CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 70768 of 2017-[Division Bench]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1303-17-18 dated 17/10/2017 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Continental Chemicals Ltd. **.....Appellant**

(A-7, Sector-7, Noida)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Noida)

APPEARANCE:

Shri Pradeep K. Mittal, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71143 / 2019

Date of Hearing : 24/05/2019
Date of Decision : 24/05/2019

PER: ARCHANA WADHWA

After hearing both the sides, we note that the appellant is engaged in the manufacture of Detergent Powder which is being exported by them. As a result, they are entitled to refund of duty paid on the inputs utilized in the manufacture of exported detergent. Accordingly, they filed a refund claim, which was initially rejected by the Original Adjudicating Authority. The Commissioner (Appeals), on appeal upheld the order of Original

Adjudicating Authority. The matter was further taken up before the Tribunal who vide their order dated 20.04.2015 set aside the order of Original Adjudicating Authority and allowed the appeal with consequential relief.

2. It is seen that the appellant had earlier filed a refund application on 26.12.1989. On receipt of the Tribunal's order the appellant again approached the revenue to refund the amount in question by way of filing a letter dated 23.12.2015. The said refund claim was sanctioned to the appellant to the extent of Rs.10.62 laksh approximately. However, the appellant's claim of interest on the said refund amount was rejected.

3. On matter being further taken up before the Commissioner (Appeals) he observed as under:-

> "7. I find that based on above listed provisions, interest is payable to the, appellant from the date as prescribed under Section 11-BB of the Central Excise Act, 1944. However, in the instant case the application for the refund was filed on 29.12.1989 and refund was also sanctioned keeping in view the direction issued by the CESTAT vide order dated 20.04.2015 and the request for refund made by the party vide letter dated 23.10.2015. The refund application dated 29.12.1989 was filed under Section 11B (1) and refund has been sanctioned under subsection (2) of the Section 11-B of the Central Excise Act, 1944. Section 11-BB was inserted in the scheme of refund under Section 11-BB with effect from 26.05.1995 vide Section 75 of the Finance Act, 1995 (22 of 1995). As there was no express provision under Section 11-B to grant interest on delayed refund during the period of filing of refund claim (December, 1989), I find that interest cannot be granted under Section 11-BB of Central Excise Act, 1944 on delayed sanction of refund. It is also observed that the refund application was already disposed off vide order dated 09.01.1992 thereby escaping the provisions of proviso to the Section 11-BB."

He accordingly rejected the appeal and hence the present appeal.

4. As is seen from the above the appellate authority has initially observed that in terms of Section 11-BB of Central Excise Act, the interest is payable from the date as prescribed therein. However, He observed that as the application was filed on 29.12.1989, when the provisions of Section 11-BB were not on statute book, the assessee’s claim of interest has to be rejected. He did not even sanction the interest for the period subsequent to 26 May, 1995, in terms of Section 11-BB of Central Excise Act, 1995.

5. On going through the provisions of Section 11-BB, we note that proviso to the said Section lays down that where the refund application stands made before the date on which the Finance Bill, 1995 receives the assent of the president and is not refunded within 3 months from such date, the appellant shall be paid interest under the said Section from the date immediately after three months from such date, till the date of refund of such amount. In terms of the said proviso, which applies to all the refund applications pending on the date of introduction of said Section 11-BB, all such refund applications are supposed to be decided within a period of 3 months and if the amount is not refunded, the assessee shall be entitled to interest on the said refund, from the expiry of period of three months till the actual date of payment of such refund amount. The Learned Commissioner (Appeals) has merely rejected the claim of interest on the sole ground that the provisions of Section 11-BB

were introduced in the Act only w.e.f. 26 May, 1995 and as the application for refund was made on 29.12.1989, the same would not apply to the said refund application. He has not bothered to read the entire provisions of Section 11-BB which also includes the proviso. As already observed in terms of the proviso to said Section 11-BB, the revenues interest liability would start accruing after the expiry of period of 3 months from 26 May, 1995.

6. Otherwise also we note that the issue stands decided by the Hon'ble Supreme Court's decision in the case of Ranbaxy Laboratories Ltd. Vs Union of India reported as 2011 (273) ELT 3 (SC). While dealing with an identical situation where the refund application of the assessee was initially denied by the revenue and subsequently allowed by the higher appellate forum, the Hon'ble Supreme Court has observed that the liability of the revenue to pay interest under said Section would commence from the date of expiry of 3 months from the date of receipt of the application for refund.

7. In view of the foregoing, while agreeing with Commissioner (Appeals) that the refund application filed on December, 1989 would not invite any interest, in the absence of any provisions to the fact in the statute, till the period of enactment of said Section 11-BB in terms of the proviso to said Section, we hold that the interest liability of the revenue would start form the period of expiry of 3 months from 26.05.1995. Accordingly, we set aside the impugned order and remand the

matter to Original Adjudicating Authority for calculation of the interest to be paid to the appellant in terms of this order.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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