IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.22831 of 2010

M/s.Gillette Diversified Operations Pvt. Ltd.,
No.126B/1A1, Vandalur Kelambakkam Road,
Mambakkam
Cheglepet Taluk,
Kancheepuram District
Chennai-600048 ...Petitioner

Vs.

1.The Joint Secretary,
(Revision Application),
Ministry of Finance,
Department of Revenue,
14, Hudco Vishala Building, B Wing,
6h Floor, Bhikaji Cama Place
New Delhi 110 066.

2.The Maritime Commissioner of Central Excise,
26/1, Mahatma Gandhi Road,
Nungambakam,
Chennai-600034.

3.The Commissioner of Central Excise (Appeals),
26/1, Mahatama Gandhi Road,
Numgambakam
Chennai 600034. ...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in his order No.1313-1315/10-CX of the Government of India dated 13.08.2010 and quash the same and direct the respondents to refund the rebate of Rs.9,60,725/- (Rs.1,01,336/- + Rs.1,01,336/- +Rs.29,984 +7,29,069/-) being the claim for rebate of duty due on the exports made by the petitioner, along with appropriate duty due on the exports made by the petitioner, along with appropriate interest from three months from the date of filing the respective rebate claims till the date of payment.

For Petitioner : Mrs.L.Maithili

For Respondent : Mr.K.S.Ramasamy

O R D E R

The petitioner is a merchant exporter and had been engaged by a manufacturer to export tooth brushes and shaver brushes. The manufacturer, one M/s.Rialto (P) Ltd. (hereinafter referred to as 'Rialto') had cleared the goods on payment of central excise duty to the petitioner, who exported the same. The petitioner sought rebate of the duty paid, such benefit being passed on to it by the manufacturer. The claim was made in terms of Rule 18 of the Central Excise Rules, 2002 (in short 'Rules'). A total of three claims were filed, the first on 03.03.2006 relating to rebate of Rs.4,69,677/-. The Commissioner allowed the claim substantially by order dated 23.03.2006 as against which both the Department and assessee filed appeals before the first appellate authority.

2. Refund/rebate claims 2 and 3 dealt with shaver brushes and are dated 14.09.2005 and 23.09.2005. Both the claims were dismissed by orders dated 13.10.2006 and 26.06.2007 as against which appeals were filed before the first appellate authority, Commissioner of Central Excise (Appeals) by the petitioner that were, by two appellate orders dated 28.09.2007 and 29.09.2008, rejected. The petitioner sought revision of the aforesaid orders by way of Revision Applications dated 20.02.2009 and a common order dated 13.08.2010, rejecting the applications, was passed by the respondent, that is under challenge in the present writ petition.

3. The petitioner challenges the order mainly on the ground that orders dated 14.09.2005 and 23.09.2005 ought not to have rejected the refunds simply for the reason that no duty was payable on the transaction to begin with and since the transaction was duty-free and subject to exemption. Secondly, reference is made to Rule 18 of the Central Excise Rules and Notification 19 of 2004 dated 06.09.2004, indicating that it is only in cases of direct export that rebate could be sought and such rebate could not be sought by a merchant exporter.

4. Learned counsel for the petitioner relies on a decision of the Gujarat High Court in the case of Arvind Ltd. Vs. Union of India [(2014) 300 ELT 481], confirmed by the Supreme Court in Union of India Vs. Arvind Ltd. [(2017) 352 ELT A21].

5. Mr.Ramaswami, learned counsel appearing for the respondent, for his part, supports the order of rejection.

6. Heard learned counsels and carefully examined the rival contentions advanced as well as the relevant documents.

7. Rebate of duty is dealt with under Rule 18 of the Rules, extracted below:

> Rule 18. Rabate of duty.- Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

8. Rule 18 contemplates that rebate may be granted on excisable goods or duty paid on materials used in manufacture or processing subject to conditions or limitations, if any, in cases of export. In this case, the fact that (i) duty has been remitted in respect of the goods and (ii) the goods have been exported is not in dispute. The rejection is on the basis that the duty claimed as rebate ought not to have been paid at all, seeing as the goods in question, were exempt in the first place. I see no merit in this submission.

9. To begin with, Rule 18 does not make a distinction between a case where duty has been paid or a one where duty ought not to have been paid, but was still remitted. The only condition imposed is that duty be remitted and there is no dispute on this aspect.

10. The second condition as contained in Clause 2(a) of Notification 19 is extracted below:

> (2) Condition and limitations:
>
> (a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order;

11. The revenue argues that the export should be only by a manufacturer, direct from the factory. I do not agree with this submission, seeing as the latter portion of the Notification refers to export both by a manufacturer directly as well as

through merchant exporter. Moreover, the activity sought to be addressed is that of 'export' and in the present case, it is not disputed that the goods have, in fact, been 'exported'. This will, in my view, suffice as far as satisfaction of the requirement is concerned.

12. Furthermore, the appellate authority in his order has confirmed categorically that the manufacturer has filed a disclaimer to the effect that it has not claimed the rebate. Thus, there is no question of a double claim of the duty remitted.

13. The Division Bench in the case of Arvind Ltd (supra) at paragraph 9 and 10 states as follows:

> 9. On, thus, having heard both the sides and on examination of the material on record, the question that involves in these petitions is the wrong availment of the benefit of concessional rate of duty vide Notification No.59/2008 dated December 07, 2008. Admittedly, the final products were exempted from payment of duty by original Notification No.29/2004-CE dated July 09, 2004 as further amended vide Notification No.59/2008-CE dated December 07, 2008. The fact is not being disputed by the respondents that the petitioner availed Notification No.59/2008 for clearance made to export and thereafter filed various rebate claims. It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No.59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat Credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No.29/2004 as amended by Notification No.59/2008-CE read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.

> 10. We also cannot be oblivious of the fact that in various other cases, the other assessees have been given refund/rebate of the duty paid on inputs used in exported goods. The stand of the Revenue is also not sustainable that the payment of duty on final products exported at the will of the assessee cannot be compared with other type of cases of refund/rebate of duty. Admittedly, when the petitioner was given exemption from payment of whole of the duty and the petitioner if had paid duty at the time of exporting the goods, there is no reason why it should be denied the rebate claimed which otherwise the petitioner is found entitled to. We are not going into the larger issues initially argued before us as subsequently the Revenue has substantially admitted the claim of rebate of excise duty and has not resisted in substance such claim of rebate.

This order has been confirmed by the Supreme Court in Union of India Vs. Arvind Ltd. [(2017) 352 ELT A21].

14. In the light of the aforesaid discussion, it is clear that (i) the duty having been admittedly paid, (ii) the goods having been, admittedly, exported there is no justification whatsoever for the revenue to reject the rebate sought. In fact, accepting the argument of the revenue would tantamount to unjust enrichment of the revenue, since duty, which ought not to have been paid has, admittedly, been remitted and received.

15. This writ petition is allowed and the rebate claimed is liable to be refunded within a period of four weeks from date of receipt of a copy of this order.

16. The petitioner prays for interest from three months from the date of filing the respective rebate claims till date of payment of the same. This is contested by Mr.K.S.Ramasamy, learned counsel for the respondent, who argues that the question of interest would arise only in the case of refund and not rebate. I reject his defence for the following reasons.

17. Section 11B of the Central Excise Act, 1994 deals with claim of refund of duty. The Explanation to the provision defines 'refund' as follows:

> Section 11B. 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 12A) 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 :

Thus, the word 'refund' includes, inter alia, 'rebate' as well.

18. The Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India [(2011) 273 ELT 3], has considered a controversy relating to claims of rebate of duty and interest thereon. The Court, after noting the provisions of Section 11BB relating to interest on delayed refunds, considered a Circular issued by the Central Board of Excise & Customs dated 01.10.2002, wherein the Board categorically states that interest is liable to be paid in all cases of rebate as well as refund. Thus rebate and refund have been held to be in pari materia and no distinction has been made in that regard. The Circular is extracted below:

> Circular No.670/61/2002-CX, dated 1-10-2002
> F.No.268/51/2002-CX.8
>
> Government of India
> Ministry of Finance (Department of Revenue)
> Central Board of Excise & Customs, New Delhi
>
> Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding
>
> I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing.

In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No.398/31/98-CX, dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed.

The petitioner is thus entitled to interest at the rate of 6% per annum.

19. In fine, the rebate ordered at paragraph 15 of this order, along with interest at the rate of 6% per annum computed from three months from date of claim of rebate till date of payment, shall be paid over to the petitioner. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Joint Secretary,
(Revision Application),
Ministry of Finance,
Department of Revenue,
14, Hudco Vishala Building, B Wing,
6h Floor, Bhikaji Cama Place
New Delhi 110 066.

2.The Maritime Commissioner of Central Excise,
26/1, Mahatma Gandhi Road,
Nungambakam,
Chennai-600034.

3.The Commissioner of Central Excise (Appeals),
26/1, Mahatama Gandhi Road,
Numgambakam
Chennai 600034.

+1cc to M/s.L.Maithili Associates, Advocate Sr.78669

W.P.No.22831 of 2010
& MP.No.1 of 2011

mp[co]
srg 31/01/2020