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

Excise Appeal No. 76935 of 2018

Arising out of Order-in-Appeal No. 24/CE/RKL-GST/2018 dated 20.02.2018 passed by the Commissioner (Appeals), GST, Central Excise & Customs, Bhubaneswar.

IDL Explosives Ltd.
(Formerely Gulf Oil Corporation Ltd.)
P.O. Sonaparbat, Rourkela,
Dist:- Sundergarh-769016, Odisha.

….Appellant (s)

Vs.
Commissioner of GST, CX & Customs, Bhubaneswar.
Central Revenue Building,
Rajaswa Vihar, Bhubaneswar.

….Respondent (s)

Appearance:
Shri S. C. Mohanty, Advocate for the Appellant (s)
Shri K. Chowdhary, A.R. for the Respondent(s)

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

Final Order No.77066/2019

Date of Hearing:-17.10.2019

Date of Decision:-17.10.2019

PER SHRI P.K.CHOUDHARY:

The present appeal is filed by the appellant against the Order-in-Appeal No. 24/CE/RKL-GST/2018 dt.20.02.2018 passed by the learned Commissioner (Appeals), GST, Central Excise & Customs, Bhubaneswar, denying payment of interest under Sec.11BB of the Central Excise Act,1944.

2. Brief Facts of the case, as stated in the appeal memorandum, are as follows:

2.1. The appellant M/s.IDLExplosives Ltd., (formerly known as Gulf Oil Corporation Ltd.) filed a refund claim under Sec.11B of the Central Excise Act,1944, claiming refund of excise duty paid, on quality control samples during the period 1986-87 to 2004-05. The said refund application was filed by the appellant on 13.06.2005, with the Asst.

Commissioner, Central Excise, Rourkela Division, pursuant to the Order-in-Appeal No.162/BBSR-II/2004 dt.06.08.2004 passed by the Commissioner (Appeals), holding that no duty is payable by the appellant on the quality control samples, used for testing purposes within the factory. The refund was sanctioned by the Dy. Commissioner, Central Excise, Rourkela, vide his OIO No.R-7/RKL-II/2009 dt.21.07.2009, amounting to Rs.16,13,588/-, but the amount was credited to the Consumer Welfare Fund, in terms of Sec.11B(2) of the Central Excise Act, on the ground that the refund would cause unjust enrichment to the appellant.

After several rounds of litigation, the dispute regarding unjust enrichment was resolved by the learned Commissioner (Appeals) Bhubaneswar, vide Order-in-Appeal No.84/CE/RKL/2016 dt.22.02.2016, pursuant to which, the Asst. Commissioner, Central Excise, Rourkela-II Division, passed the Order-in-Original No.R-02/REFUND/RKL-II/2016 dt.15.09.2016, sanctioning the refund of Rs.16,13,588/- and the amount was disbursed to the appellant by cheque.

After receipt of the refund amount of Rs.16,13,588.00, the appellant vide its communication dt.17.10.2016, approached the Asst. Commissioner, Central Excise, Rourkela to release the interest amounting to Rs.10,65,233.00 which has accrued in terms of Sec.11BB of the Central Excise Act. The request of the appellant regarding release of interest was rejected by the Asst. Commissioner, vide his communication bearing No.V(18)1/Refund/RKL-II/2016/3031 dt.28.12.2016, stating that the refund claim was filed by the appellant basing on the Order-in-Appeal No.84/CE/RKL/2016 dt.22.02.2016, passed by the Commissioner (Appeals) on 22.07.2016 (Correct and complete in all respects) and the refund has been sanctioned on 15.09.2016, which is well within the period of three months from the receipt of the application, and as such, the request for release of interest, does not arise.

2.2 Aggrieved by the said decision of the Asst. Commissioner, the appellant filed an appeal before the Commissioner (Appeals) which was rejected vide the Order-in-Appeal No.24/CE/RKL/GST/2018 dt.20.02.2018, against which the present appeal has been filed by the appellant before this Tribunal.

3. The appeal was posted for hearing on 17.10.2019. Sri S. C. Mohanty, Advocate appeared on behalf of the appellant and Sri K. Chowdhary, A.R. appeared on behalf of the Respondent.

3.1 At the outset Sri Mohanty, the Ld. advocate for the appellant, submitted that the subject refund claim was originally filed before the Asst. Commissioner, Central Excise, Rourkela-II Division on 13.06.2005, which was then under the jurisdiction of the Commissionerate of Central Excise, Bhubaneswar. Subsequently, a new Central Excise Commissionerate was formed at Rourkela. Therefore the respondent in the present appeal should be the Commissioner, GST, Central Excise & Customs, Rourkela, instead of the Commissionerate of Central Excise, Bhubaneswar, as appearing in the cause title of the Appeal Memorandum.

3.2 It is submitted by the learned Advocate for the appellant that the refund application was originally filed before the Asst. Commissioner, Rourkela on 13.06.2005, pursuant to the Order-in-Appeal No.162/BBSR-II/2004 dt.06.08.2004, passed by the Commissioner (Appeals), Bhubaneswar. The refund was sanctioned by the Asst. Commissioner, Rourkela-II Division vide Order-in-Original

No7/RKL-II/2009 dt.21.07.2009, but was credited to the Consumer Welfare Fund, on the ground of unjust enrichment. The learned Advocate submits that it is the same refund application, filed by the appellant on 13.06.2005, which was finally decided by the learned Commissioner (Appeals) vide his Order-in-Appeal dt.22.02.2016.

A copy of the said order dt.22.02.2016 was filed by the appellant with the Asst. Commissioner, Rourkela-II Division, under the cover of its letter dt.08.03.2016 (acknowledged on 11.03.2016). As the relevant records relating to the Refund Application dt.13.06.2005, were not available with the division office, the appellant was asked to provide copies of the same. The appellant complied by submitting a copy of the original Refund Application dt.13.06.2005 on 19.07.2016 (acknowledged on 22.07.2016 by the Division Office). But the Asst. Commissioner in his Communication dt.28.12.2016 has erroneously stated that the refund application was filed by the appellant on 22.07.2016. The Commissioner (Appeals), ignoring the factual aspects and the ratio of decisions of the Hon'ble supreme Court, passed the impugned order dt.20.02.2018, denying payment of interest to the appellant.

4. Ld. Authorized Representative appearing on behalf of the Respondent reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. The crucial issue to be determined in the present appeal is, what is the actual date of filing of the refund application by the appellant, for the purpose of Sec.11BB of the Central Excise Act. The learned Commissioner (Appeals), vide para 2 of his impugned Order-in-Appeal dt.20.02.2018, has stated that the appellant filed the refund application on 22.07.2016, based on the Order-in-Appeal dt.22.02.2016. Again under the said para 2, he states that the

appellant initially filed a refund application on 13.06.2005, in pursuance of Order-in-Appeal dt.06.08.2004 of the Commissioner (Appeals), which was sanctioned vide Order-in-Original dt.21.07.2009, but was credited to the Consumer Welfare Fund. I find that the above statements by the learned Commissioner (Appeals) are contradictory to each other. Also I find that the learned Commissioner (Appeals) vide para 5.1 of the impugned order states that the appellant filed the refund application of Rs.16,13,588/- on 22.07.2016 (Correct and complete in all respects) and in the same para he also states that the refund claim was initially filed by the appellant on 13.06.2005, and records his views as under:

> *"So, I am of the view that the entire process starting from the date of initial application i.e. 13.06.2005 till the date of sanction of the refund vide Order-in-Original No.R.02/REFUND/RKL-II/2016 dt.15.09.2016, is continuous and nowhere it has been interrupted due to any inaction on the part of the department. It is pertinent to mention here that the appellant has filed the refund claim of Rs.16,13,588/- on 22.07.2016, which was correct and complete in all respect, based on the decision of Order-in-Appeal No.84/CE/RKL/2016 dt.22.02.2016. So the actual date of refund application is 22.07.2016 not the application initially filed i.e. 13.06.2005, as claimed by the appellant. Hence, I hold that the contention of the appellant is not sustainable and the interest claimed by the appellant is also not maintainable in the instant case."*

7. From the available records and the detailed date chart furnished by the appellant at page 8 – 11 of the appeal paper book, I find that the refund application was filed by the appellant on 13.06.2005. The said refund application was decided by the Asst. Commissioner, vide his order dt.21.06.2009, as stated under para 2 of the impugned order dt.20.02.2018, under which the refund was sanctioned but was credited to the Consumer Welfare Fund on the ground of unjust enrichment. The unjust enrichment aspect relating to the said refund application dt.13.06.2005, after several rounds of litigation was resolved by the Commissioner (Appeals), vide the Order-in-Appeal dt.22.02.2016. Therefore, it is not correct to say that the

refund application was filed by appellant on 22.07.2016 basing on the Order-in-Appeal dt.22.02.2016.

The position of law in this regard has been well settled by the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India reported in 2011 (273) ELT – 3 (SC), wherein it was held that Sec.11BB of the Central Excise Act lays down that, in case any duty paid, is found refundable, and if the duty is not refunded within the period of 3 months from the date of receipt of the application, submitted under Sub-Sec.(1) of Sec.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 3 months from the date of receipt of the application. In this case, the Hon'ble Apex Court also took note of the CBEC's Circular No.670/2002-CX dt.01.10.2002, which is to the effect that the provisions of Sec.11BB of the Central Excise Act, 1944, are attracted automatically for any refund sanctioned beyond a period of three months. Further, in the case of Union of India Vs. Hamdard (Waqf) Laboratories, reported in 2016 (333) ELT – 193 (SC), it was held by the Hon'ble Supreme Court that interest on delayed refund is payable under Sec.11BB of the Central Excise Act, on expiry of 3 months from the date of receipt of the application, till the date of refund of duty. It was held that defects, if any, in refund application, ought to have been communicated within 48 hours as stipulated in CBEC Circular dt.30.05.1995. If there is any deficiencies and defects in the refund application, it is obligatory on the part of the Revenue to inform the assesse within two days of receipt.

8. In view of the above settled position of law, I am inclined to hold that the refund application was filed by the appellant on 13.06.2005 and the refund was finally paid on 15.09.2016, and in terms of Sec.11BB of the Central Excise Act, the appellant is entitled to the interest, at the rate as notified by the Central Government.

The appeal is allowed in the above terms with consequential relief to the appellant.

(Dictated and pronounced in the open court.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

T.K.