CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70249 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1033-20-21 dated 26/02/2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s India Yamaha Motor Pvt. Ltd., ...Appellant
(A-3, Industrial Area,
Dadri Road Surajpur, Noida)

VERSUS

Commissioner of Central Excise &

CGST, Noida ....Respondent

(3rd Floor, Wegemans Business Park,

KP-III, Noida-201306)

APPEARANCE:

Shri Tanuj Hazari, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70438/2025

DATE OF HEARING : 09 April, 2025
DATE OF DECISION : 09 April, 2025

SANJIV SRIVASTAVA:

This appeal is directed against No.NOI-EXCUS-002-APP-1033-20-21 dated 26/02/2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"v. I find that the application for refund was mired with technical deficiencies and therefore, the appellant is not entitled to claim interest for such period.

vi. I find that the adjudicating authority has passed the order on 17.07.2020 and refund claim has been credited to the account of appellant on 21.08.2020, which is well *within 3 months of finalizing the refund claim of the applicant. Thus, in the instant case interest under Section 11BB of the Central Excise Act, 1944 is not applicable."*

2.1 Appellant is engaged in manufacture of motorcycles, scooters and spare parts falling under Chapter hearing No.87 of the Central Excise Tariff Act, 1985 and also has been an exporter of the same.

2.2 They filed a rebate claim amounting to Rs.32,57,738/- on 18.04.2018 under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. On scrutiny of the said claim it was observed that the appellant has not correctly assessed the value as per Rule 6 of Central Excise Rules, 2002 read with Section 4 of the Central Excise Act, 1944 and have included post clearance charges such as local freight and insurance beyond factory, CHA charges, Port Charges, Packing and Forwarding Charges, Terminal Handling Charges, etc in the assessable value. They also failed to provide consignment wise details of freight and insurance.

2.3 Show cause notice dated 12.07.2018 was issued to the appellant asking them to show cause as to why-

"i) the assessable value declared in the ARE-Is pertaining to these rebate claims is not proper and correct, as it appears to be including the amount of post clearance viz figures of local freight, insurance, CHA Charges, Port Charges, Packing & Forwarding Charges (related to export), Terminal Handling Charges, Haulage Charges, International Freight & Insurance etc and thus Assessable Value in the ARE-1's are contrary to the provisions of Rule 18 of Central Excise Rules, 2002, read with Notification No.19/2004-CE(NT) dated 06.09.2004 (as amended),

ii) the claim does not have documents/information as per the directions of the Commissioner of Central Excise, Appeals-II, Delhi, supra, *iii) and why penalty under rule 27 of CER-2002 should not be imposed on them."*

2.4 The said show cause notice was adjudicated as per the Order-in-Original dated 17.07.2020 by holding as follows:-

"Order

I hereby sanction the rebate claim amounting to Rs 32,57,738/- (Rupees Thirty Two Lakhs, Fifty Seven Thousand Seven Hundred Thirty Eight only) to M/s. India Yamaha Motor Pvt. Ltd., A-3, Industrial Area, Noida Dadri Road, Surajpur, Greater Noida under Section 11 B of the Central Excise Act, read with Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 06.09.2004. The payment shall be made electronically through RTGS/NEFT as per account details provided by them as per Circular No. 1013/1/2016-CX dated 12.01.2016 enforced through Trade Notice NO. 02/N-II/2016 dated 15.02.2016."

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Tanuj Hazari learned Counsel appearing for the appellant and Smt Chitra Srivastava learned Authorized Representative appearing for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows:-

"i. I find that the appellant has filed a refund claim on 18.04.2018. It is apparent on record that the refund claim filed by the appellant was lacking relevant documents/ information, which led the jurisdictional Assistant Commissioner to issue Show Cause Notice seeking the relevant documents/ information and to examine the admissibility of rebate claim. Once Show Cause Notice was issued by the department, the appellant submitted their

documents, personal hearing was conducted and subsequently Order-in-Original was passed on 17.07.2020 sanctioning the rebate claim.

ii. I find that the appellant has claimed that they are entitled to interest under Section 11BB of the Central Excise Act, 1944 for late sanction of their rebate claim and refund in their account. I find that as per Section 11BB of the Central Excise Act, 1944 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.

iii. It is manifest from the provision of Section 11B of Central Excise Act, 1944, 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 the provision 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.*

iv. In the instant case, the original refund application filed by the appellant was lacking valid documents/ information and SCN was issued to the appellant. After issuance of SCN, various processes are involved to examine the finalize the refund claim such as;

- *Issuance of SCN*
- *Submission of documents by the appellant*
- *Scrutiny of documents submitted by the appellant*
- *Personal hearing to be conducted by the adjudicating authority*
- *Passing of order to validate the refund claim and to sanction refund, if application is valid."*

4.3 I find that undisputedly refund claim was filed on 18.04.2018 and the show cause notice was issued on 12.07.2018, there is no dispute about receipt of the refund claim and its processing with jurisdictional authorities.

4.4 As per the supplementary CBIC's manual of supplementary instruction, if the refund claim was filed with incomplete documents the same should have been return back to the appellant for removal of the deficiency and should not have been received by the jurisdictional officers. The relevant extract from chapter 9 of the "Central Excise Manual of Supplementary Instructions" is reproduced below:

"2. Presentation of refund claim

2.1 Any person, who deems himself entitled to a refund of any duties of excise or other dues, or has been informed by the department that a refund is due to him shall present a claim in proper Form, along with all the relevant documents supporting his claim and also the copies of *documents/records supporting his declaration that he has not passed on the duty incidence.*

2.2 The claim will be filed with the Deputy/Assistant Commissioner of Central Excise with a copy to the Range Officer.

2.3 The claim shall be presented in duplicate and shall be duly signed by the claimant or by a duly authorised person on his behalf and shall be pre-receipted (with revenue stamp on original copy, where necessary).

2.4 ***It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available.*** *In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant in not in disadvantageous position with respect to limitation period.*

4.5 Having received and acknowledged the refund claim, the date of registration/receipt of the refund claim becomes the date of filing of the refund claim. Interest under Section 11BB is to be paid after three months from the date of filing of refund claim to the date of payment as has been held by Hon’ble Supreme Court in the case of Ranbaxy Laboratories [2011 (273) E.L.T. 3 (S.C)] has held as follows:-

"2. As aforesaid, in all these appeals the question in issue being the same, these are being disposed of by this common judgment. However, in order to appreciate the controversy in its proper perspective, a few facts from C.A. No. 6823 of 2010 may be noted. These are as follows :

The appellant filed certain claims for rebate of duty, amounting to Rs. 4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate.

3. A show cause notice was issued to the appellant on 5th July 2005, proposing to reject their claim for interest on the ground that rebate had been sanctioned to them within three months of the receipt of order of the Commissioner (Appeals) dated 30th September, 2004. Upon consideration of the reply submitted by the appellant, relying on Explanation to Section 11BB of the Act, the Assistant Commissioner rejected the claim.

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8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under :

"11B. Claim for refund of 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 Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :

Provided further that the limitation of one year shall not apply where any 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 :

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise 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 ---

(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;

(b) unspent advance deposits lying in balance in the applicant's current account 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;

(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;

(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;

(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 of any Court 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).

(4) ....

(5) ....

Section 11BB, the pivotal provision, reads thus :

"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 :

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.

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, 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."

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.*

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].

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of *receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus :*

"Circular No. 670/61/2002-CX, dated 1-10-2002

F. No. 268/51/2002-CX.8

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection. Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any *superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX., dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed."*

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :

"Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33 :

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated

payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under subsection (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

The special leave petition is dismissed. No costs."

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

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 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."

4.6 As I find that the issue to be squarely covered by the above decision of Hon'ble Supreme Court as above, I do not find any merit in the impugned order and the same is set aside.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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