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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75842 of 2015

(Arising out of Order-in-AppealNo.61/GHY/CE(A)/GHY/2015 dated31.03.2015 passed by Commissioner, Customs, Central Excise & Service Tax(Appeals), Guwahati.)

M/s.S. Gopal & Company
(Industrial Complex, Bonda, Guwahati-781026
And
339, F.I.E., Patparganj, New Delhi-110092.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Guwahati
.....Respondent
(Sethi Trust Building, G.S. Road, P.O.:- Bhangagarh, Guwahati-781005, Assam.)

APPEARANCE

ShriAnurag Mishra, Advocate for the Appellant (s)
ShriK.Chowdhury, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75227/2022

DATE OF HEARING : 19 January 2022
DATE OF DECISION : 25 April 2022

P.K.CHOUDHARY :

The present appeal is filed by M/s S. Gopal& Co (hereinafter referred to as the 'Appellant') against the Order of the Ld. Commissioner (Appeals) dated 31.03.2017, wherein the Ld. Commissioner (Appeals) denied the interest under Section 11BB on the refund which was sanctioned to the Appellant vide Order dated 12.12.2013 passed by the Ld. Assistant Commissioner, Gauhati.

2. The facts of the case in brief are that the Appellant is a manufacturer of Branded Chewing Tobacco classifiable under Chapter Heading 2404 of the Central Excise Tariff Act, 1985. The Appellant is

having a manufacturing unit at the industrial Complex, Bonda, Guwahati-781026. The Appellant is duly registered under the Central Excise Act and paying the Central Excise duty under the terms and conditions of Notification No. 32/99 dated 08.07.1999.

3. In the year 1999, the Central Government exercising its power under Section 5A of Central Excise Act, 1944 read with Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Section 3 of the Additional Duties of Excise Textile and Textile Articles) Act, 1978 issued a Notification No. 32/99-CE dated 08.07.1999 (hereinafter referred to as 'Exemption Notification'), thereby granting exemption to certain units located in certain specific regions from so much of the Excise Duty or Additional Duties of Excise as the case may be, leviable thereon under the said Notification as equivalent to the amount of duty paid by the manufacturer of the goods.

4. As per the Terms and conditions of the Notification No. 32/99-CE dated 08.07.1999, the manufacturer is required to submit a statement of duty paid from the current account to the Assistant Commissioner or Deputy Commissioner, as the case may be, by the 7th of next month in which the duty has been paid from the current account. The said exemption notification also casts an obligation on the Assistant Commissioner or Deputy Commissioner, as the case may be, to refund the amount of duty paid by the 15th of next month. The Notification further states that the amount of refund is subject to the verification and in case of delay in verification, the Department is directed to make the payment on provisional basis by 15th of next month.

5. The Appellant during the period from May,2000 to March,2001, manufactured the goods in the area which was covered under the aforesaid Notification and the Appellant duly deposited the Excise Duty in respect of the goods manufactured in their unit during the above referred period. The Appellant in order to claim the refund for the said

period amounting to Rs.3,96,27,347/- submitted the requisite documents alongwith the proof of payments to the Jurisdictional Assistant Commissioner. Accordingly, a Show Cause Notice dated 07.09.2021 was issued to the Appellant for denying the benefit of Exemption Notification No.32/99-CE dated 08.07.1999 and consequential rejection of refund claim amounting to Rs.3,96,27,347/. The said Show Cause Notice was challenged by the Appellant before the Hon'bleGauhati High Courtvide Writ Petition No. 1384/2002. TheHon'bleGauhati High Court directed the Customs Authorities to take a fresh decision in the matter in accordance with law after grant of proper opportunity to the Appellant. The Department has preferred an S.L.P. against the Order of the Hon'bleGauhati High Court before the Hon'bleSupreme Court. The Hon'bleSupreme Court dismissed the Department's S.L.P. No. CC13549 of 2013.

6. The Ld. Adjudicating Authority following the directions of Hon'bleGauhati High Court granted a fresh opportunity of personal hearing to the Appellant to decide the issue that whether the Appellant was entitled for exemption Notification No. 32/99-CE dated 08.07.1999 and consequently entitled for refund of Rs.3,96,27,347/-. The Ld. Assistant Commissioner considering the directions of the Hon'bleGauhati High Court and taking into cognizance of the documents, came to the conclusion that the Appellant is entitled for refund of Rs.3,96,26,444/-. Accordingly, the Ld. Assistant Commissioner vide Order-in-Original dated 12.12.2013 sanctioned the refund claim to the Appellant amounting to Rs.3,96,26,44/-. The Ld. Assistant Commissioner did not pass any order in respect of interest due on the said amount on account of delay in sanctioning the refund claim. The Appellant vide Letter dated 05.02.2014 made a request to the Assistant Commissioner to seek the refund of interest amount under Section 11BB of the Central Excise Act, 1944. The Ld. Assistant Commissioner vide Order dated 21.04.2014 denied the interest on the said sanctioned refund amount on the ground that the Notification

No.32/99-CE dated 08.07.1999 did not provide for any provision for interest on delayed payment of refund. The Appellant against the said Order preferred an appeal to the Ld.Commissioner (Appeals), Customs, Excise and Service Tax (NER), Guwahati. The Ld. Commissioner(Appeals) upheld the order of the Assistant Commissioner and rejected the Appeal of the Appellant. Hence, the Appellant has preferred the present Appeal.

7. The Ld. Advocate ShriAnurag Mishra appeared on behalf of the Appellant and submitted that the provisions of Section 11BB are fully applicable to the present case as the Notification No. 32/99-CE dated 08.07.1999 did not restrict application of Sections and Rules provided under the Central Excise Law. He also submitted that the Notification 32/99 cannot be read independently and it has been wrongly held by the Ld. Commissioner that the provision of Section 11BB is inapplicable in respect of the refund claim covered under Notification 32/99. The Ld. Advocate submitted that the Notification No. 32/99-CE dated 08.07.1999 cannot be said to be conclusive and the findings of the Ld. Commissioner (Appeals) that the provisions of Section 11B and Section 11BB are not applicable in respect of the refund claim filed by the Appellant under the said Notification is inappropriate.

8. The Ld. Advocate further submitted that the issue to grant interest on the delayed payment of refund under the provisions of Section 11BB is well settled now and the Hon'bleGauhati High Court in the case of M/s Amalgamated Plantation Private Limited Vs. UOI reported at 2013(296)E.L.T.13G (Gau.) under similar facts and circumstances has held that Section 11B ibid does not exclude claim of refund made in terms of Notification No. 32/99-CE dated 08.07.1999, accordingly assessee is entitled for interest under Section 11BB on Excise duty refunded to them. Against the said Order, the Department preferred a Review Petition which was dismissed by the Hon'bleGauhati High Court reported at 2016 (340) E.L.T.310(Gau.). In the review petition, the Hon'ble High Court also dealt with the Board

Circular dated 19.12.2002 and 08.12.2006 and categorically held that the Board's Circulars are not binding on the Court. Against the Order of the Gauhati High Court, the Department preferred S.L.P. before the Hon'bleSupreme Court reported at 2017 (349) E.L.T. A89 (S.C.), which was dismissed on the ground of limitation. Therefore, the Ld. Advocate submitted that the Appellant is entitled for refund of interest immediately after 3 (three) months from the date of submission of refund under Section 11BB.

9. ShriJ.Chattopadhyay, Ld.Authorized Representative for the Department contended that in the case of M/s DharampalSatyapal Ltd. Vs. UOI reported at 2018 (362) E.L.T. 776 (Gau.) under similar facts and circumstances of the case allowed the interest on delayed payment of refund under Section 11BB but the Department has preferred S.L.P. against the said Order before the Hon'bleSupreme Court. He further submitted that the Hon'bleSupreme Court condoned the delay and notice has been issued to the respective parties and the said Order is reported at 2018 (362) E.L.T. A208 (S.C.). He contended that the issue is still pending for decision before the Hon'bleSupreme Court but on being asked, he submitted that no stay in respect of the operation of the Order of the Hon'ble High Court has been granted by the Hon'ble Supreme Court so far.

10. Heard both sides through video conferencing and pursued the appeal records and the cited judgements.

11. It is undisputed that the principal amount was sanctioned to the Appellant by the Assistant Commissioner vide its Order dated 12.12.2013. Similarly, the interest claimed by the Appellant under Section 11BB was rejected on the ground that the provisions of Section 11BB shall not apply in case where the Exemption Notification No. 32/99-CE dated 08.07.1999 is being claimed. Pursuant to the Order of the Ld. Assistant Commissioner dated 21.04.2014 wherein he rejected the refund claim of the Appellant on the ground that the

refund of the amount was processed and sanctioned under the Notification No. 32/99-CE dated 08.07.1999 and not under sub-section (1) of Section 11B of the Act. Since, the provisions of Section 11B do not apply in the present refund case, the provisions of Section 11BB for grant of interest for delayed payment of refund shall also not apply. The Ld.Assistant Commissioner further contended that the Exemption Notification No. 32/99-CE dated 08.07.1999 is a self-contained law wherein detailed conditions, safeguard and limitation has been provided for giving the effect to the said Exemption Notification. The said Notification does not have any provisions for grant of any interest and therefore, in absence of legal provisions in the said Notification, he rejected the refund of interest under Section 11BB. The Ld. Commissioner (Appeals) vide its Order dated 28.04.2015 upheld the findings of the Learned Assistant Commissioner. Therefore, the grounds taken by the Ld. Assistant Commissioner are identical to the case referred by the Learned Advocate.

12. The Hon’ble High Court of Gauhati in the case of M/sAmalgamated Plantations (P.) Ltd., Vs. UOI reported at 2013 (296) E.L.T. 30 (Gau.) has held as under-

> *“32. Thus, in view of the discussions made above, we are of the unhesitant view that Section 11B of the Central Excise Act, 1944 does not exclude claim of refund made in terms of the notification dated 08.07.1999. Petitioners would, therefore, be entitled to interest under Section 11BB of the Central Excise Act, 1944 on the excise duty refunded to them. The jurisdictional excise officers shall now determine the interest amount payable to the petitioners for the relevant periods. The amounts found due shall be paid to the petitioners within three months from today.”*

13. The Review Petition filed by the Department reported at 2016(340) E.L.T. 310 (Gau.) in the case of UOI Vs. M/s Amalgamated Plantations (P.) Ltd., was also dismissed by the Hon’ble High Court of

Gauhati and while dismissing the Review Petition the Court has observed as under-

> *"17. On due consideration, we are unable to accept the contention advanced by the review petitioners. The circular dated 19.12.2002 and 8.12.2006 are executive in character. It cannot override statutory provisions such as Section 11B of the Central Excise Act, 1944 as interpreted by the Court. Moreover, all these aspects were gone into in detail by the writ Court while passing the judgment and order dated 8.11.2012. In the garb of review, it appears that review petitioners actually seek rehearing of the writ petition, which is not permissible."*

14. The SLP filed against the above referred order before the Hon'bleSupreme Court was dismissed on the ground of limitation which is reported at 2017 (349) E.L.T. A89 (S.C.).

15. We find that in the case of M/s.DharampalSatyapal Ltd. Vs. UOI reported at 2018(362)E.L.T.776 (Gau.), the Hon'ble High Court passed a similar Order and allowed the interest on account of delayed payment of refund under Section 11BB. The SLP filed against the said Order by the Revenue reported at 2018 (362) E.L.T. A208 (S.C.) is pending before the Hon'bleSupreme Court and the notice was issued. We also find that no stay from the operation of the Order of the Hon'ble High Court was granted by the Hon'bleSupreme Court. Under the prevailing circumstances the Order of the Hon'bleGauhati High Court in the case of M/s. Amalgamated Plantations (P.) Ltd.Vs. UOI and M/s.DharampalSatyapal Ltd. Vs. UOI has the binding effect on this Tribunal.

In view of the above findings and respectfully following the judicial discipline, we are of the considered view that the Appellant is entitled for interest under Section 11BB. Accordingly, we allow interest to the Appellant under Section 11BB immediately after 3 (three) months from the date of filing of the application. We therefore, direct the Revenue to make the payment of interest to the Appellant within a period of 2 (two) months from the date of receipt of this order.

We therefore, allow the present Appeal with consequential relief to the Appellant.

(Order pronounced in the open court on 25 April 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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

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