IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14045 OF 2018

Jindal Drugs Limited .. Petitioners
vs.
The Union of India and ors. .. Respondents.

Mr. Prakash Shah a/w. Jas Sanghavi i/b PDS Legal for the Petitioners.
Mr. Sham Walve a/w. Mr. Ram Ochani for the Respondents.

CORAM: M.S. SANKLECHA, J.
AND M.S.SONAK, J.
DATE : 19 JUNE 2019.

ORAL JUDGMENT : (PER M.S. SONAK,J.)

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] By this petition under Article 226 of the Constitution of India, the petitioners seek writ of mandamus to direct the respondents to forthwith sanction and grant interest in respect of refund sanctioned and granted after expiry of three months from the date of refund application viz. 10th October 2007 till the date of actual refund viz. 16th August 2017 under Section 27A of the Customs Act 1962 (said Act) and not only merely for the period as sanctioned in the impugned order dated 12th October 2018 made by the Assistant Commissioner of Customs, Group-IIA (respondent No.6).

3] In effect the main issue involved in this petition is whether the interest on delayed refund under Section 27A of the said Act is payable on expiry of period of three months from the date of receipt of refund application or whether interest is payable from the date on which the order for refund is actually made or confirmed.

4] The brief matrix of facts in which the aforesaid issue arises is as follows:

(i) On 23rd January 1995, two quantity based Advance Licenses were issued to the petitioners by the office of Joint Chief Controlloer of Imports and Exports;

(ii) Based upon the aforesaid, the petitioners imported goods which were permitted duty free by the Customs Authorities under Notification No.204 of 1992. It is the case of the petitioners that it neither sold the exempt material nor resultant products in the domestic market. However, there was delay on the part of the petitioners in completing their export obligation under the said Advance Licenses. This delay was condoned on requiring the petitioners to pay certain penalties ;

(iii) At the time of imports, the petitioner did not pay any duties of customs relying upon exemption Notification No.204 of 1992. However, since there was delay in discharge of export obligation, on the direction of the Director General of Foreign Trade (DGFT), the petitioners deposited the following amounts:

a] Towards Advance Licence No. 2073442

	Challan No./Date	Amount (Rs)
Duty	9210/December 24, 1996	Rs.23,54,406/-
Interest	5231/December 24,1996	Rs.10,35,393/-
	Total	Rs.33,89,799/-

b] Towards Advance Licence No. 2073306

	Challan No./Date	Amount (Rs)
Duty	3015/February 7, 1997	Rs.42,75,906/-
Interest	1808/February 7, 1997	Rs.15,39,073/-
	Total	Rs.58,14,797/-

(iv) The Customs Authorities at Mumbai ultimately disputed the exports in respect of some of the shipping bills. The petitioners, therefore, instituted Writ Petition No. 163 of 2001 in this Court. The petition was disposed of by directing the Customs Authorities to afford hearing to the petitioners and only then carry out the work of auditing/logging of DEEC Book;

(v) Finally, Dy. Commissioner of Customs, Mumbai vide order dated 28th March 2001, held that the petitioners had violated the conditions of Notification No. 204 of 1992 and on such basis rejected the petitioners' claim for logging of exports;

(vi) The Commissioner (Appeals) vide order dated 13th March 2003 set aside the Dy. Commissioner's order dated 28th March 2001 and remanded the matter to the Adjudicating Authority for fresh consideration;

(vii) The Adjudicating Authority (Assistant Commissioner) vide order dated 3rd February 2006, once again rejected the petitioners' claim for logging of exports. The petitioners' further appeal to the Commissioner (Appeals) was also rejected vide order dated 17th July 2006;

(viii) The petitioners appealed to the Appellate Tribunal, which, vide order dated 22nd March 2007 allowed the petitioners' appeal, set aside the aforesaid order and directed the logging of the exports;

(ix) As consequence of the aforesaid order, the petitioners became eligible to secure refund of the amounts of Rs.33,89,799/- and Rs.58,14,797/-, which the petitioners had deposited on directions of DGFT. The petitioners, therefore, filed two separate applications dated 10th October 2007 claiming refund along with interest before the Assistant Commissioner of Customs (respondent No.3);

(x) The petitioners' applications for refund dated 10th October 2007 were not being disposed of by the Assistant Commissioner on the ground that this Court had admitted Customs Appeal No. 96 of 2007 filed by the Department.

This was despite the fact that no stay order had been granted by this Court to the appellate Tribunal's order dated 22nd March 2007. The petitioners, aggrieved by this order instituted Writ Petition No. 884 of 2010 in this Court;

(xi) By order dated 8th February 2010, this Court, directed respondent No.3 to decide the petitioners' two refund applications dated 10th October 2007 within a period of four weeks after afford of personal hearing to the petitioners;

(xii) By order dated 3rd October 2011, respondent No.3 rejected the petitioners' applications dated 10th October 2007 for refund. By order dated 4th May 2012, the Commissioner (Appeals) upheld the order dated 3rd October 2011. However, by orders dated 6th September 2016/28th December 2016, the appellate Tribunal allowed the appeal instituted by the petitioners. The petitioners instituted Writ Petition No. 8269 of 2017 and the department filed appeal to challenge the aforesaid order dated 6th September 2016. Thereupon, the Dy. Commissioner of Customs sanctioned refund of Rs.58,74,279/- and Rs.33,90,345/- to the petitioners, however, without any interest. This was by order dated 3rd August 2017;

(xiii) The petitioners, instituted Writ Petition No. 10755 of 2017 challenging the order dated 3rd August 2017 to the extent it had failed to make any provision for interest;

(xiv) This Court, vide order dated 9th October 2017 dismissed the appeal filed by the department against the order dated 6th September 2016 and permitted the petitioners to withdraw the earlier Writ Petition No. 8269 of 2017. By order dated 7th September 2018, this Court, directed the proper Officer to consider the claim of the petitioners for interest and to pass an order within six weeks. Based upon this direction, the petitioners withdrew Writ Petition No. 10755 of 2017;

(xv) By order dated 12th October 2018, the Assistant Commissioner of Customs (Respondent No.6) sanctioned interest of Rs.3,64,654/- at the rate of 6% per annum for period 5th December 2016 to 3rd August 2017. This means that the petitioners have been denied interest from 11th January 2008 to 4th December 2016, i.e., interest on expiry of period of three months from the date of receipt of refund applications dated 10th October 2007 till the date of actual refund;

(xvi) Therefore, the petitioners have instituted present petition seeking interest on delayed refund from 11th January 2008 to 4th December 2016 in terms of Section 27A of the said Act

5] Mr. Prakash Shah, learned counsel for the petitioners, submits that the issue involved in the present petition is covered by the decision of the Apex Court in ***Ranbaxy***

Laboratories Ltd. vs. Union of India – 273 E.L.T. 3 (SC), this decision was rendered in the context of provisions of Section 11BB of the Central Excise Act, 1944 (Central Excise Act). He submits that this provision is *pari materia* to the provision in Section 27A of the said Act. He relies on ***Shelf Drilling International Inc. vs. Union of India – 341 E.L.T. 164 (Bom)***, in which, the Division Bench of this Court has noted that the provisions in Section 11BB of the Central Excise Act and the provisions of Section 27A of the said Act are *pari materia* and therefore, submits that the decision of the Apex Court in *Ranbaxy Laboratories Ltd. (supra)* must apply on all fours, to the facts and circumstances of the present case. He submits that in *Shelf Drilling International Inc. (supra),* this Court had in fact passed strictures against the Authority of the Customs Department for delaying consideration of application for refund and thereafter denying interest on delayed refund consistent with provisions of Section 27A of the said Act. He submits that despite this, interest on delayed refund has been denied to the petitioners and therefore, writ of mandamus is liable to be issued.

6] Mr. Sham Walve, learned counsel for the respondents, submits that in this case the petitioners had themselves deposited the amounts with department consequent upon delay in discharge of export obligation. He submits that the interest on delayed refund of pre-deposit is to be awarded only from the date of refund order and not upon the expiry of three months from the date of refund applications. In support of this, Mr.Walve relies upon the ***Commissioner of Central Excise , Hyderabad vs. I.T.C. Ltd. - 179 E.L.T. 15 (SC)***, ***Abdulla Gani vs. Union of India – 48 S.T.R. 17 (Bom), Prempreet Textile Industries Ltd. vs. Union of India – 293 E.L.T. 523 (Guj).*** On such basis, Mr. Walve submits that this petition is liable to be dismissed.

7] The rival contentions now fall for our determination.

8] According to us, the issue involved in this petition is entirely covered by the decision of Apex Court in *Ranbaxy Laboratories Ltd. (supra).* In the context of provisions of Section 11BB of the Central Excise Act, the Apex Court has held that manifestly, interest under Section 11BB of the Central Excise 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 of the Central Excise Act that can be arrived at is that interest under the said section becomes payable on the expiry of period of three months from the date of receipt of application under sub-section (1) of Section 11B of the Central Excise Act and further, the explanation added to the said section does not have any bearing or connection with the date from which interest under Section 11BB of the Central Excise Act becomes payable.

9] From the perusal of the provisions under Section 11BB of the Central Excise Act and Section 27A of the said Act, with which we are concerned, it is apparent that the provisions are *pari materia.* Therefore, interpretation put on the provisions of Section 11BB of the Central Excise Act will equally apply to the interpretation of provisions of Section 27A of the said Act.

10] In fact, in *Shelf Drilling International Inc (supra),* the Division Bench of this Court has in fact applied the ruling of the Apex Court in *Ranbaxy Laboratories Ltd. (supra)* to a case of refund arising under Section 27A of the said Act by expressly holding that the provisions in Section 11B and 11BB of the Central Excise Act are almost identical and *pari materia* to Section 27 and Section 27AA of the said Act. In paragraph 24, the Division Bench, in fact, issued strictures on the department delaying the process of refund application made by the assessee.

11] In the facts of the present case, we find no justification whatsoever on the part of the respondents for denying the petitioners interest on delayed refund amount for the period between 11th January 2008, i.e., three months after the expiry of receipt of refund applications dated 10th October 2007 till the date of actual refund, i.e., 16th August 2017. Accordingly, writ of mandamus as prayed for by the petitioners is liable to issue.

12] Mr. Walve's contention that this was a case of deposit the duty by the petitioners and therefore, the principles in case of ***ITC Ltd. (supra), Abdulla Gani (supra), Prempreet Textile Industries Ltd. (supra)*** will apply, cannot be accepted. In all the said decisions the issue involved related to refund of pre-deposit made before the appellate Tribunal during pendency of an appeal. In the present case, we are not at all concerned with any issue of refund of pre-deposit. In the present case, the petitioners made deposits in pursuance of express directions issued by the DGFT simply because there was some delay on the part of the petitioners in complying with the export obligation. Thereafter, such amounts were appropriated by the respondents on basis of orders that the petitioners had breached the terms and conditions of the Advance Licenses under Notification No. 204 of 1992. Such orders were ultimately set aside after it was found that the petitioners had committed no breaches. Accordingly, the respondents were duty bound to refund the amounts deposited by the petitioners and sanction for such refund has already been granted.

13] There is no dispute that the petitioners had filed two separate applications dated 10th October 2007 for refund, which was ultimately found to be due and payable to the petitioners. Accordingly, in terms of Section 27 and 27A of the said Act, the petitioners are entitled to interest on delayed refund on an expiry of period of three months from the date of receipt of applications dated 10th October 2007 till the date of actual refund. Since the impugned order has failed to grant such interest, the same warrants interference.

14] Although, in this matter, the issue of alternate remedy was not raised by the respondents, we clarify in brief, reasons which prompted us to entertain the present petition without relegating the petitioners to avail alternate remedies under the Customs Act, 1962. In the first place, taking into consideration the chequered history of the matter and the fact that the petitioners were required to take out several proceedings in order to secure the refunds which were admittedly due to it, we did not deem it appropriate to relegate the petitioners to avail the alternate remedy under the Statute. Secondly, and most importantly, the impugned orders/action of the respondents is in flagrant breach of the decision of the Apex Court in *Ranbaxy Laboratories Ltd (supra)* as also the decision of this Court in *Shelf Drilling International Inc. (supra).* If the petitioners were to be relegated to avail alternate remedy, then, serious prejudice would ensue to the petitioners, since the Customs Act 1962 does not contemplate award of any interest on the interest component due and payable to the petitioners. Thirdly, in quite similar circumstances, this Court, in the case of ***Shroff United Chemicals Limited vs. Union of India – 24 S.T.R. 17 (Bom)*** rejected the plea of alternate remedy and entertained a petition where facts were not in dispute and the Authorities had failed to apply the correct principles in matters of refund.

15] Accordingly, we allow this petition and make Rule absolute in terms of prayer clause (b) and direct the respondents to pay interest to the petitioner on refund amount for the period between 11th January 2008 to 4th December 2016, since, the interest on refund amount for the later period has already been awarded by the impugned orders. The impugned orders are modified accordingly.

16] We direct that the interest amount in terms of this order be computed and paid to the petitioners, as expeditiously as possible and in no case later than two months from the date of this order is uploaded on the website.

17] In the facts and circumstances of the present case, there shall be no order as to costs.

(M.S.SONAK, J.) **(M.S.SANKLECHA, J.)**