

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10953 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-607-2018-19 dated- 26/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Reliance Industries Ltd

Dahej Manufacturing Division Po Dahej Taluka Vagra
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

.....Respondent

WITH

Excise Appeal No. 10954 of 2019

(Arising out of OIA-CCESA-SRT-APPEALS-PS-782-2018-19 dated- 07/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Reliance Industries Ltd

Village Mora Post Bhatha Surat Hazira Road
Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-I

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

.....Respondent

Appearance:

Ms. Dimple Gohil, Advocate appeared for the Applicant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11315-11316 /2022

DATE OF HEARING: 06.10.2022
DATE OF DECISION: 31.10.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant are entitled for the interest for delay in sanction of refund of cenvat credit which was reversed in excess to the actual reversal required in terms of Rule 6(3) of CCR, 2004.

1.2 The brief facts of the case is that by following Rule 6(3A) of Cenvat Credit Rules, 2004 appellant reversed the cenvat credit from time to time. On finalization of their reversal for a particular period it was found that the appellant had reversed the excess amount as compared to the actual cenvat credit required to be reversed. For such excess reversal of cenvat credit, the appellant have applied for the refund claim vide their letter dated 24.05.2016 for an amount of Rs 2,70,69,161/- and letter dated 22.07.2016 for an amount of Rs. 22,50,839. The said refund claim was sanctioned by the Adjudicating Authority vide Order-In-Original dated 05.11.2018. However, the sanctioning authority has not granted the interest on such sanctioned refund claim. Being aggrieved with the order of original authority to the extent the interest was not granted the appellant filed appeals before the Commissioner (Appeals) who rejected the appeals on the ground that the appellant in terms of Rule 6(3A)(f) would have adjusted the excess amount on their own by taking credit suo moto, in failure to do so the appellant is not entitled for interest. Being aggrieved by the order of the Commissioner (Appeals) the appellant filed the present appeals.

2. Ms. Dimple Gohil, Learned Counsel appearing on behalf of the appellant submits that the refund claim is governed by Section 11B therefore consequential interest under section 11 BB is available to the appellant. She submits that it is settled law that any claim of refund even related to Modvat/Cenvat is governed by section 11B. In this support she placed reliance on the Hon'ble Gujarat High Court Judgment in the case of Indo Nippon Chemicals Ltd -2005 (185) ELT 19 (Guj.). She submits that in the present case itself the refund has admittedly been sanctioned under the provision of subsection 11 B (2) of the Central Excise Act, therefore, 1994 the provision of section 11BB will automatically come into play. She submits that duty of excise includes cenvat credit therefore the refund of cenvat credit is also governed by section 11 B. She also

relied upon the decision in the appellant's own case reported at 2010 (259) ELT 356 (Guj.) wherein even the refund of cenvat in terms of Rule 5 of CCR, 2004 is also considered a refund under section 11 B and interest is payable under section 11 BB. The aforesaid decision of Hon'ble Gujarat High Court was upheld by dismissing the Revenue's SLP reported at 2011 (274) ELT A110 (SC). She also submits that since there is a delay in granting the refund the appellant is entitled for the interest.

3. Shri Prakash Kumar Singh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that since the appellant was entitled to take suo moto credit which they failed to do so, therefore, revenue cannot be burdened for payment of interest.

4. I have carefully considered the submission made by both sides and perused the records. The limited issue to be decided in the present case is that when the appellant were granted the refund of excess reversal of cenvat credit whether they are entitled for the interest for the delayed sanction of refund in terms of Section 11 BB. I find that there is no dispute regarding sanction of refund as the appellant has been granted the refund of excess reversal of cenvat credit. The Learned Commissioner has denied the claim of interest on the ground that since the appellant were entitled to take the suo moto credit the refund is not governed by section 11 B. I surprised to note that in one hand the department has undisputedly sanctioned the refund in cash obviously under section 11B then why the different treatment should be given for grant of interest which is consequential to refund under section 11 B. There is no dispute that there is a delay in sanctioning the refund against the application of refund filed by the appellant on 24.05.2016 and 21.07.2016 whereas the refund was granted on 05.11.2018. It is settled law that in case of delay in sanctioning refund after 3 months of filing of

application the assessee is entitled for the interest after 3 months from the date of application till the sanction of refund. This issue has been considered by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd Vs. Union Of India - 2011 (273) E.L.T. 3 (S.C.) wherein it was held that the assessee is entitled for the interest if the refund is not sanctioned within the stipulated time period of 3 Months from the date of refund application. Accordingly, I am of the clear view that the appellants are entitled for the interest in the refund claim sanctioned from the date after 3 months of filing the application for refund claim till the date of sanction.

5. Accordingly, the impugned orders are set aside and appeals are allowed in above terms.

(Pronounced in the open court on 31.10.2022)

RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta