IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/363/2012

(Arising out of Order-in-Appeal 21/Kol-VII/2012 dated 16.03.2012 passed by the Commissioner of Central Excise (Appeal-I), Kolkata)

Commissioner of Central Excise, Kolkata-VII

….Appellant (s)

Vs.
Rasoi Limited

….Respondent (s)

AND

Appeal No. E/426/2012

Rasoi Limited

….Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-VII

….Respondent (s)

Appearance:
Dr. Samir Chakraborty, Sr. Adv.
Shri Sourabh Bagaria, Adv. &
Shri Indranil Banerjee for the Appellant (s)
Shri D.K. Achariya, Spl. Counsel for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER(TECHNICAL)

Date of Hearing:- 28.03.2019
ORDER NO. FO/75467-75468

PER: SHRI. P.K.CHOUDHARY

Rasoi Limited, the respondent in appeal No. E/363/2012 and appellant in appeal No. E/426/2012 (in short "**Rasoi**"), was a manufacturer of Vanaspati. Vanaspati was exempted from payment of duty during the period July 24, 1996 to February 28, 2003. At the time of exemption on July 23, 1996, Rasoi was availing the credit of inputs under the Modvat Credit Scheme and had accumulated a balance of unutilised credit amounting to Rs. 17,32,78,689/-. Once the commodity was fully exempted from payment of duty, Rasoi could not make use of the accumulated credit. Upon reintroduction of central excise duty on Vanaspati w.e.f. March 1, 2003 Rasoi wanted to make use of the accumulated modvat credit but the same was not permitted by the Revenue. Accordingly, Rasoi paid an amount of Rs. 4.46 crores as duty in cash on the insistence of the Department. Rasoi filed a writ petition No. 983 of 2003 before the Hon'ble Calcutta High Court praying inter alia for being allowed to utilise the accumulated credit for payment of duty on Vanaspati manufactured and cleared from its factory and to take back the credit in its PLA, the duties forced to be paid from the said account instead of from RG23B Part-II Register. By a judgment and order dated June 9, 2004 the writ petition was allowed by the Hon'ble High Court. The Special Leave Petition preferred by the Revenue against this judgment, being SLP (C) No. CC 2314-2315/2005, was dismissed by the Hon'ble Supreme Court by an order dated March 7, 2005. Thereafter Rasoi was allowed to take credit in its PLA the duty of Rs. 4,46,62,485/- and to debit equivalent amount of duty in RG23B Part-II Register.

2. In the meantime, with effect from March 1, 2005, Vanaspati was again subjected to 'Nil' rate of duty. On this date, Rasoi had an unutilised balance of Rs. 4.10 crores in the PL Account. Hence Rasoi filed an application for refund of the said Rs. 4.10 crores under Section 11B(2)(b). The said claim was, however, rejected by the Assistant

Commissioner. On appeal by the company, the order of the Assistant Commissioner was reversed by the Commissioner (Appeals) and the refund claim was allowed. Revenue's appeal against this order was rejected by the Tribunal on January 15, 2008. Appeal filed by the Revenue against the Tribunal's order was dismissed by the Hon'ble Calcutta High Court by a judgment dated July 28, 2008. Revenue's SLP (Civil) Nos. 16197-16198/2009 against the judgment of the Hon'ble Calcutta High Court was dismissed by the Supreme Court on August 3, 2009. Ultimately by an order dated December 24, 2009 the refund of Rs. 4.10 crores was sanctioned by the Deputy Commissioner was made on the same date.

3. Rasoi thereafter filed a claim for interest on June 22, 2010. The claim was made in three parts:

a) Interest for the period upto March 16, 2005 on the duty of Rs. 4,46,62,485/- forced to be paid by Rasoi in cash from PLA.

b) Interest on the delayed refund of Rs. 4.10 crores. The refund claim was filed for the period April 19,2006 to March 23, 2009.

c) Interest on the aforesaid amounts of interest claimed.

4. The refund claim was rejected by the Deputy Commissioner by an order dated January 25,2011. However, on appeal by Rasoi, the Commissioner (Appeals), by an order dated March 16, 2012, allowed the interest claims, except the claim for interest on interest, which was rejected.

5. Against the said order dated March 16, 2012 of the Commissioner (Appeals), both Rasoi and the Revenue are in appeal.

The Revenue's appeal is against the interest claims allowed by the Commissioner (Appeals) whereas Rasoi's appeal is against rejection of its claim for interest on the interest amounts claimed and allowed.

6. We have heard Dr. Samir Chakraborty, Ld. Sr. Adv. on behalf of Rasoi and Shri D.K. Achariya, Ld. Spl. Counsel on behalf of Revenue and have perused and considered the documents and submissions made on behalf of both the parties.

7. In respect of the claim for interest for the period upto March 16, 2005, we find that it has been held right up to the Hon'ble Supreme Court that the insistence on the Department's part that Rasoi paid in cash from PLA the duty was illegal and that Rasoi was entitled to utilize the credit lying in its RG -23B Part II Register and could not be forced to pay the said duty in cash. The interest has been claimed for the period from the respective dates of payments of the said duty in cash vide TR-6 challans upto the date of its refund dated March 16, 2005 when the said duty paid was allowed to be credited back in the PLA.

7.1 In the case of **ONGC Limited** Vs. **CCE, 2007 (215) ELT 166 (SC)**, the assessee was forced to pay duty due to the Department rejecting its claim for exemption. The duties were realized during pendency of the appeals. The matter was ultimately decided in favour of the assessee. Before the Hon'ble Supreme Court it was claimed that on the amounts in question the Department is liable to pay interest. The said claim for interest was allowed by the Hon'ble Supreme Court by directing the Department to pay interest @6% per annum from the date of recovery of the amounts till the date of refund.

7.2 In **Sandvik Asia Ltd.** Vs **CIT.2006 (196) ELT 257 (SC)**, the Hon'ble Supreme Court directed for payment of interest due to delay on the Department's part in granting the refund. After referring to various earlier decisions on the issue, in paragraph 29 of the judgment the Hon'ble Supreme Court held, inter alia, as under:

> *"In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee"*

7.3 In **Plas Pack Industries** Vs. **CCE, 2009 (243) ELT 741 (T)**, the Tribunal, by a majority decision, allowed the claim for interest when the assessee was forced to pay duty in cash instead of from modvat account and when this insistence of the Department was ultimately found to be illegal.

7.4 In the instant case we find that the duties were not payable by Rasoi in cash but it was permissible for it to utilize the credit balance in RG-23B Part II Register for paying the same. This legal position was settled in favour of Rasoi right upto the Hon'ble Supreme Court. The said duties were paid in cash by making deposits vide TR-6 challans and then entered in PLA. The said duties were paid due to insistence on the Department's part who prevented Rasoi from utilizing the credit lying in RG-23B Part-II Register, although entitled to. Hence following the above stated decisions of the Hon'ble Supreme Court and the Tribunal, on refund of the said duties, the Department is bound to pay Rasoi interest, as has been correctly held by the Commissioner (Appeals).

7.5 It has been contended on behalf of the Revenue that the sum of Rs. 4,46,62,485/- could not be construed as duty and hence Section 11BB of the Central Excise Act was not attracted. We are unable to accept this contention in the undisputed facts of the case which conclusively shows that the character of the said duties was of "Union Excise Duties" and this character continued till refund thereof. The said amount was paid as excise duty in cash vide TR-6 challans wherein they were described as "Basic Excise Duties" under "Major Head of Account 038". In the writ petition filed before the Hon'ble Calcutta High Court, which was allowed, Rasoi had claimed restitution of the said duty forced to be paid by it in cash, which was granted by the Hon'ble High Court. Rasoi was allowed to take back credit of the said duties in its PLA. Moreover, this contention / allegation was not made in the show cause notice dated January 25, 2011 issued for rejecting the claim for interest. As such, this contention of the Revenue has no merit and is untenable.

8. In so far as the Rasoi's claim for interest on duties of Rs. 4.10 crores for the period from three months after the date of filing the refund application till the date of refund, we find that the undisputed facts are that the refund application was filed on January 19, 2006 and the period of three months expired on April 18, 2006, but, however, the refund was granted on December 24, 2009. Hence, as per Section 11BB of the Central Excise Act, the Department is liable to pay statutory interest from April 19, 2006 to December 23, 2009. The contention of the Department is that the period of three months has to be computed not from the date of filing of the refund application but from the date of the Commissioner(Appeals)'s order, i.e. from 14/21.09.2006.

8.1 We find that this issue is covered by the judgment of the Supreme Court in **Ranbaxy Laboratories Ltd.** Vs. **Union of India, 2011 (273) ELT 3.** In the said judgment the Hon'ble Supreme Court held as under :

> *"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 (Para 9).*
>
> ***12.*** *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.*
>
> ***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".*

8.2 This decision has been relied upon by the Hon'ble Supreme Court in the case of **Union of India** Vs **Hamdard (Waqf) Laboratories, 2016(333) ELT 193(SC)** and **Union of India** Vs. **U.B. Twiga Fibre Glass Ltd., 2009 (243) ELT A27 (SC).**

8.3 The Revenue has challenged the order of the Commissioner (Appeals) allowing refund of the interest claim on the ground that the amount lying in PLA was not central excise duty so as to attract Section 11BB of the Central Excise Act. We are unable to accept this contention. As above stated, the amounts in question were paid as excise duties in cash vide TR-6 challans as "Basic Excise Duties". The said amounts were used for paying the duties due to insistence of the Department and after the matter was decided in favour of Rasoi right upto the Hon'ble Supreme Court, the duties were allowed to be credited back to the PLA. Since Vanaspati manufactured by Rasoi became exempted from duty in the meantime, it filed application for refund of the said duties, which was ultimately refunded. Furthermore, the refund application filed under Section 11B was rejected by the Assistant Commissioner under Section 11B on the ground of alleged unjust enrichment. Thus these amounts were all along the duties of excise and treated as such by both the parties. Moreover, refund of deposits lying in the Account Current is specifically covered by Section 11B(2)(b) of the Central Excise Act, 1944. As held by the Hon'ble Madras High Court in **CCE** Vs. **Rajalakshmi Textile Processors (P) Ltd., 2008 (221) ELT 38 (Mad)** and by the Hon'ble Gujarat High Court in **CCE** Vs. **Reliance Industries Ltd. 2010 (259) ELT 356 (Guj.)**, when the refund application was filed under Section 11B and was allowed under Section 11B(2), as in the instant case by the Commissioner (Appeals), the provisions of Section 11BB are automatically attracted for payment of interest.

8.4 Respectfully following the above stated decisions of the Hon'ble Supreme Court of India and the Hon'ble High Courts on the issues involved, we are of the view that the Commissioner (Appeals) has correctly allowed the claim for interest for the period April 19, 2006 to December 23,2009 on the duty amount of Rs. 4.10 crores.

9. The third part of the claim for interest, being the subject matter of the appeal filed by Rasoi, is a claim for interest on delayed payment of interest. This issue is no more res integra. It has been held by the Hon'ble Supreme Court in the case of **Commissioner of Income Tax. Gujarat** Vs. **Gujarat Fluoro Chemicals, 2013 (296) ELT 433 (SC),** explaining its decision in Sandvik Asia Ltd., VS CIT(Supra), that it is a misinterpretation of this case that the Revenue is obliged to pay interest

on interest in the event of its failure to refund the interest payable within the statutory period and that in the said case, considering the inordinate delay in payment, the Hon'ble Supreme Court had directed the Revenue to pay compensation for the same and not an interest on interest. Accordingly to the Hon'ble Supreme Court it is only interest provided for under the statute which can be claimed by an assessee from the Revenue and no other interest on such statutory interest can be claimed. In this respect reliance is also placed upon the decision of the Hon'ble Madras High Court in **Commissioner of Customs (Exports), Chennai** Vs **VBC Industries Ltd**., **2011 (270) ELT 314 (Mad)** wherein the Tribunal's order of granting interest on interest was set aside by the Hon'ble Madras High Court on the ground that in the absence of a specific provision in the statute, no interest on interest is payable. The Hon'ble High Court distinguished the decision of the Supreme Court in Sandvik Asia Ltd. Vs. CIT (Supra) in holding the same. Respectfully following the said decisions we are of the view that the Commissioner (Appeals) had rightly rejected the claim of Rasoi for interest on delayed payment of interest.

9.1 On behalf of Rasoi reliance was placed upon the decisions of the Hon'ble Karnataka High Court in **CC Airport & ACC** Vs. **Pfizer Products India P. Ltd., 2015 (324) ELT 259 (Kar)** and the Hon'ble Gujarat High Court in **Purnima Advertising Agency Pvt. Ltd.**Vs. **Union of India, 2016 (42) STR 785(Guj)** to contend that in both the said decisions the Hon'ble High Courts had compensated the respective assessee for prejudice caused due to inordinate delay in effecting refund after lapse of statutory period therefor**.** From the said decisions we find that both the High Courts had granted compensatory interest for the delay, as was done by the Supreme Court in Sandvik Asia Ltd. Vs. CIT (Supra) considering the inordinate period of delay in granting of refund. The power of grant of compensatory interest has not been conferred upon the Tribunal. Consequently, the said decisions are of no assistance to Rasoi in the instant case.

10. We therefore find no infirmity in the impugned order of the Commissioner (Appeals) dated March 16, 2012 and the same is upheld. Consequently, both the appeals of the Revenue and Rasoi are dismissed.

(Operative part of the order was pronounced in the open Court.)

(V. Padmanabhan)	**(P.K. Choudhary)**
Member(Technical)	**Member(Judicial)**

msh