IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 13714 of 2016
Date of Decision: 18.01.2018

M/s Om Refoils Ltd. …..Petitioner

versus

Union of India and another …..Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Jagmohan Bansal, Advocate for the petitioner.

Mr. Ish Puneet Singh, Advocate for respondent No.2.

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S.J.VAZIFDAR, CHIEF JUSTICE (ORAL)

The petitioner seeks a writ of certiorari to quash the communication dated 18.06.2016 rejecting its claim for interest and a writ of mandamus directing the respondents to pay interest as demanded.

2. On 23.07.2007, the petitioner had imported several consignments of goods, in respect whereof bills of entries were filed and the petitioner paid the duty on the basis of self assessment. On 23.07.2007, the petitioner filed 11 applications for refund of duty.

3. By an order dated 30.03.2008, the Assistant Commissioner of Customs sanctioned the refund but held that the same was not admissible as it constituted undue enrichment. The Assistant Commissioner, therefore, directed the amount of refund to be transferred to the Consumer Welfare Fund. In other words, the petitioner's application for refund was in fact rejected on the ground of undue enrichment. The petitioner and the respondents challenged this order. The petitioner challenged the order insofar as it transferred the refund to the Consumer Welfare Fund and the respondent challenged the order insofar as it upheld the claim for refund.

The Commissioner (Appeals) by a order dated 17.10.2008 dismissed the petitioner's appeal and allowed the respondent's appeal.

4. In other words, the petitioner's application dated 23.07.2007 under Section 27 of the Act for refund was decided in its favour.

5. In the meantime on 17.04.2010, the respondents issued a notice to the petitioner with respect to the petitioner's claim for refund in respect of the remaining three bills of entries. The proceedings were kept pending in view of the proceedings with respect to the eight bills of entry.

By an order dated 29.10.2014, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) allowed the petitioner's appeal against the said order of the Commissioner (Appeals) dated 17.10.2008. The Tribunal, however, remanded the matter to the Assistant Commissioner on the question of unjust enrichment.

The Deputy Commissioner of Customs by an order dated 26.05.2015 decided the proceedings on remand in favour of the petitioner and sanctioned the refund of Rs.41,28,827/-under Section 27 of the Customs Act, 1962 read with a Notification dated 14.09.2007.

6. Pursuant thereto the respondents paid the principal amount in respect of the eight bills of exchange on 27.05.2015 and in respect of the remaining three bills exchange on 12.02.2016.

7. The petitioner thereafter made an application for payment of interest on the above amount from three months from the receipt of the application dated 23.07.2007 till payment. By the impugned order, the respondents rejected the application. The respondents contend that the petitioner is entitled to interest only from the date of the final order which in this case was passed on 26.05.2015. The petitioner contends that it is entitled to interest from the expiry of 90 days from the date of the application under Section 27(1).

8. Section 27 and 27(A) of the Customs Act, 1962 insofar as they are relevant read as under:-

> ***27. Claim for refund of duty.—***
> *(1) Any person claiming refund of any duty or interest,—*
> *(a) paid by him; or*
>
> *(b) borne by him,*
>
> *may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of*

one year, from the date of payment of such duty or interest:

(2) If on receipt of any such application, the Assistant Commissioner of Customs is satisfied that the whole or any part of the [duty and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of [duty and interest, if any, paid on such duty] as determined by the Assistant Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) the [duty and interest, if any, paid on such duty] paid by the importer [or the exporter, as the case may be] if he had not passed on the incidence of such duty and interest, if any, paid on such duty] to any other person;

***[27-A. Interest on delayed refunds**.— If any duty ordered to be refunded under sub-section (2) of Section 27 to an 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 27 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, [National Tax Tribunal] or any court against an order of the Assistant Commissioner of Customs under sub-section (2) of Section 27, the order passed by the Commissioner (Appeals),

> *Appellate Tribunal, [National Tax Tribunal] or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.*

9. In view of the orders passed by the authorities the petitioner is entitled to the refund. The orders establish that the proviso to sub section (2) of Section 27 applies to the petitioner's case and therefore the petitioner is entitled to the refund of the duty paid. The only question is the period for which the petitioner is entitled to interest on this amount.

10. Mr. Jagmohan Bansal's submission on behalf of the petitioner that interest is liable to be paid from the expiry of 90 days from the date of the application under Section 27(1), which in this case is 23.07.2007, is well founded. A plain reading of Section 27A supports his submission that the word "applications" throughout Section 27A refers to the application for refund under Section 27(1). There is no other application contemplated therein. The opening part of Section 27A refers to the duty ordered to be refunded under sub section (2) of Section 27 within three months from the date of receipt "of application under sub section (1) of that Section". The reference to the application, therefore, is clearly to the one under Section 27 (1) and the order under sub section (2) is only in respect of the application under sub section (1). Section 27A then provides for the payment of interest from the date immediately after expiry of three months from the date of receipt of "such application". The words "such application" refer to the application under Section 27(1). As we mentioned earlier, no other application is even referred to in the main part of Section 27A. It follows, therefore, that interest is payable under Section 27A from the expiry of 90 days from the date of the application for refund under Section 27(1).

11. The respondents' reliance upon the explanation is not well founded. The explanation does not deal with the period for which interest is paid. It only provides that the order of the Appellate Authority shall be deemed to be an order passed under sub section (2) of Section 27. This, in fact, would support Mr. Bansal's submission, which we have accepted. It would indicate that what we have held in respect of the main part of Section 27(2) applies also to orders passed in proceedings challenging orders passed under sub section (2) of Section 27.

12. This view is supported by the judgment of the Supreme Court

in *Ranbaxy Laboratories Ltd. vs. Union of India, (2011)10 SCC 292.* In that case Sections 11B and 11BB of the Central Excise Act, 1944, fell for consideration. Sections 11B and 11BB insofar as they are relevant read as under:-

> "***11-B.Claim for refund of duty.***—*(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12-A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person:*
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> ***11-BB.Interest on delayed refunds.***—
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> *If any duty ordered to be refunded under sub-section (2) of Section 11-B 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 11-B 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 11-B, 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."

The provisions of Sections 11B and 11 BB of Central Excise Act, 1944 correspond to Section 27(1) and 27A respectively insofar as they are relevant to this case. The Supreme Court held as under :-

9. It is manifest from the aforeextracted provisions that Section 11-BB of the Act comes into play only after an order for refund has been made under Section 11-B of the Act. Section 11-BB 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 11-B 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 the proviso to Section 11-BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the 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 11-B 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 11-BB of the Act. Manifestly, interest under Section 11-BB of the Act becomes payable, if on 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 11-BB 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 11-B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11-BB of the Act becomes payable.

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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 11-BB of the Act commences from the date

> *of expiry of three months from the date of receipt of application for refund under Section 11-B(1) of the Act and not on the expiry of the said period from the date on which the order of refund is made.*

The judgment supports the petitioner's case. In any event, in view of what is stated earlier, Mr. Bansal's submissions are upheld.

13. Even assuming that the petitioner furnished the evidence with respect to the issue of unjust enrichment later it would make no difference as Section 27A mandates the payment of interest from the date of the application. The revenue in any case does not suffer any loss as it has the benefit of the use of the money, in fact, even prior to the date of the filing of the application for refund under Section 27(1).

14. The petition is, therefore, allowed. The petitioner shall be paid interest from 23.10.2007 i.e. 90 days after the date of the application under Section 27(1) viz. 23.07.2007 till payment. The same shall be paid by 15.04.2018. There shall however be no order as to costs.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

18.01.2018
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No