CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 52178 of 2018 [DB]

[Arising out of Order-in-Appeal No. BHO-EXCUS-000-APP-021-18-19 dated 24.04.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Manik Bagh Palace Indore (M.P.)]

M/s.Hindustan Motors Limited **...Appellant**
(Power Unit Plant)
Sector-III, Sagore Kutti,
Industrial Area, Pithampur,
Dist. Dhar, M.P.

VERSUS

Commissioner of Customs,
CGST & Service Tax &Central Excise, **...Respondent**
Manik Bagh Palace,
Indore, M.P.

<u>APPEARANCE:</u>

Shri Manish Saharan, Advocate for the Appellant
Shri Sunil Kumar, Authorised Representative for the Respondent

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION : 11.11.2019

FINAL ORDER No. <u>51837/2019</u>

<u>RACHNA GUPTA</u>

The order of Commissioner (Appeals) bearing No.BHO-EXCUS-000-APP-021-18-19 dated 24.04.2018 has been assailed in the impugned appeal vide which the order of original adjudicating authority rejecting the claim of interest to the refund allowed to the appellant has been rejected. Being aggrieved, the impugned appeal has been filed.

2. Facts relevant for the purpose are that M/s.Hindustan Motors, the appellant had filed a refund claim of Rs.3,00,78,856/- initially on 05.02.2005 towards customs duty paid, under protest, in respect of bills of entry for import of diesel/petrol engine for motor cars classifying under heading No.8407/8408 of CTA 1975. This payment was made in furtherance of the order of Assistant Commissioner, ICD Pithampur dated 28.03.2000. The said order was set aside by Commissioner (Appeals), Bhopal vide Order-in-Appeal No. 6-8/BPL/2001 dated 28.12.2001. This Tribunal vide Final Order No.468-470/2003 dated 30th June, 2003 had accepted the Order in Original setting aside the O-I-A dated 28.12.2001. However, the appellant thereafter filed a Civil Appeal in Hon'ble Supreme Court which was dismissed. Thus, the order dated 28.03.2000 had reached the finality.

3. The impugned refund application dated 05.02.2005 was filed thereafter. However it was rejected by Dy. Commissioner, ICD, Pithampur vide order dated 22nd July, 2005. The said order was challenged. Vide the Order in Appeal No.229/12 dated 8th August, 2012, the aforesaid Order-in-Original was set aside and the amount of refund was allowed. Revenue challenged the Order –in – Appeal before this Tribunal, who vide Final Order No.55734/2017 dated 1st August, 2017 upheld the Order-in-Appeal dated 08.08.2012 rejecting the appeal of the Revenue. Pursuant thereto a letter dated 22.09.2017 alongwith the copy of aforesaid final order was submitted by appellant to Assistant Commissioner of Customs ICD, Pithampur praying for sanction of refund as was applied on

05.02.2005 alongwith the interest of Rs.2,26,60,504/-. On basis of this letter that the impugned show cause notice dated 30th November, 2017 was served upon the appellant denying his entitlement for the claim of the interest. Said proposal has been confirmed not only by the Original Adjudicating Authority vide order No.192/2017-18 dated 27.12.2018, but has been upheld vide the Order-in-Appeal under challenge giving rise to the impugned appeal.

4. We have heard Shri Manish Saharan, learned Counsel for the appellant and Shri Sunil Kumar, learned D.R. for the Department.

5. It is submitted on behalf of the appellant that the issue involved herein is no more *res-integra* as it stands settled by Hon'ble Apex Court itself in the decision of **Ranbaxy Laboratories Ltd. vs. Union of India reported in 2011 (273) ELT 3 (S.C.).** It is submitted that despite this decision was brought to the notice of the adjudicating authorities but they had surpassed the impugned order in sheer ignorance thereof. Order is, accordingly, prayed to be set aside and appeal is prayed to be allowed.

6. Per-contra ld. D.R. has justified the order which has been passed based on Section 27 sub-section (2) of Customs Act, 1962. Impressing upon para No.9 and 10 of the impugned order the appeal in hand is prayed to be dismissed.

7. After hearing both the parties and perusing entire record, we are of the opinion as follows:-

7.1 The only question in the case is about the relevant date for the award of interest on the sanctioned refund as to whether it should be the date of filing of application which is 05.02.2005 in the present case or it should be the date of application as was filed after passing of the order sanctioning refund which is on 01.08.2017 in the present case.

7.2 The claim of refund of duty has been detailed under section 11B and 11BB of Central Excise Act, 1944. 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 the 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 the 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. Thus, 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 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."

7.3 The issue in fact was initially taken up by Hon'ble Supreme Court in the case of **Union of India vs. Shreeji Colour Chem Industries reported in 2008 (230) ELT 0199** wherein it was held that in so far as the reckoning of period for the purpose of payment of interest under section 11BB of Central Excise Act is concerned, emphasis has been laid on the date of receipt of application for refund. Not only this Department's own circular No.670/61/2002-CX dated 01.10.2002 states that the relevant date for payment of interest in refund cases is the expiry of three months from the date of receipt of application under section 11B (1) of the Act.

7.4 Though the Adjudicating authorities below have relied upon Section 27 of the Customs Act, 1962 but issue qua same has also been settled by Hon'ble High Court of Punjab and Haryana in the case titled as **M/s. Om Refoils Ltd. vs. Union of India & Others reported in 2018 TIOL 181 (P&H)** wherein it has been held as follows:-

> *"The only question is the period for which petitioner is entitled to interest on the amount of refund. Petitioner submits that interest is liable to be paid from expiry of 90 days from the date of application under Section 27(1), which in this case is 23.07.2007, is well founded. A plain reading of Section 27A of Customs Act, 1962 supports his submission that the word "applications" throughout Section 27A refers to the application for refund under Section 27(1). There is no other application contemplated therein. Section 27A then provides for the payment of interest from the date immediately after expiry of three months from the date of receipt of "such application". The words "such application" refer to the application under Section 27(1). <u>This view is supported by judgment of Supreme Court in Ranbaxy Laboratories Ltd. 2011-TIOL-105-SC-CX. In that case Sections 11B and 11BB of CEA, 1944, fell for consideration</u>. The provisions of Sections 11B and 11 BB of CEA, 1944 correspond to Section 27(1) and 27A respectively insofar as they are relevant to this case. Even assuming that petitioner furnished the evidence with respect to issue of unjust enrichment later it would make no difference as Section 27A mandates the payment of interest from the date of the application. The revenue in any case does not suffer any loss as it has the benefit of the use of the money, in fact, even prior to the date of filing of application for refund under Section 27(1). The petitioner shall be paid interest from 23.10.2007 i.e. 90 days after the date of the application under Section 27(1) viz. 23.07.2007 till payment."*

7.5 The said decision has been announced based upon the decision of Hon'ble Supreme Court in **Ranbaxy Laboratories (supra**) case wherein Section 11B and 11BB of Central Excise Act 1944 fell for consideration. It was held that Section 11B and 11BB of CEA correspond to section 27 (1) and 27A of Customs Act respectively. Thus, there remains no doubt that Section 27A of Customs Act does not change the date of refund. It has been clarified that Section 27A merely asserts that the order of appellate authority shall be deemed to be an order passed under sub-section (2) of section 27. The date of application, therefore, shall be for such application, as was filed under section 11B of Central Excise Act.

8. Applying these case laws to the present case, we observe that the refund claim was initially filed on 05.02.2005 in furtherance of sanction vide the order of original adjudicating authority dated 28.03.2000. The sanctioning of refund got confirmed even vide the order of Hon'ble Apex Court. As already discussed above, date of application relevant for section 11BB shall be the date on which the application under section 11B of CEA was filed. In the present case, the application for refund under Section 11B of CEA was filed on 05.02.2005. The final order of CESTAT dated 01.08.2017 has reverted the situation back to the date of application dated 05.02.2005. Hence, appellant is entitled for interest on refund from the date of his application i.e. 05.02.2005. The adjudicating authorities below had rejected the entitlement of appellant for interest alongwith refund claim in sheer violation of the decisions of Hon'ble Supreme Court & High Court and thus the order under challenge is against judicial protocol.

9. The order under challenge is, therefore, held not sustainable. Accordingly, the same is hereby set aside. As a result, appeal in hand is hereby allowed.

[Operative part pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita