IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. C/388/08

(Arising out of Order-in-Appeal No. 31/2008/MISC/ACC dated 04.03.2008 passed by the Commissioner of Customs (Appeals), Mumbai).

M/s India Extrusion	Appellant

Vs.

Commissioner of Customs (ACC & Import), Mumbai	Respondent

Appearance:

Shri Brijesh Pathak, Advocate	for Appellant
Shri Bhushan Kamble, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 08.01.2019

Date of Decision: 08.01.2019

ORDER NO. **A/85144 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. 31/2008/MISC/ACC dated 04.03.2008 passed by the Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the appellant had imported cable joining kits, the classification of which was claimed under Chapter sub-heading 8547 of Customs Tariff Act,

1975, whereas Revenue classified the product under Chapter sub-heading 3926 of Customs Tariff Act, 1975. Differential duty was paid under protest and subsequently refund was claimed on 6.7.1989. The appellant succeeded on the issue of classification before the Hon'ble Bombay High Court. Thereafter, they have filed a reminder letter dated 6.4.1994 with the Department for refund of excess duty recovered. The said refund claim was rejected by the Revenue as barred by limitation. The matter reached before the Tribunal and the Tribunal by its order dated 09.01.2001 remanded the matter to the Commissioner (Appeals) for *de novo* consideration. The learned Commissioner (Appeals) thereafter decided the issue in favour of the appellant observing that the refund claim filed was within time. Against the said order, the Revenue filed an appeal along with seeking the stay of the order of the learned Commissioner (Appeals). The said application filed by the Revenue was rejected by the Tribunal by its order dated 1.7.2002. Consequently, a refund claim of Rs.72,46,441/- was sanctioned to the appellant. Thereafter, the appellant filed an application on 18.03.2004 seeking interest for the period from 1.7.1995 to 27.08.2002 on the delayed refund amounting to Rs.70,46,363/-. The said claim for interest was rejected by the original adjudicating authority, hence they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned Advocate for the appellant submits that the refund claim was filed for the excess duty paid on account of incorrect classification of imported goods in the proceeding initiated by the Department way back on 6.7.1989. The issue of classification

was settled in their favour by the Hon'ble Bombay High Court. Thereafter, they requested for refund of the excess amount pending with the Department. However, the refund was sanctioned and paid to them only on 12.8.2002. Therefore, in view of the principles laid down by the Hon'ble Supreme Court in *Ranbaxy Laboratories Ltd. Vs. Union of India – 2011 (273) ELT 3 (SC)*, they are entitled to interest on expiry of three months from the date of accent of the amendment to Section 27A of the Customs Act, 1962.

4. The learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We have carefully considered the submissions made by both sides. Section 11BB of Central Excise Act, 1944, has been inserted in the year 1995, which reads as under: -

> **"11BB. Interest on delayed refunds. -**
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> *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 :*
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> *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.*
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> *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."

6. The Hon'ble Supreme Court has an occasion in of *Ranbaxy Laboratories Ltd.'s* case *(supra)* to interpret the said provision, has been held as under: -

> **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.
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> **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 :-
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> > "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 subsection (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."
> >
> > The special leave petition is dismissed. No costs"
>
> **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.
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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.
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> **16.** As a sequitur, C.A. No. 6823 of 2010, filed by the assessee is allowed and C.A. Nos. 7637/2009 and 3088/2010, preferred by the revenue are dismissed. The jurisdictional Excise officers shall now determine the amount of interest payable to the assessees in these appeals, under Section 11BB of the Act, on the basis of the legal position, explained above. The amount(s), if any, so worked out, shall be paid within eight weeks from today."

7. Applying the principles laid down in the above case, we find that the appellant had filed refund claim on 06.07.1989 and reminder on 06.04.1994 after Hon'ble Bombay High Court's judgment in their favour. Hence, they are eligible to interest on expiry of three months from the date when the Finance Bill, 1994 received the assent of the President of India i.e. on 26.05.1995. Consequently, interest is available to the appellant from 27.08.1995 till the date, the amount was paid to them.

8. Appeal is allowed.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha