CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No.51551 of 2022-SM

(Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL/140/2020-21 dated 09.03.2021 passed by the Commissioner (Appeals), Central Goods and Service Tax, Dehradun).

M/s Flex Foods Limited **Appellant**
Lal Tappar Industrial Area
Haridwar Road, Dehradun
Uttarakhand

VERSUS

Commissioner **Respondent**
Central Goods & Service Tax and
Central Excise
2nd & 3rd Floor, Shree Palace,
Nathanpur, Dehradun.

APPEARANCE:

Sh. R. M. Saxena, Advocate for the appellant
Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51066/2022

DATE OF HEARING/DECISION: 02.11.2022

ANIL CHOUDHARY:

The issue in this appeal is whether interest for delayed refund has been rightly granted for the correct period of delay.

2. The brief facts of the case are that the appellant is an Export Oriented Unit (EOU) engaged in the manufacture and export of freeze dried, dehydrated and quick frozen fruits, vegetables, culinary herbs and spices. As the goods exported by them are not liable to excise duty, they are entitled to refund of proportionate input service tax utilised for export in terms of Rule 5 of Cenvat Credit Rules read

with Notification No. 27/2012-ST dated 28.06.2012. Undisputedly, the appellant filed refund claim as follows:-

S. No.	Refund period	Refund filling date	Refund Amounts (Rs.)
1	October 2014 to December, 2014	09.10.2015	16,60,975/-
2	January 2015 to March 2015	16.11.2015	23,72,711/-
3	April 2015 to June 2015	16.11.2015	22,53,852/-
4	July 2015 to August, 2015	23.03.2016	18,64,184/-
			81,51,722/-

3. Vide common order-in-original dated 07.10.2016, the refund claim was rejected. The appellant contested the rejection before the Commissioner (Appeals), who vide order-in-appeal dated 24.05.2018 was pleased to allow the refund claim. Revenue carried the matter before the Tribunal in Excise appeal No. 53203/2018 on the ground that the Commissioner (Appeals) have not taken into consideration the fact that the previous order of this Tribunal dated 28.09.2017 [(which was relied upon by the Commissioner (Appeals)] was not appealed against due to monetary limits. The Revenue's appeal was rejected by the Division Bench of this Tribunal vide Final order No. 50951/2019 dated 26.03.2019.

4. Thereafter, the appellant filed a reminder dated 07.08.2019 for grant of refund alongwith interest pursuant to Final order of this Tribunal. Vide order-in-original dated 04.06.2020, refund totalling Rs. 81,51,722/- was allowed. However, interest was not sanctioned as applicable under Section 11BB of the Central Excise Act.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal has been pleased to hold that the appellant is entitled to interest under Section

11BB of the Central Excise Act. However, as regards the period of interest, learned Counsel points out that instead of considering the date of original application of refund, which was filed as stated herein above during November, 2015 to March, 2016, the date of application for refund has been taken as 07.08.2019, which is actually the date of reminder after passing of the final order by this Tribunal. The appellant had also filed an application for rectification in the order in appeal, which was rejected by the Commissioner (Appeals) by communication dated 17.03.2022. Being aggrieved, the appellant is before this Tribunal.

6. Assailing the impugned order, learned Counsel states that the provisions of Section 11BB are very clear, and provides for grant of interest from the end of three months from the date of application for refund. Thus, he prays for modification of the impugned order and consequential benefits.

7. Learned Authorised Representative for the Revenue relies on the impugned order.

8. Having considered the rival contentions and also going through the records, I find that undisputedly the appellant has filed their refund claims during the period 09.10.2015 to 23.03.2016, as specified in the table at para 2 hereinabove. I have also verified these dates from the evidences available on record. Accordingly, I hold that the appellant is entitled to interest from the end of three months from the date of receipt of application by the Department (as mentioned hereinabove) and such interest shall be payable till the date i.e.

04.06.2020 (date of sanction of refund). Thus, the appeal is allowed. The impugned order is modified. Accordingly, I direct the Adjudicating Authority to grant the amount of interest within a period of 45 days from the date of receipt of copy of this order.

9. In the result, the appeal is allowed.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp