IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76199 of 2024

(Arising out of Order-in-Appeal No. 97/HAL/CE/2024-25 dated 30/05/2024 passed by Commissioner of CGST & CX, Appeal-II Commissionerate)

M/s Unitech Paper Mills Pvt. Ltd.
(Pachim Beguni, P. O. Chakshyampur, Ballichak, Paschim Medinipur-721124)

Appellant

VERSUS

Commr. of CGST & CX, Haldia
(25, Princep Street, Kolkata-700072)

Respondent

APPEARANCE:

Mr. H. K. Pandey, Advocate for the Appellant
Mr. Debapriya Sue, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.77360/2025

Date of Hearing : 18th August 2025
Date of Decision : 18th August 2025

ORDER [PER R. MURALIDHAR]

The appellant was litigating valuation adopted by the Revenue on account of inclusion of transport charges in the assessable value. Vide OIO dated 25/03/2008, the demand came to be confirmed. After due process, the matter reached the Tribunal. The Tribunal vide Final Order No. 75066/2023 dated 2/3/2023 set aside the impugned order and allowed the appeal filed by the appellant. After this, the appellants have filed the refund claim filed for the amount of Rs. 6,67,533/- paid by them "under protest" on 12/01/2010. The Adjudicating Authority after considering all the documentary evidence placed before him has passed the Order-in-Original sanctioning an amount of Rs. 6,67,533/- vide his Order dated 09/05/2023. Being aggrieved by the fact that the appellant was not granted interest for the amount deposited "under protest" on 12/1/2010, the appellant filed their appeal before the

Commissioner (Appeals). The Commissioner (Appeals) has dismissed their appeal. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that the refund sanctioning authority has taken the stand that there is no provision to grant any interest for the pre-deposit made before 06.8.2014.

3. The Learned Counsel submits that it is on record that the appellant has paid this amount not as a pre-deposit but has paid it "under protest" as can be seen from their letter dated 12/1/2010. He relies on the case law **of Allied Chemicals & Pharmaceuticals Pvt. Ltd. Vs. Commissioner of Central Excise & CGST, Jaipur-2022 (382) E.L.T. 371 (Tri.-Del)** passed by the Delhi Bench holding that in such cases, when the amount is paid under 'protest', the same is required to be refunded along with interest of 12% per annum. He also relies on the case law of Kolkata Bench in the case of **Z. Konark Vs. CGST-BBSR vide Final Order No. 75013 dt. 07.01.2025**.

4. The Learned AR reiterates the findings of the lower authorities. He submits that the amount was not pre-deposited in terms of Section 35F as amended from 06/08/2014. Therefore, the appellant is not entitled for any interest in terms of Section 35FF. Thus, he justifies the denial of interest to the appellant.

5. Heard both sides and perused the appeal papers.

6. Similar issue came to be decided by Kolkata Tribunal in the case of Z Konark Vs CCGST-BBSR vide Final Order No.75013/2025 dated 7.1.2025. The Tribunal held as under :

> *9. The issue to be decided in this case is the date from which the interest would be payable by the Revenue and the rate of interest thereon.*

*10. We find that the issue is no more res integra. The Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. Vs. UOI reported at 2011 (273) E.L.T 3 (S.C.),** has held as under :*

The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short "the Act"). In short, the question is whether 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 or on the expiry of the said period from the date on which the order of refund is made?

The appellant filed certain claims for rebate of duty, amounting to Rs.4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central xcise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate

Section 11BB, the pivotal provision, reads thus:

"11BB. Interest on delayed refunds.- If any duty ordered to be refunded under sub- section (2) of section 11B to any 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 at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately

after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

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.*

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus:

"Circular No.670/61/2002-CX, dated 1-10-2002 F.No.268/51/2002-CX.8 Government of India Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the

Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra).

In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

"Heard both the parties. In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub- section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that *application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.*

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.

*11. In the case of **Atmiya Engineering and Plastics Vs CCE & ST Vadodara, vide FINAL ORDER NO. A/ 10311 /2022,** has followed the Ranbaxy judgement and has held as under :*

In case of Ranbaxy Laboratories Ltd., Hon'ble Supreme Court held as under

*" **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."

10. In view of the above settled position by the Hon'ble Supreme Court if there is any delay in sanction of the refund claim from the date of filing application, the appellant is entitled for the interest from the date of filing of refund claim till the date of sanction.

11. The Revenue's contention is that they have granted the refund within three months form the date of Commissioner (Appeals) order. In this regard, I am of the view that once the Commissioner (Appeals) has allowed the refund, the appellant was entitled for the refund right from the date of filing of the application. Therefore, for the purpose of interest, it is not the date of Commissioner (Appeals) order, but it is the date of filing of refund application needs to be taken.

12. In the case of ***Tengapani Tea Estate, M/s. Betjan Tea Estate Vs. Commissioner of CGST & CX, Dibrugarh Commissionerate - 2021 (9) TMI 22****, this Bench has held as under :*

"Since the claim for refund/exemption filed by the Appellants in 2008 was eventually adjudicated in favour of the Appellants in 2019, it is evident that there was a delay in the processing of the refund in favour of the Appellants. The Original Authority and the Appellate Authority have proceeded on the premise that the communication dated 27 February 2019 is a claim for refund, which is factually incorrect - The said communication dated 27 February 2019 by the Appellants is only forwarding and inviting the attention of the jurisdictional refund sanctioning authority to the Final Order dated 9 July 2018 passed by this Tribunal and cannot be construed as a fresh claim ………………………..

It is settled by the decision of the Hon'ble Supreme Court in Ranbaxy Laboratories case [2011 (10) TMI 16 - SUPREME COURT] that the said period has to be reckoned from the date of the application for exemption/refund, which in the instant case is 10 January 2008, and not the date of the adjudication or appellate order sanctioning the refund……………………"

13. Therefore, following the ratio laid down in the above case laws, we hold that the appellant is eligible for the interest taking the refund claim date as the base. The appellant has filed the refund claim on 22.11.2007. Hence after considering the period of 3 months for processing of this application, the interest would be payable from 22.02.2008 till the date on which the refund has been paid to them.

14. Now, we take up the issue of the rate of interest to adopted. We find that this issue also stands decided in several cases.

*15. The Allahabad Bench, in the case of **Parle Agro Pvt Ltd Vs CCGST, Noida – 2022(380) ELT 219 (Tri-All),** has held as under:*

***29.** Section 11BB provides for interest on delayed refund. It states that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application, then the applicant shall be entitled to interest after the expiry of three months from the date of receipt of the application at such rate not below 5% and not exceeding 30% as may be notified by the Central Government in the Official Gazette.*

In the present case, the provisions of Section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31-1-2017, which order has attained finality.

In this connection reference can also made to the decisions of the Allahabad High Court in Pace Marketing Specialities and Ebiz.Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

In view for the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.

Thus, for the reason stated above, Excise Appeal No. 70628 of 2019 is allowed and the order dated 28-5-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment.

*16. In **Churchit Interntional Vs CC (Export), vide Final Order No.58537/2024 dated 6.9.2024**, the Delhi Tribunal has held as under :*

The Appellant was made to deposit Rs.50,00,000/- involuntarily under threat of arrest during investigation on 18.03.2014.

Thereafter, Assistant Commissioner of Customs (Refund) vide Order-in-Original No.045/2021 dated 24/12/2021 allowed the refund of Rs. 50,00,000/-but had not granted interest on the said amount.

5. Having heard both the parties and after perusing the record it is worth noting that amount of Rs.50,00,000/- was deposited much before issuance of show cause notice and adjudication order did not confirm any demand against the appellant and thus the said amount was never appropriated against any demand. There was no demand against the appellant and accordingly such collection of amount was without authority of law.

15. This Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida (vice- Versa) reported as 2021 (5) TMI 870 – CESTAT ALLHABAD has held that in the light of the above discussed notifications the grant of interest at the rate of 12% per annum seems to be appropriate. Tribunal Delhi (CESTAT) also in the case of Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex., Cus. & CGST, Delhi reported as 2021 (378) ELT 293 (Tri.-Del.) wherein the adjudicating authority was ordered to grant interest @ 12% per annum *from the date of deposit till the date of refund. The relevant Para is reproduced as under:*

"I further take notice that Divisioin Bench of this Tribunal in Parle Agro (P) Ltd. Vs. ommissioner, CGST - 2021-TIOL-306-CESTAT ALL, wherein interest on pre-deposit (made during investigation) have been enhanced from 6% to 12%, following the ruling of the Apex Court in Sandvik Asia Ltd. Vs. Commissioner – 2006 (196) E.L.T. 257 (S.C.). I further direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the date of refund. Such interest should be granted within a period of two months from the date of receipt or service of the copy of this order."

16. Similar view was taken in case of Pr. Commr. of CGST, New Delhi Vs. Emmar Mgf Construction Pvt. Ltd. reported as 2021 (55) GSTL 311 (Tri.-Del.) wherein it was held that amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund. Further, it is directed that the adjudicating authority shall disburse the amount of interest @ 12% per annum forthwith.

"8. Considering the rival contentions, this appeal by the Revenue is dismissed. Further, it is directed that the Adjudicating Authority shall disburse the amount of interest @12% per annum forthwith, within a period of 45 days from the date of receipt of the copy of this order, as held by Division Bench of this Tribunal in Parle Agro (P) Ltd., (supra)."

19. Consequent to the entire above discussion, the findings of the order under challenge are upheld with respect to holding appellant entitled for getting refund of the amount along with interest. However, it is held that the appellant is entitled to have interest on the amount of refund sanctioned at the rate of 12% per annum to be calculated from the date of the deposit of the amount till the date refund thereof. Resultantly, the present appeal is hereby allowed.

17. Following the ratio of the cited case laws of Parle Agro and Churchit, we hold that the appellant would be eligible for interest @ 12% per annum.

7. Following the ratio of the cited case law, I allow the appeal and hold that the appellant would be eligible for interest of 12% per annum from 12/1/2010 till the date on which the refund was granted by the Revenue.

8. The appeal stands allowed thus.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja