

**Customs, Excise & Service Tax Appellate Tribunal**  
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/61502-61503/2018

| Sr. No | Case No          | Impugned Order Detail's       | Date of Impugned Order | Passed By                                               | Appellant    | Respondent             |
|--------|------------------|-------------------------------|------------------------|---------------------------------------------------------|--------------|------------------------|
| 1      | E/61502/2018-SMC | OIA-LUD-EXCUS-001-APP-1246-18 | 07/06/2018             | Commissioner of Central Excise and Service Tax-LUDHIANA | Ms J C T Ltd | C.C.E. & S.T.-Ludhiana |
| 2      | E/61503/2018-SMC | OIA-LUD-EXCUS-001-APP-1234-18 | 04/06/2018             | Commissioner of Central Excise and Service Tax-LUDHIANA | Ms J C T Ltd | C.C.E. & S.T.-Ludhiana |

**Represented by:**

For Appellant (s) : Shri Abhinav Kansal, Advocate

For Respondent (s): Shri G. M. Sharma, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

Date of Hearing/Decision: 13.12.2018

**ORDER No. A/63581-63582 / 2018**

**Per : Mr. Ashok Jindal**

The appellant are in appeals against the impugned orders wherein the interest on delayed refund has been rejected under Section 11BB of the Central Excise Act, 1944.

2. The facts of the case are that the appellant is an exporter and exported their goods. The appellant is also operating under Notification No. 29/2004-CE and 30/2004-CE dated 09.07.2004. For export of goods, the appellant filed rebate claims, the said rebate claims were allowed but amount of rebate was partly allowed through cenvat credit account and partly in cash. As per the CBEC Circular No. 687/3/2003-CX dated 03.01.2003, in such cases, the rebate claim is required to be sanctioned in

cash. Therefore, the appellant preferred appeals before the Ld. Commissioner (A) who modified the adjudication order and allowed the rebate claims in cash. After receiving the rebate claims in cash, the appellant filed claim of interest on delayed refund after three months from the payment of rebate claim in cash. The claim of interest was rejected by the authorities below on the premise that there is no delay in sanctioning the rebate claim in cenvat credit account, therefore, they are not entitled for interest. Against those orders, the appellant is before me.

3. Heard the parties.

4. As the facts of the case are not in dispute, therefore, only legal issues are to be examined. As per the CBEC Circular No. 687/3/2003-CX dated 03.01.2003, the duty paid through actual credit or deemed credit account on the goods export must be refunded in cash. For better appreciation, the said circular is extracted herein below:-

**Circular No. 687/3 /2003-CX**

3<sup>rd</sup> January, 2003

**F.No. 267 /57/2002-CX-8**

Government of India

Ministry of Finance & Company Affairs

Department of Revenue

Central Board of Excise & Customs

**Subject: – Payment of rebate amount of the duty paid from Cenvat credit account in cash-reg.**

I am directed to draw your attention to Board's circular No. 21/89-CX6 dated 11.5.89 issued from F.No. 210/21/87-CX6, circular No. 153/64/95-CX dated 12.10.95 issued from F.No.209/47/95-CX6 and circular No. 262/96/96-CX dated 6.11.96 issued from F.No.209/36/96-CX6 wherein it has been, inter alia, clarified that rebate could be sanctioned in cash in respect of the duty payment made through credit accounts of Modvat scheme on inputs or capital goods or deemed credit account. Subsequently, Board has been receiving representations from trade to say that the rebate is not being granted in cash.

2. The matter has been examined by the Board. It is the view that there is no discretion with the sanctioning authority to give the refund of the duty paid on goods exported through credit accounts. It is therefore clarified that the duty paid through the actual credit or deemed credit account on the goods exported must be refunded in cash.

3. Field formations may please be informed suitably.
- 4 .Receipt of the same may be acknowledged.
5. Hindi version will follow.

As it is a clear position from the abovementioned circular that the rebate claim was required to be refunded in cash, but, the adjudicating authority while sanctioning the rebate claim instead of sanctioning the rebate claim in cash had partly allowed the rebate claim in cash and partly in cenvat credit account. The reason for sanctioning the rebate claim in cenvat credit account is are best known to the adjudicating authority which are in gross violation of the CBEC Circular dated 03.01.2003, but, the Ld. Commissioner (A) sanctioned the rebate claim in cash. These are not in dispute, therefore, sanctioning the rebate claim in cenvat credit account by the adjudicating authority in contravention of CBEC Circular dated 03.01.2003 is in gross violation of the mandate of law. In these circumstances, for the error committed by the adjudicating authority, the assessee should not suffer. As the rebate claim has been sanctioned in cenvat credit account which is not as per mandate of law, in that circumstances, it cannot be termed that the rebate claim has been sanctioned to the appellant in time. Therefore, the date on which the Ld. Commissioner (A) sanctioned the rebate claim in cash is the date of sanctioning the rebate claim to the appellant. Moreover, when the rebate claims were realized is the actual date of sanctioning the rebate claim. In that circumstances, the appellant are entitled to claim interest in terms of Section 11BB of the Central Excise

Act, 1944 after three months from the date of filing of the rebate claim till their realization.

In these terms, I allow the appeals filed by the appellant and set-aside the impugned orders rejecting the claim of interest.

*(Dictated & pronounced in the Court)*

**(Ashok Jindal)**  
Member (Judicial)

G.Y.