relied on the decision of Hon'ble Apex Court in the case of RANBAXY LABORATORIES (supra).

03. Learned AR argued that the refund became admissible only when the order relating to admissibility of credit dated 30th August, 2019 was passed and the refund was granted within three months of the said period. Therefore, the appellant is not entitled to any interest. He relied on the following decisions:-

- PEARL POLYMERS LTD- 2004 (174) ELT 41 (Tri-Del)
- PEARL POLYMERS LTD- 2008 (225) ELT A59 (SC)
- CCE, GOA Vs. NARAYAN BANDEKAR & SONS P LTD.- 2010 (252) ELT 417 (Tri-Mum)
- HITECH PRINT SYSTEMS Vs. CC, CHENNAI- 2008 (230) ELT 288 (Tri-Chennai)

04. I have considered the rival submissions. I find that the Hon'ble Apex Court in RANBAXY LABORATORIES (supra) has observed as follows:-

> ***"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.*
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> ***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 SCC 739]."*

4.1 It is apparent from the above that irrespective of the disputes that arise after the filing of refund claim, the appellant became entitled to interest from after three months of filing of original refund claim. The said decision has been followed in numerous cases cited by learned counsel. Learned AR has relied on many decisions listed above in Para 3 however, it is seen that none of these decisions has been passed after the decision of Hon'ble Apex Court in the case of RANBAXY LABORATORIES.

05. Consequently, following the decision of Hon'ble Apex Court in case of RANBAXY LABORATORIES, the appeal is allowed with consequential relief. The impugned order is set aside.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Mehul