

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. I

E-HEARING

Excise Appeal No. 52271 of 2022

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL/41/2022-23 dated 08.08.2022 passed by the Commissioner (Appeals), CGST, Dehradun)

M/s Bajaj Auto Ltd

Plot No. 2, Sector-10,
IIE, Rudrapur,
Pant Nagar, Udham Singh Nagar,
Uttarakhand

..... Appellant

Versus

The Commissioner, CGST

At 'E' Block, Nehru Colony,
Haridwar Road, Dehradun,
Uttarakhand-248001

..... Respondent

APPEARANCE:

Mr. Arshad Hidayatullah, Senior Advocate with Mr. Makarand Joshi, Advocate for the Appellant

Mr. Rakesh Agarwal, Authorised Representative for the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: November 20, 2025

FINAL ORDER NO. 51799/2025

JUSTICE DILIP GUPTA

M/s Bajaj Auto Ltd¹ has filed this appeal against the order dated 08.08.2022 passed by the Commissioner (Appeals) claiming that interest should also have been awarded to the appellant on the amount of Rs. 341,99,83,326/- that had been sanctioned as refund to the appellant from the date of deposit of the amount by the appellant to the date the amount was refunded to the appellant.

2. It transpires from the records that officers of the department raised an objection that the appellant had not made payment of National

1 the appellant

Calamity Contingency Duty², Education Cess and Secondary Education Cess. The appellant raised an objection that it was eligible for exemption from payment in terms of section 136 of the Finance Act, 2001. However, a show cause notice dated 26.08.2011 was issued to the appellant demanding the aforesaid amount with interest and proposing to impose equal amount of penalty. Thereafter, periodical show cause notices were also issued. These show cause notices were adjudicated by the Commissioner of Central Excise by orders dated 02.09.2014, 27.01.2015 and 07.10.2016 and the demand was confirmed. Aggrieved by the these orders passed by the Commissioner, the appellant as well as the department filed appeals before the Tribunal which were decided finally by order dated 09.05.2019. The said order is reproduced below:

"As the issue in these four appeals arise out of common dispute on the denial of exemption from 'national calamity contingent duty' levied under section 136 of Finance Act, 2001 that was, despite exemption from basic excise duty conferred under notification no. 50/2003-CX dated 10th June 2003 available to industries in specified areas, held to be chargeable owing to apparent lack of applicability to this levy. Of the four appeals impugned before us, three are of the assessee and pertains to seven show cause notices for the period from April, 2007 to September, 2014 arising from which ₹199,81,81,066 has been confirmed while one, pertaining to the period from January 2014 to June 2014, is that of Revenue and is limited to the non-imposition of penalty.

2. Learned Senior Counsel, appearing for appellant, submits that the issue of eligibility for exemption of 'national calamity contingent duty', 'education cess' and 'secondary and higher education cess', levied by various Finance Acts, has been decided by the Hon'ble Supreme Court in Bajaj Auto Ltd v. Union of India & Ors [2019- TIOL-127-SC-CX] on appeal

2 Contingency Duty

against the order of the Hon'ble High Court of Uttarakhand. It is also contended by Learned Senior Counsel that appellant had not been given an opportunity to be heard despite placing on record the pendency of the appeal before the Hon'ble Supreme Court. He makes a further plea for consequential relief as, in parallel proceedings in civil appeal no. 1600-1605 of 2018 in the matter of **Hero Motocorp Ltd v. Commissioner of Customs & Central Excise, Dehradun**, the Hon'ble Supreme Court had considered it appropriate to refund the amounts collected within a period of two months from the date of receipt of the order of the Court.

3. We have heard the Learned Authorised Representative.

4. In our view, with the decision of the Hon'ble Supreme Court, the eligibility to exemption under notification no. 50/2003-CX dated 10th June 2003 is not longer *res integra*. Accordingly, we set aside the impugned order and allow the appeal.

5. The proper officer to consider the claim for refund under section 11B is also directed, upon compliance with the procedures therein, to follow the directions of the Hon'ble Supreme Court to the extent applicable and as allowable in the decision in *re Hero Motocorp Limited*.

6. The appeals of M/s Bajaj Auto Limited are allowed and that of Revenue is dismissed."

(emphasis supplied)

3. It is, therefore, clear from the aforesaid decision of the Tribunal, which had considered the decision of the Supreme Court in the matter of the appellant in **Bajaj Auto Limited vs. Union of India**³, that the appellant would be entitled for exemption under the Notification dated 10.06.2003.

3 2019(366)E.L.T. 577 (S.C.) decided on 27.03.2019

4. Pursuant to the decision of the Tribunal, the appellant filed an application under section 11B of the Central Excise Act, 1944⁴ on 26.09.2019 in Form-R for refund of the amount deposited during pendency of the litigation. In paragraph 'F' of the application, the appellant specifically stated that the claim was being filed in terms of the procedure laid down in section 11B of the Central Excise Act, 1944 read with the order dated 09.05.2019 passed by the Tribunal. Prayer was, therefore, made to refund the amount of Rs. 341,99,83,326/- deposited under protest with interest.

5. This application filed by the appellant was decided by the Assistant Commissioner by order dated 18.10.2019. The Assistant Commissioner noted that the application was filed under section 11B of the Central Excise Act and interest on this amount is contemplated under section 11BB of the Central Excise Act. The relevant portion of the order is reproduced below:

"**12.** From the above, the party appears eligible only for refund of Rs. 341,99,83,326/- only in terms of section 11 B of the Central Excise Act, 1944. Regarding claim of interest on the above amount, I find that interest on refund is mentioned in Section 11BB of the Central Excise Act, 1944 which stipulates as under:-"

6. The Assistant Commissioner, thereafter, referred to the provisions of section 11BB of the Central Excise Act relating to interest and delayed refund and observed that as the refund was paid within three months from the date of filing of the application, interest would not be payable. The relevant portion of the order is reproduced below:

"**13.** In view of the above, I find that as the instant refund claim has arisen on account of CESTAT's order

4 the Central Excise Act

and the refund claim has been filed by the party with this office on 27.09.2019, and interest shall only be payable to the party if the amount is not refunded to them before three months ie.26.12.2019. Therefore the party is not eligible for interest on the amount deposited by them as discussed above.”

7. The operative part of the order is reproduced below:

ORDER

“ I hereby sanction the refund claim of Rs. 341,99,83,326/- (Rupees Three Hundred Forty One Crore Ninety Nine Lakh Eighty Three Thousand Three Hundred Twenty Six only) under section 11B of Central Excise Act, 1944 to M/s Bajaj Auto Ltd, Plot No.2, Sector-10, IIE, Pantnagar, Rudrapur, Distt. U.S.Nagar, Uttrakhand-263153. This order is issued without prejudice to any other action that may be taken under Central Excise Law or any other law for the time being in force in India.

An amount of Rs. 341, 99, 83,326/- (Rupees Three Hundred Forty One Crore Ninety Nine Lakh Eighty Three Thousand Three Hundred Twenty Six only) is to be paid to the party through e-payment.”

8. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals). The appeal was dismissed by order dated 08.08.2022. It is this order that has been assailed in this appeal.

9. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

“**13.** Therefore, I find that the issue to be decided in the present case is that whether or not the adjudicating authority has complied with the directions given by the Hon'ble CESTAT in its aforesaid F.O. dated 9.5.2019. As narrated above, Hon'ble CESTAT has allowed the present refund with the specific directions and guidelines to the proper officer to consider the claim for refund under Section 11 B to follow the direction of the Hon'ble Supreme

Court to the extent applicable and as allowable in the decision in re Hero Motocorp Limited".

14. On going through the said orders of Hon'ble Apex Court in the case of M/s Hero Motocorp Ltd. reported in 2019(366)ELT807(SC), I find that at para 5 of the said judgment Hon'ble Apex Court has ordered as under:

"That being the position, the amount paid to the Department would be refunded back within a maximum period of two months from the receipt of copy of this order".

15. From the aforesaid wordings, I find that in its judgment Hon'ble Apex Court had directed in the case of M/s Hero Motocorp Ltd. that the amount in question should be refunded within two months. However, no interest was directed to be paid on the amount to be refunded.

16. Juxtaposing the aforesaid judgments of Hon'ble CESTAT and the Hon'ble Apex Court, I find that the directives given to the adjudicating authority by the CESTAT was to grant refund of the amount to the appellant within two months from the receipt of the order. **In the present case, the said F.O. dated 9.5.2019 was issued on 8.8.2019, claim was filed by the appellant on 30.08.2019 and refund was sanctioned on 18.10.2019 vide impugned OIO. Accordingly, I find that since the refund in question was granted by the adjudicating authority within the time limit prescribed by the Hon'ble CESTAT vide F.O. dated 9.5.2019, liability of interest does not arise.**

xxx xxx xxx

18. In view of the aforesaid discussion and findings I find no reason to interfere with the OIO appeal against and accordingly hereby dismiss appeal bearing No. 75-CE/Apl/DDN/2019 dated 08-01-2020 filed by the party."

(emphasis supplied)

10. Shri Arshad Hidayatullah, learned senior counsel appearing for the appellant assisted by Shri Markand Joshi submitted that the Commissioner (Appeals) committed an error in not granting interest on the sanctioned amount of refund. Learned counsel submitted that the amount was demanded without authority of law and, therefore, is liable to be refunded with interest from the date of deposit till the date of refund. Learned senior counsel also pointed out that the appellant is entitled to interest under section 35FF of the Central Excise Act on the amount of pre-deposit made at the time when the appeal was filed before the Commissioner (Appeals) and the Tribunal.

11. Shri Rakesh Agarwal, learned authorized representative appearing for the department, however, contended that there is no error in the order passed by the Commissioner (Appeals). Learned authorized representative pointed out that the refund application was filed on 26.09.2019 and the refund was sanctioned by the Assistant Commissioner by order dated 18.10.2019, which is within the period of three months. Learned authorized representative pointed out that under section 11BB of the Central Excise Act, interest can be paid if the amount is not refunded within three months from date of receipt of the application under section 11B of the Central Excise Act.

12. The submissions advanced by the learned senior counsel for the appellant and the learned authorized representative appearing for the department have been considered.

13. It is no doubt true that the Contingency Duty was paid by the appellant pursuant to the order passed by the Commissioner adjudicating the show cause notices issued to the appellant. The appellant filed three appeals before the Tribunal against the said order of the Commissioner, but during the pendency of the appeal, the Supreme

Court on 27.03.2019 in **Bajaj Auto Ltd** held that the appellant was not liable to pay Contingency Duty. When the three appeals filed by the appellant came up for hearing before the Tribunal on 09.03.2019, the order passed by the Supreme Court was noticed and, therefore, it was ordered that the appellant would be entitled to exemption under the Notification dated 10.06.2003. Regarding refund, the Tribunal left it open to the appellant to pursue the remedy provided for under section 11B of the Central Excise Act. The Proper Officer was, however, directed to examine the issue in the light of the decision of the Supreme Court in Civil Appeal No. 1600-1605 of 2018 in the matter of **Hero Motorcorp Ltd. vs. Commissioner of Customs and Central Excise, Dehradun**⁵.

14. It is not in dispute that pursuant to the order of the Tribunal, the appellant did file an application on 26.09.2019 under section 11B of the Central Excise Act for refund of the amount of Rs. 341,99,83,326/-. In paragraph 'F' of the application, the appellant clearly stated that the application was filed under section 11B of the Central Excise Act pursuant to the directions dated 09.05.2019 issued by the Tribunal.

15. This application was disposed of by the Assistant Commissioner by order dated 18.10.2019. The amount of refund claimed by the appellant was sanctioned. However, the claim for interest was denied for the reason that interest can be paid only if the amount is not refunded within a period of three months from the date of filing of the application.

16. This order of the Assistant Commissioner has been maintained by the Commissioner (Appeals).

17. Section 11B of the Central Excise Act provides for claim of refund of duty and interest paid on such duty. It provides that any person claiming refund of any duty of excise and interest may make an

5 2019(366) E.L.T. 807 (S.C.)

application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise.

18. Section 11BB of the Central Excise Act deals with interest on delayed refunds. Sub-section (2) of section 11B provides that if, on receipt of any such application, the Assistant Commissioner is satisfied that the whole or any part of the duty paid by the appellant is refundable he may make an order, accordingly, and the amount should be determined shall be credited to the fund.

19. Section 11BB of the Central Excise Act provides that if any interest ordered to be refunded under sub-section (2) of section 11B to an 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 in such rate not below 5% and not exceeding 30% per annum as fixed by the Central Government by Notification in the official Gazette.

20. In the present case, the appellant filed the application before the Assistant Commissioner on 26.09.2019 and the refund was sanctioned to the appellant within three months from the date of filing the application. Interest would, therefore, not be payable to the appellant under section 11B of the Central Excise Act. The Assistant Commissioner and the Commissioner (Appeals), therefore, committed no error in rejecting the claim of the appellant for payment of interest under section 11BB of the Central Excise Act.

21. Learned senior counsel for the appellant submitted that certain pre-deposits had been made by the appellant at the time of filing the appeal before the Commissioner (Appeals) and the Tribunal and this pre-deposit has been refunded to the appellant, but interest has not been paid under section 35FF of the Central Excise Act.

22. This appeal arises out of an application filed by the appellant under section 11B of the Central Excise Act for grant of refund of Rs. 341,99,83,326/-. The Commissioner (Appeals) has observed that the application that was filed by the appellant under section 11B was only for refund for the Contingency Duty deposited by the appellant.

23. From the submissions advanced by the learned senior counsel for the appellant, it transpires that this pre-deposit amount was paid to the appellant. The only contention is that interest was not paid. If interest was not paid it was for the appellant to have pursued separate appropriate proceedings and this claim for interest cannot be examined in these proceedings which emanate from the application filed by the appellant under section 11B of the Central Excise Act. This application does not refer to refund of the amount of pre-deposit or payment of interest on it under section 35FF of the Central Excise Act. This issue, therefore, cannot be examined in this appeal.

24. There is, therefore, no merit in this appeal. It is, accordingly, dismissed.

(order dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shenaj