

GAHC010255432022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : C.Ex.App./7/2022

COMMISSIONER OF GST AND CENTRAL EXCISE
GST BHAWAN (5TH FLOOR) KEDAR ROAD, MACHKHOWA, GUWAHATI
781001

VERSUS

M/S S. GOPAL AND COMPANY
INDUSTRIAL COMPLEX, BONDA, GUWAHATI 781026 AND 339, F.I.E
PATPARGANJ, NEW DELHI 110092

For the Appellant : Mr. S.C. Keyal, Standing Counsel, CBIC.

For the Respondent : None.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

14.08.2023

The instant appeal has been preferred by the Commissioner of GST & Central Excise, Dibrugarh for assailing the judgment and final order dated 25.04.2022 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata in Excise Appeal No.75842/2015, whereby the claim led by the respondent/assessee for payment of interest on delayed payment of refund under Section 11BB of the Central Excise Act, 1944 was accepted in the following terms:-

“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.”

The only submission of Mr. Keyal, learned counsel for the appellant for assailing the said order was that the issue regarding entitlement of interest on account of delayed payment of refund under Section 11BB of the Central Excise Act is pending consideration before the Hon'ble Supreme Court in the case of M/s Dharampal Satyapal Limited. However, Mr. Keyal is not in a position to dispute the fact that Hon'ble the Supreme Court in the case of ***Ranbaxy Laboratories Limited -Vs- Union of India & Ors.***, reported in ***2011 (10) SCC 292*** has been clearly laid down that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of 3(three) months from the date of receipt of the application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which the order of refund is made. Hence, the issue regarding revenues liability to pay interest on delayed payment of refund is no longer *res integra*.

This Court has decided a batch of appeals led by Writ Appeal No.102/2022 and Central Excise Appeal No.3/2022 involving a similar issue affirming the judgments rendered by the CESTAT in favour of the assessees and directing the Department to make payment of interest on delayed refund, subject to the assessee(s) furnishing undertaking that in case the revenue succeeds in the SLP of M/s Dharampal Satyapal Limited, the interest amount shall be reimbursed to the Department.

Thus, requiring the respondent/assessee to furnish an undertaking in the above term, the appeal filed by the revenue is dismissed with a direction that interest on delayed payment of refund shall be paid to the assessee within 2(two) months from today.

JUDGE

CHIEF JUSTICE

Comparing Assistant