

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

E/25/2009-DB

[Arising out of No. 194-2008 dated 01/10/2008 passed by
CCE(Appeals), Mangalore]

**JINDAL PRAXAIR OYGN
COMPANY PVT LTD**
THORANAGALLU, BELLARY

Appellant(s)

Versus

C.C.E. & S.T.-MANGALORE
7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE,
KARNATAKA
575003

Respondent(s)

Appearance:

Shri Sundeep Huilgol, Advocate
Huilgol Law Chambers Advocates
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BANGALORE
KARNATAKA
560042

For the Appellant

Shri Gopakumar, Jt. Commissioner(AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 01/11/2019

Date of Decision:14/11/2019

Final Order No. 21010 / 2019

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 01/10/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has ordered for disbursal of refund amount but

declined to pay the interest on the same.

2. Briefly the facts of the present case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956 and are engaged, inter alia, in the business of production and supply of gaseous Oxygen, gaseous Nitrogen and Argon. After filing the present appeal, the shareholding pattern of the appellant company underwent a change and now, the appellant is renamed as JSW Industrial Gases Pvt. Ltd. A show-cause notice was issued to the appellant and Order-in-Original dt. 11/01/2005 was passed by the Commissioner, as per which the appellant was held liable to pay excise duty of Rs.12,62,13,125/- apart from penalty and interest. Aggrieved by the said order, appellant filed an appeal before the Tribunal along with application seeking stay of recovery of duty, interest and penalty. The Tribunal vide its Order dt. 18/08/2005 disposed of the stay application and directed the appellant to deposit Rs.1 crore within 4 months and recovery of the balance amount was stayed and the appellant, in compliance of the said stay order, duly deposited the said amount of Rs.1 crore under protest. Subsequently the Tribunal vide Order dt. 29/08/2006 allowed the appeal of the appellant and set aside the demand. Subsequently, the appellant filed application under Section 11B of the Act on 28/02/2007 seeking refund of Rs.1 crore deposited by it. Thereafter the ACCE passed an order dt. 05/06/2007 sanctioning the said refund but refused to disburse and instead adjusted the said amount of Rs.1 crore as against a separate demand raised on the appellant vide different Orders-in-Original. Aggrieved by the said order of adjustment dt. 05/06/2007, appellant filed appeal before the Commissioner(Appeals). In the mean time, another show-cause notice was issued to the appellant and Order-in-Original dt. 24/09/2004 was passed by CCE confirming the demand along with interest and penalty. Aggrieved by the said order, appellant filed appeal before the Tribunal along with an application seeking stay of

recovery of duty, interest and penalty. While disposing the stay petition, the Tribunal vide its order dt. 16/03/2005 directed the appellant to deposit Rs.30 lakhs and the balance amount was stayed. The appellant, in compliance with the stay order, deposited the said amount of Rs.30 lakhs under protest. Thereafter the Tribunal allowed the appeal of the appellant vide Final Order dt. 07/02/2007 and the demand raised on the appellant was set aside. Subsequently, the appellant filed an application under Section 11B of the Act before the Deputy Commissioner on 26/04/2007 seeking refund of the said amount of Rs.30 lakhs deposited by them. thereafter the Asst. Commissioner vide order dt. 24/07/2007 sanctioned the refund but refused to disburse the entire refund and instead adjusted a portion of the said amount as against a separate demand raised on the appellant vide different Orders-in-Original. The appellant did not accept the Order-in-Original and challenged the same before the Tribunal. The said Order-in-Original had not attained finality and was subjudice but still the Deputy Commissioner adjusted a portion i.e. Rs.14,56,044/- of the refundable amount of Rs.30 lakhs as against the provisional demand foisted on it vide other Orders-in-Original. The demands against which aforesaid sanctioned refund were adjusted were set aside by the Tribunal. Consequently, the said amount which was adjusted became payable to the appellant. In the impugned order, the Commissioner(Appeals) has directed the disbursal of the sanctioned refund of Rs.1 crore and Rs.14,56,044/- to the appellant under Section 11B but denied the interest. Against which the appellant is in appeal before this Tribunal in the present appeal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that as per the impugned order, the refund has been granted to the appellant but at a belated stage and demanded interest for the delay in granting the

refund. He further submitted that the Commissioner(Appeals) in the impugned order has not given any reason for declining to pay the interest under Section 11BB of the Central Excise Act. He further submitted that liability to pay interest stands automatically attracted as soon as the period 3 months lapsed from the date of receipt of the application for refund. He further submitted that as per Section 11BB, it is clear that the payment of interest is mandatory and there is no discretion vested in the Revenue authorities to decide whether or not to pay interest. He further submitted that this issue is no more res integra and has been settled by the Hon'ble Apex Court in the case of Ranbaxy Laboratories Ltd. Vs. UOI [2011 33 STT 326]. He also submitted that CBIC has also clarified that interest has to be paid automatically in case refunds are not paid within 3 months from the date of receipt of the refund application. He referred to the said Circular No.670/61/2002-CX dt. 01/10/2002. He also referred to another Circular No.572/9/2001-CX dt. 22/02/2001. He also submitted that on identical issue, Bangalore Bench of the Tribunal in the case of Voltas Ltd. Vs. CCE [2008(201) ELT 615] has held that even when a sanctioned refund is adjusted against another demand foisted on an assessee, interest is payable by the Department under Section 11BB from the expiry of 3 months from the date of receipt of the refund application till the date of payment of the refund. He also relied upon the decision of the Bangalore Bench in the case of Super Cassettes Industries Ltd. Vs. CCE [2007 taxmann.com 545] in which it was categorically held that it is clear from the above observations of the Tribunal that ex-parte, arbitrary and erroneous adjustment of amounts due to an assessee by revenue authorities does not affect the assessee's claim for interest in regard to a delayed refund/rebate claim from the date of filing of the claim. He also relied upon the decision of Bangalore Bench in the case of Vijai Industries Vs. CCE [2003(158) ELT 517] which was upheld by the Karnataka High Court reported in 2010(258) ELT 358.

5. On the other hand, the learned AR defended the impugned order and submitted that interest is to be paid from the expiry of 3 months from the date of decision of the Tribunal. For this submission, he relied upon the decision of the Tribunal in the case of Bakelite Hylam Ltd. Vs. CC,CE&ST, Hyderabad-II [2019(1) TMI – CESTAT Hyderabad.

6.1. After considering the submissions of both the sides and perusal of the material on record, we find that in the impugned order, no reasons have been given for not granting interest on the delayed refund. Further, we find that admittedly, there is a delay in disbursal of the refund amount in the present case. Further, we find that notwithstanding the fact that the sanctioned refund is merely belatedly paid but instead, first adjusted against some other demand and then later on disbursed to the assessee. Further we find that this issue is no more res integra and has been settled by Apex Court in the case of Ranbaxy Laboratories Ltd. wherein the Hon'ble Apex Court has held as under:-

9. 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

6.2. Further we find that even the Board has clarified vide various circulars that the interest becomes payable after the expiry of a period of three months from the date of receipt of the application under sub-section 1 of Section 11BB of the Act. Further we find that on identical facts as involved in the present case, this Tribunal in the case of Vijai Industries cited supra has held as under:-

5. the party has filed a refund claim on 17-1-2000. It was not correct on the part of the authorities below to have adjusted the refund amount towards the other demand, since the very demand was under challenge by way of appeal, as it was observed by the Tribunal while passing the miscellaneous order. In the facts and circumstances, I am of the view that the party is entitled to interest from 17-4-2000 till 5-12-2000. Appeal is allowed, accordingly.

The said decision of the Tribunal was challenged by the Department before the Hon'ble High Court of Karnataka and the appeal of the Department was dismissed. The Hon'ble High Court has observed as under:-

5. It is not in dispute that on 18-7-2000 as per Annexure-B the Deputy commissioner who is the adjudicating authority has held that the assessee was entitled for refund. After sanctioning the refund, the said amount was appropriated for other dues. Therefore, it is clear that if other dues were not there, the respondent-assessee was entitled for the amount of refund forthwith.

6. In the circumstances we are of the opinion that the arguments advanced by the learned counsel for the revenue that the order of refund has to be reckoned not from 18-7-2000 but the same has to be considered with effect from 30-1-2001 has to be rejected.

7. In the circumstances, we do not see any merit in this appeal. Accordingly, the appeal is dismissed.

6.3. Further we find that the Tribunal decision in the case of Bakelite Hylam Ltd. is not applicable in the present case when on identical issue, there is a decision of Karnataka High Court in the case of Vijai Industries cited supra.

7. In view of our discussion above and by following the decision of the Karnataka High Court in the case of Vijai Industries and also Apex Court's decision in the case of Ranbaxy Laboratories Ltd., we

are of the considered view that the impugned order is not sustainable in law and therefore we set aside the same by allowing the appeal of the appellant. The original authority is directed to quantify the interest for the period after the expiry of 3 months from the date of filing the refund application till the amount is paid. Appeal is accordingly disposed of.

(Order pronounced on 14/11/2019)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

Raja...