CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH Court No. III

SERVICE TAX APPEAL NO. 50058 of 2020

[Arising out of Order-in-Appeal No.887 (CRM) ST/JDR/2019 dated 21.11.2019 passed by the Commissioner (Appeals) Central Excise & CGST, Jodhpur]

VIGYAN GURUKUL ... **APPELLANT**
Na-2, Dadabari extension
Kota 324009.

VERSUS

COMMISSIONER OF CENTRAL EXCISE & CGST, JODHPUR ... **RESPONDENT**

APPEARANCE

Shri Prakhar Gupta, Advocate for the Appellant
Shri Pradeep Gupta, Authorised Representatives for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : MARCH 23, 2021
DATE OF DECISION : 14.06.2021

FINAL ORDER NO. 51566 /2021

PER MS. RACHNA GUPTA

In the present appeal, order in appeal No. 887/19 dated 21.11.19 has been assailed. The facts in brief for the adjudication thereof are as follows:

1.1 The appellant is a registered partnership firm engaged in the business of imparting educational coaching to the aspirants of IIT JEE and AIIIE entrants test. The Service Tax authorities searched the premises of appellant on 19.10.05 on the basis of documents seized and amount of Rs 3,25,270/- was demanded vide SCN No.

V(CTC)03/01/ST/06 dated 6.2.2006. The said demand was confirmed by Order-in-Original No. 263/06 dated 8.12.2006. dropping Rs.14,088/- and appropriating Rs. 32,967/-. The appeal thereof was rejected by Commissioner (Appeals) vide Order in Appeal No. 170(GRM)ST/JPR-I/2007 dated 15.5.2007. When the said order was assailed before CESTAT, stay was granted with the direction to deposit Rs 60,000/-. The said amount was got deposited vide challan dated 31.11.2007. The appeal was partially rejected. Being aggrieved thereof, the appellant had filed the appeal before Hon'ble High Court at Jaipur. Which was decided vide order dated 13.10.17 remanding the matter back to the authority.

However, the amount of Rs.2,24,624/- was deposited under protest by the appellant.

1.2 It is thereafter the appellant filed the refund claim of the said amount as was deposited by the appellant on 9.9.04. The appellant filed the refund on 24.6.06 under section 11 B of CEA, 1944.

1.3. The said refund was rejected, the appeal thereof was also rejected. However, CESTAT vide Final order No. 453/11 dated 09.09.2011 allowed the said refund. But the Asstt. Commissioner Kota vide Order-in-Original No. 53/R/2013 dated 31.3.2013 had adjusted the said amount against the demand of Rs. 3,11,182/- as was confirmed.

1.4 Meanwhile the assessee had filed the refund claim on 28.1.13 claiming the refund of service tax of Rs.2,24,624/- on the ground it being paid erroneously. The said claim was sanctioned by Assistant Commissioner, Kota vide Order in Original No. 53/2013 dated 31.3.2017. However, the amount was got adjusted in Government dues in respect of demand pending against Order-in-Original No. 263/06 dated 8.12.06. In consequence thereto to High Court of Rajasthan decision dated 13.10.2017, the appellant filed the refund claim of Rs.3,17,591/- (224624 +60000 + 32967) along with interest on 11.12.2017. The Deputy Commissioner

Kota vide Order-in-Original No. 12/18 dated 09.03.2018 sanctioned the refund claim of Rs.284624/- (224624 +60,000) under section 11 B of Central Excise Act and paid the same in cash through Bank account. The order also sanctioned the refund of Rs.32967/- but credited the same into consumer welfare fund. However, the claim of interest on the amount of refund was rejected. The said rejection was assailed before Commissioner (Appeal), who has sanctioned the interest on the refund claim, however with effect from 28.4.2013 with respect of amount of Rs. 2,24,624/- and with effect from 10.3.2018 with respect to amount of Rs. 32,967/-. Being aggrieved thereof the impugned appeal has been filed praying for calculation of interest with effect from the date when first refund claim i.e. 20.6.2006 filed.

2. I have heard Shri Prakhar Gupta, learned Counsel appearing for the appellant and Shri Pradeep Gupta, learned Departmental Representative appearing for the Revenue.

3. It is submitted on behalf of the appellant that appellant is entitled for the interest from the date of expiry of three months from the date of filing the original refund claim which was 20.6.2006. It is submitted that the department has caused unnecessarily harassment to the appellant. Once the refund filed in 2006 was successfully allowed under Central Excise Act in July, 2011, the Department should have released the amount in favour of the appellant. Even after the proceedings were quashed by the High Court Jaipur, the Department did not release the refund amount and finally when in 2018, Department passed the order for release of refund, the interest for the partial period only was granted, adding to more harassment to the appellant. While impressing upon section 11 B and 11 BB, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these arguments, it is submitted by learned Departmental Repressenative that the entitlement to claim of

refund accumulated / accredited to the appellant sanctioned thereto from the decision of this Tribunal vide order dated 9.9.2011 but the refund application dated 28.3.2013 was filed post the aforesaid order. Accordingly, that application becomes the application of original refund claim and the appellant has rightly been denied the claim of interest with effect from 20.9.2006 impressing upon that the Adjudicating Authority has rightly calculated the interest for the period from, 28.4.2013 to 9.3.2018 on delayed payment of refund claim, that the appellant's application is prayed to be dismissed.

5. After hearing the parties, perusing the record of this appeal and looking into the facts and circumstances of present case, it is held that the question in short to be adjudicated vide the impugned appeal is:

> "Whether the liability of Revenue to pay interest under section 11BB of Central Excise Act, 1944 commencing from the date of expiry of three months with effect from the date of receipt of application for refund or on expiry of the said period with effect from the date on which the order of refund is made."

6. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under :

> **"11B. Claim for refund of duty. –**
>
> (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner 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 and interest, if any, paid on such duty in relation to which such refund is

claimed was collected from or paid by him and the incidence of such duty and interest if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to ---

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) ………………………………………………………………………………

(5) ………………………………………………………………………………

Section 11BB, the pivotal provision, reads thus :

"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 that 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 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."

7. At this juncture, it would also be appropriate 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 relevant portion of the Circular reads thus :

> "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."
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> (Emphasis supplied)

8. 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.

9. 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."

10. 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.

11. The aforesaid question is no more res integra as decided in Civil Appeal No. 1666 of 2006 in the case of **Union of India and others vsM/s. Hamdard (Waqf) Laboratories.** The relevant portion reads as under:-

> **"15.** Sub-section (2) of Section 11B stipulates filing of an application by the assessee before the competent authority. It also postulates that the said authority is required to be satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty is refundable. The application, as submitted by Mr. Adhyaru, has to be an application in law. Section 11BB which deals with interest on delayed refund clearly and categorically predicates that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application under sub-section (1) of Section 11B, there shall be paid to the applicant interest at the notified rate 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. The significant words are "expiry of three months from the date of receipt of such application".

12. Few circulars have also been appraised like Circular dated 30.5.1995. Para 2 (d) of the said Circular reads as follows:

> "2. Keeping the above in view, the following instructions are being issued regarding refunds claimed under section 11BB of CE & SA, 1944 :-
>
> (a) ….

> (b) ....
>
> (c) ....
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> (d) An acknowledgment should be issued immediately after the above mentioned verification which will be an evidence of the receipt of refund application in terms of Section 11BB. The period of 3 months in terms of Section 11BB shall be counted from the date following the date of receipt of refund application up to the date of dispatch of cheque for refund."

13. Circular 398/31/98 dated 2.6.1998 has also been appraised wherein the Board has directed that the responsibility should be fixed for not dispensing for refund /rebate claims within three months from the date of receipt of application. The Board stressed with the provision of section 11BB of Central Excise Act 1944 are attracted automatically for no refund sanction beyond the period of three months hence the jurisdictional Central Excise officer were directed to not to wait of instructions from any superior officer and to ensure that no interest liability is attracted. It was also clarified in the circular that the department has maintained the consistent stand about the interpretation of section 11BB since it stand inserted in the Act with effect from 26.5.1995. It is held in the circular that explaining the intent merit and the manner under which the section is to be implemented. It is stated that the relevant date in this regard is the expiry of three months from the date of receipt of application under section 11 BB (1) of the Act.

14. In the present case such application is the one as was filed on 24.6.2006 which was the first application filed under section 11B(1) of the Act. The issue is no more res integra as it stands decided by the Hon'ble Apex Court in the case of **Ranbaxy vs. Union of India and others [2011 (10) SCC 292]** as also been followed by Hon'ble Apex Court itself in Civil Appeal No. 1666/2006 in the case of **UOI and others vs. Hamdard (Waqf) Laboratories** vide the judgement dated 25.2.2016. wherein it has been held as under:

> **"17.** The seminal issue is be whether there has been delay in grant of refund and consequently, whether the respondent-assessee is entitled to interest. Keeping in view the enumerated facts, the submissions canvassed and the provisions referred to, it is necessary to appreciate the principle stated in *Ranbaxy Laboratories Limited* (supra). In the said case, the question arose whether 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 or on the expiry of the said period from the date on which the order of refund is made. The two-Judge Bench after analyzing the provision has held as follows :-
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>> "12. It is manifest from the afore-extracted provisions that 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 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 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. 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.
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>> 13. 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 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.
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> (Emphasis supplied)

15. From the entire above discussions, it is held that the appellant is entitled for interest on the entire refund amount with effect from 24.6.2006. The order under challenge is, therefore,

held to have wrongly calculated the interest for two different amounts and from two different dates. The same is, therefore, hereby set aside. As the result, the appeal stands allowed.

(Pronounced in the open Court on 14.06.2021)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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