

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Excise Appeal No.40215 of 2020

(Arising out of Order-in-Appeal No. 20/2020 (CTA-I) dated 12.2.2020 passed by the
Commissioner of GST & Central Excise (Appeals – I), Chennai)

M/s. SRF Ltd.

Manali Industrial Area
Manali, Chennai – 600 068.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
No. 26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

Respondent

APPEARANCE:

Shri A.P. Ravi, Advocate and
Shri B.Jeevan Kumar, Chartered Accountant for the Appellant
Smt. Anandalakshmi Ganeshram, Supdt. (AR)

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40471/2023

Date of Hearing : 13.06.2023

Date of Decision: 23.06.2023

Per M. Ajit Kumar,

This is an appeal filed by M/s. SRF Ltd. Chennai against Order in Appeal No. 20/2020 (CTA-I) dated 12.2.2020 passed by the Commissioner of GST and Central Excise (Appeals – I), Chennai.

2. Brief facts are that the appellants filed a refund claim on 05/10/2018 claiming a refund of Rs.3,00,97,192/-. The claim was filed by appellant consequent to Tribunal's Final Order No. A/52983/2018-EX (DB) dated 13.8.2018 allowing their appeal which was related to electricity wheeled out to their sister units. As a result, the proportionate credit taken on electricity wheeled out to their sister unit

was not reversible but electricity sold to another group company was liable to be reversed. Thereby apart from a refund they were also liable to reverse a credit of Rs 91,17,064/- which was availed on electricity sold to group company/ vendor etc. The appellant in their claim dated 05/10/2018, requested the department to adjust this amount payable by them against the consequential refund due and pay the balance amount of Rs 2,09,80,128/-. After some correspondence the claim was returned to the appellant by the department vide letter C No IV/09/56/2018-Refund dated 28/01/2019, on the ground that though proportionate credit had been reversed, the appellant was liable to pay appropriate interest on the said credit reversed by them and for which they had not produced any documentary evidence of payment. The appellant replied vide their letter dated 04/03/2019 stating that that they were also eligible for interest of Rs 1,74,88,805/- under section 11BB of the Central Excise Act 1944 (herein after also referred to as 'Act'). Hence the total amount eligible by them was Rs 3,84,68,933/- (2,09,80,128/- + 1,74,88,805/-) of which the interest outstanding of Rs 19,62,599/- may be deducted and an amount of Rs 3,65,06,334/- inclusive of interest be refunded to them. Subsequently the appellant vide letter dated 15/05/2019 (received in the office on 21.5.2019) have informed the department that they have paid the interest of Rs 19,62,599/- vide challan on 15/05/2019. The adjudicating authority vide Order in Original No. 15/2019-20 (R) dated 29.8.2019 sanctioned refund amount of Rs.2,09,80,128/- being the CENVAT credit reversed under protest. However, the adjudicating authority rejected an amount of Rs.1,74,88,805/- claimed towards interest as ineligible in terms of section 11BB of the Act. Aggrieved by the said order, the appellant filed

an appeal before Commissioner (Appeals) who vide the impugned order held that the appellant would be eligible for interest after a lapse of three months from 21.5.2019 i.e. the date of filing the revised refund claim. Aggrieved by the said impugned order, the appellant is before us in appeal.

3. No cross-objection has been filed by the respondent-department.

4. We have heard Shri A.P. Ravi, learned counsel and Shri B. Jeevan Kumar, Chartered Accountant for the appellant and Smt. Anandalakshmi Ganeshram, Supdt. (AR) on behalf of the respondent.

5. The learned counsel for the appellant has stated that the only issue in this appeal is relating to sanction of interest. He has stated that the stand taken by the Commissioner (Appeals) that the interest was only applicable from the date on which the revised refund claim is not correct. The delay was caused by the department in sanctioning their claim. The relevant date for claiming refund will be the date on which they have originally deposited the duty under-protest and that the interest would be applicable from such date. They have referred to the following judgments in their favour:-

- (a) Fujikawa Power Vs. CCE, Chandigarh vide Final Order No. 61041 and 61042/2019
- (b) M/s. Riba Textiles Ltd. Vs. CCE, Panchkula vide Final Order No. 60015/2020 dated 7.1.2020.
- (c) M/s. Marshall Foundry & Engg. Pvt. Ltd. Vs. CGST, Faridabad vide Final Order No. 61058 to 61062/2019 dated 20.11.2019

The learned counsel has submitted that the claim for interest hence be granted to them from the original date of their deposit of duty with interest.

6. The learned AR Smt. Anandalakshmi Ganeshram has stated on behalf of Revenue that this is a case where the appellant had first filed a claim on 5.10.2018 for refund of Rs.2,09,80,128/-. The department sought details on payment of interest on the credit reversed of Rs.91,17,604/- due by the appellant for the period March 2002 to January 2005 to the department vide letters dated 12.11.2018, 27.11.2018 and 1.2.2019. Subsequently after protracted correspondences between the department and the appellant it was found that the appellant had not paid the dues to the Government. The claim was thus returned to the appellant and they have filed a revised refund claim dated 15/05/2019 after paying all dues but received in the office on 21.5.2019. The refund claim was sanctioned on 29.8.2019 by way of RTGS / NEFT account of the appellant and hence the appellant is eligible for interest after a period of three months of filing the revised refund claim only. She also referred to the Tribunal's decision in the case of Wonder Packaging Industries Vs. CCE, Ahmedabad reported in 2022-TIOL-492-CESTAT-AHM wherein it was held that interest on refund is payable after three months from the date of the application and consequent to the order of the Commissioner (Appeals) and no interest is payable from the date of deposit during investigation.

7. We have heard the parties. We find that the only issue to be considered is the relevant date for calculating the interest arising due to a delay in the payment of the consequential refund arising from the order of a coordinate bench of Tribunal's Final Order No. A/52983/2018-EX (DB) dated 13.8.2018. The disputed dates are;

- 1) from the date of filing the original claim i.e. 05/10/2018

- 2) from the date of filing the relevant support document i.e.
14/8/2019
- 3) from the date of filing the revised claim i.e. 15/05/2019 or
21/05/2019
- 4) from the date of reversal of CENVAT credit under protest i.e.
15/04/2005

7.1 It is seen that the appellant has claimed the relevant date for calculation of interest to be from 15/04/2005 i.e. the date on which they reversed the CENVAT Credit. Extracting Section 11BB of the Central Excises and Salt Act, 1944 relevant to the matter, will help in the better understanding of the issue;

“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 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, National Tax 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.”

(emphasis added)

Sub Section (1) of Section 11B of the Act, at the relevant time, states that ‘Any person claiming refund of any duty of excise may make an

application for refund of such duty to the Assistant Collector of Central Excise before the expiry of one year from the relevant date in such form 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 in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person.....'.

7.2 We find that CENVAT credit paid was ordered to be refunded to the applicant as a consequential benefit by Hon'ble CESTAT's Final Order dated 13/08/2018. The same should have been refunded within three months from the date of receipt of application under sub-section (1) of that section 11B of the Act, which was 05/10/2018. The interest clock would start ticking from that date. The appellants have prayed that the claim for interest on the refund be granted to them from the original date of their deposit of duty under protest, with interest. We find that this is a dispute which has gone through the adjudication process where protests were vacated and duties demanded. The Hon'ble Supreme Court in a seven Judge Bench judgement in the case of **Smt. Ujjam Bai Vs State of Uttar Pradesh [1962 AIR 1621/1963 SCR (1) 778]** have held that the binding force of a decision which is arrived at by a taxing authority acting within the limits of the jurisdiction conferred upon it by law cannot be made dependent upon the question whether its decision is correct or erroneous. For, that would create an impossible situation. Therefore, though erroneous, its decision must bind the assessee. This being so the amounts paid by the appellant even under protest do not survive as a 'deposit' after the

Show Cause Notices are adjudicated by the proper officer and tax liabilities determined.

7.3 The original authority has held that even the date of filing the revised claim i.e. 21/05/2019 (date of receipt in office) is not the relevant date inasmuch as the relevant support documents were only filed during the personal hearing fixed on 14.8.2019. We find that as stated in para 6.3 of the impugned order, para 3.2 Chapter 9 of the Supplementary instructions issued in terms of Rule 31 of the Central Excise Rules, 2002 require that the Divisional Office should point out the deficiencies to the refund applicant within 15 days of receipt of the claim. The original authority should have endeavored to dispose off the refund claim as per law within the time specified in sec. 11B of the Act without entering into protracted correspondence. Having not done so, he cannot take shelter under this fig leaf of the appellant not having submitted the requisite documents till 14.8.2019. The department will have to bear the cost for the inaction causing delay in sanctioning the consequential refund claims which was originally filed on 05.10.2018.

7.4 The issue regarding the relevant date for payment of interest was examined by the Hon'ble Supreme Courts in its judgment in **Ranbaxy Laboratories Ltd Vs UOI [2011 (273) E.L.T. 3 (S.C.)]**. The Hon'ble Court cited Boards instructions which covered consequential refunds and stated that the provisions of section 11BB of the Act, are attracted automatically for any refund sanctioned beyond a period of three months and that 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. The relevant portion of the judgment is extracted below:-

“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.

(Emphasis added)

7.5 We are hence of the opinion that the liability of the Proper Officer to pay interest 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, as stated under Section 11BB of the Act and not from the date of reversal of credit under protest as sought by the appellant or the date of filing the revised claim as per the impugned order. The rate of interest payable would also be governed by the relevant interest rate notification issued under the Act and was prevalent at that time.

8. The appellant has relied upon the following judgments in favor of their stand that the relevant date for claiming refund shall be the date on which the amount was deposited, and that interest will be applicable from that date;

- (a) Fujikawa Power Vs. CCE, Chandigarh vide Final Order No. 61041 and 61042/2019
- (b) M/s. Riba Textiles Ltd. Vs. CCE, Panchkula vide Final Order No. 60015/2020 dated 7.1.2020.
- (c) M/s. Marshall Foundry & Engg. Pvt. Ltd. Vs. CGST, Faridabad vide Final Order No. 61058 to 61062/2019 dated 20/11/2019.

We find that the judgment in M/s.Fujikawa Power, Riba Textiles and Marshall Foundry cited above have been passed by Single Judge Benches of the Hon'ble Tribunal and only have persuasive value. With the legal issues having been examined by the Hon'ble Supreme Court in Smt. Ujjam Bai and Ranbaxy Laboratories Ltd judgments, cited

above, judicial discipline requires us to follow the same. The Judgment in Wonder Packaging Industries cited by Revenue is also in conformity with the view that interest arises for refund sanctioned after three months from the date of filing the refund application.

9. We find that this is not a case where the refund was delayed by the appellant for want of critical documents that would be necessary to quantify the refund. It was mainly because the department wanted the appellant to pay the interest amount due first, which could very well have been adjusted by the department from their refund claim as consented by the appellant. Hence, we find that as per the statutory mandate of Section 11BB of the Act the department is under a legal obligation to sanction the refund claim along with interest after the expiry of 3 months from the date of filing of the refund claim and not from the revised date of filing the claim as decided in the impugned order.

10. In the light of the discussions above, the impugned order is set aside. We find that the relevant date for calculating interest commences from the date of expiry of three months from the date of receipt of application for refund by the department i.e. from 05/10/2018 in terms of Section 11BB of the Central Excise Act, 1944. The appeal is disposed off accordingly.

(Pronounced in open court on 23.06.2023)

(M. AJIT KUMAR)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)