IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.81 OF 2019

The Commissioner of Central Goods
and Service Tax & Central Excise, Daman .. Appellant

v/s.

Alfa Packaging .. Respondent

Ms. Padmavati Patil a/w Mr. Karan Chavan I/b Cenex Services for the respondent

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 18th JUNE, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (Act) challenges the order dated 27th November, 2017 passed by the Custom, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The Revenue has urged the only following question of law for our consideration :-

> *(a) Whether the Tribunal was right in allowing the interest on refund sanctioned when the original issue is pending for decision before the Hon'ble Supreme Court in SLP No. 2672/2012 filed by the department against the Hon'ble High Court's order dated 24.03.2011 as well as the order dated 20.09.2012 sanctioning the*

> *said refund claim is also challenged by the Department before the first Appellate Authority?*

3. The respondent is engaged in the manufacture of cosmetic shampoo falling under Chapter 33 of the Central Excise Tariff Act, 1985. The Revenue was of the view that the cosmetic shampoo have to be assessed to duty under the MRP (Maximum Retail Price) based assessment under Section 4A of the Act. According to the respondent, the assessment had to be done on transaction value of the cosmetic shampoo under Section 4 of the Act. This led to the assessment being made on the provisional basis on MRP based assessment for the period 10th August, 1998 to 31st October, 1998. The assessment was finalized on 17th December, 1998 accepting the stand of the respondent that valuation of cosmetic shampoo is to be on transaction basis under Section 4 of the Act. This lead to the respondent being entitled to refund of Rs.49.17 lakhs.

4. In the above view, on 18th January, 1999 the respondent filed its application for refund of Rs.49.17 lakhs. The authorities under the Act upto the Tribunal, rejected the claim for refund on grounds of unjust adjustment. However, in appeal the Hon'ble Gujarat High Court by order dated 24th March, 2011 negatived the stand of the Revenue and

held that there was no unjust enrichment of the respondent in case refund of Rs.49.17 lakhs is granted to it.

5. Consequent to the order dated 24th March, 2011 of the Gujarat High Court, the appellant refunded on 20th September, 2012 the principal amount of Rs.49.17 lakhs but did not pay the interest due in terms of Section 11BB of the Act. This led to the respondent demanding interest from the appellant for the period 18th April, 1999 to 20th September, 2012 under Section 11BB of the Act. The Authorities under the Act rejected the claim for interest. Finally, on the appeal of the respondent reaching the Tribunal, the impugned order dated 27th November, 2017 held that the respondent is entitled to interest as claimed from 18th April, 1999 i.e. 3 months after the date of refund application i.e. 18th January, 1999 till the grant of refund of Rs.49.17 lakhs on 20th September, 2012. This by following the decision of the Apex Court in ***Ranbaxy Laboratories Ltd. Vs. Union of India, (2011) 273 ELT 3***. In the above case, the Apex Court had held that the liability of the Revenue to pay interest under Section 11BB of the Act commences from the date of expiry of 3 months from the date of receipt of application for refund under the Act till the date the principal amount was paid back to the respondent assessee.

6. Mr. Jetly, learned Counsel appearing on behalf of the appellant does not dispute the decision of the Tribunal on merits. It is very fairly conceded that the decision of Apex Court in Ranbaxy Laboratories Ltd. (supra) would apply to the facts of the present case. The only grievance urged on behalf of the Revenue is that the principal amount of Rs.49.17 lakhs which was granted as refund consequent to the order dated 24th March, 2011 of the Gujarat High Court is pending consideration before the Hon'ble Supreme Court. Therefore, in these facts, the grant of interest could await the final decision of the Apex Court on the entitlement of the respondent to the principal amount itself.

7. It is an undisputed position that the refund has to be granted under Section 11BB of the Act within a period of 3 months from the date of the application for refund, if the refund is not paid during the stipulated 3 months period, the interest start running. In terms of Section 11BB of the Act, the Revenue was obliged to give interest along with principal amount in terms of Section 11BB of the Act. The fact that the principal amount of Rs.49.17 lakhs was refunded to the respondent is in appeal before the Hon'ble Supreme Court would not detract from the obligation of the Revenue to comply with the

provisions of Section 11BB of the Act in the absence of any stay to the order dated 24th March, 2011 of the Hon'ble Gujarat High Court by the Apex Court. The liability of interest commences after 3 months of the refund application, if the refund is not made within 3 months from the date of application for refund. Thus, it runs along with the principal amount Mere pendency of the appeal before the Apex Court would not justify the Revenue ignoring the statutory provisions of the Act namely Section 11BB of the Act. This it has to comply.

8. In these circumstances, the view taken by the Tribunal cannot be found fault with. It is self-evident position on reading of Section 11BB of the Act that the interest has to be granted if the refund is not made within a period of 3 months from the date of application for refund.

9. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

10. The appeal is dismissed. No order as to costs.

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