IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 22/02/2017.
DATE OF DECISION: 22/02/2017.

Service Tax Appeals No. 307 and 435 of 2012 (SM)

[Arising out of the Order-in-Appeal No. 38 (ST)/RPR-I/2011 dated 16/12/2011 and No. 05-(ST)/RPR-I/2012 dated 18/01/2012 both passed by The Commissioner (Appeals-I), Customs & Central Excise, Raipur.]

M/s Jindal Steel & Power Ltd. — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Ms. Aastha Gupta, C.A. – for the appellant.

Shri R.K. Mishra, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 51934-51935/2017 Dated : 22/02/2017

Per. B. Ravichandran :-

The appellants are engaged in the export of Iron and Steel products and filed claims for refund in terms of Notification 41/2007-ST and 17/2009-ST for refund of service tax paid on various services in connection with export of said goods. The claims were originally rejected but were later sanctioned in terms of appellate order by the Commissioner (Appeals). Thereafter, the appellant sought payment of interest towards delayed disbursement of refund in terms of Section 11BB of the Central Excise Act, 1944, made applicable to the provision of Finance Act, 1994. The Original Authority rejected their request for interest on the ground that the provision of Section 11B and Section 11BB are not applicable to the refund claim under the above said notifications. On appeal vide the impugned orders the Commissioner (Appeals) held that the provision of Section 11BB are applicable to the case in hand. However, he held that there is no delay in sanction of refund considering the date of letter issued by the appellant to the Jurisdictional Assistant Commissioner referring to the appellate order in their favour for early sanction of refund. He concluded that from that date refund has been sanctioned within three months and, hence, there is no occasion to pay any interest.

2. The learned Counsel submitted that the impugned order is totally misconceived by wrongly considering their reminder letter to pay the refund in time consequent to favourable appellate order, as the relevant date to decide the time limit under Section 11B. Reliance was placed on the specific statutory time limit prescribed under Section 11B and such time limit of three months is to be with reference to date of filing of claim praying for refund and not any other communication subsequent to that.

3. The learned AR reiterated the findings in the impugned order.

4. I have heard both the sides and perused the appeal records. It is clear that the impugned orders held that provisions of Section 11B/Section 11BB are available to the appellant in connection with their refund claims. However, while applying the relevant date, the learned Commissioner (Appeals) has completely misread the statutory provision of Section 11B to hold that the relevant date will start from the date of letter of the appellant to the Jurisdictional Assistant Commissioner to remind him of the appellate order in their favour and to sanction the refund early alongwith interest. It is clear that the said reminder letter has no relevance to determine the time limit under Section 11B. Further, I also note that the learned Commissioner (Appeals) referred to the provision of Clause (ec) under Explanation B to Section 11B. The said provision is relating to consequential refund arising out of an appellate order. In the present case, I note that the refund claim has not arisen consequential to any appellate order. The appellate order only decides the correctness of the claim already filed and rejected by the Original Authority. This cannot be considered as a refund consequent on an appellate order. Further, the refund amount paid is with reference to the original application for refund filed by the appellant. A reference can also be made to the decision of Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. vs. Union of India** reported in **2011 (273) E.L.T. 3 (S.C.)**. The Hon'ble Supreme Court held as below :-

"9. 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. 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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> 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".

5. In view of the facts and analysis as recorded and the law laid down by the Hon'ble Supreme Court, as above, the impugned orders are not sustainable and accordingly set aside. The appeals are allowed with consequential relief.

(Order dictated and pronounced in the open court.)

(B. Ravichandran)
Member (Technical)

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