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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 26707 of 2018 (O&M)
Date of Decision: 24.10.2019

M/s. Dee Kay Exports through its partner Sh. Baljinder Singh,
24, Industrial Estate, Yamuna Nagar (Haryana)

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

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

Mr. Anshuman Chopra, Sr. Standing Counsel, CBEC
for the respondents.

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JASWANT SINGH, J.

CM No. 11502-CWP of 2019

Present application moved by the applicant-respondents is for placing on record the reply by way of affidavit dated 05.08.2019 of Sh. Sunil Singh Katiyar, Commissioner of CGST, Panchkula.

Application is **allowed**. The reply is taken on record.

MAIN CASE

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking quashing of order dated 27.09.2018 **(Annexure P-4)** to the extent respondent No. 3-Assistant Commissioner, CGST, Yamuna Nagar has declined interest payable under Section 11BB of the Central Excise Act, 1944 (for short '1944 Act') even though principal amount has been refunded.

2. The petitioner was engaged in importing and domestically procuring Zinc Ash, which was converted into Zinc Ingots and Zinc Sulphate. On account of change of Tariff classification of Zinc Sulphate, Central Excise duty became payable on Zinc Sulphate w.e.f. 01.01.2007. Accordingly, respondent demanded duty amounting to ₹ 30,68,816/- by way of issuing a Show Notice dated 04.02.2008 and the petitioner deposited the amount of duty by way of reversal of Cenvat Credit.

3. The Central Board of Indirect Taxes and Customs issued a Notification dated 03.06.2009 under Section 11C of the 1944 Act, whereby Zinc Sulphate was exempted with retrospective effect i.e. 01.01.2007. Consequently, the petitioner filed refund application before respondent on 03.09.2009 **(Annexure P-1)** which was rejected by the respondent vide order dated 30.04.2010 **(Annexure P-2)**. The petitioner unsuccessfully assailed said order before the Commissioner (A) and thereafter filed an appeal before learned Tribunal which vide order dated 21.02.2018 **(Annexure P-3)** allowed the same.

4. The petitioner vide letter dated 29.06.2018 requested the respondent to release their refund alongwith interest as prescribed under Section 11BB of the Act. The respondent vide Order-in-Original dated 27.09.2018 **(Annexure P-4)** sanctioned refund of duty but declined claim of Interest.

5. Mr. Jagmohan Bansal, counsel for the petitioner contended that present matter is squarely covered by judgement of Hon'ble Supreme Court in the case of ***Ranbaxy Laboratories LTd Versus UOI, 2011 (273) ELT 3*** which has been followed by this Hon'ble Court in the case of ***Om Refoils Ltd. Versus UOI***, ***CWP No. 13714 of 2016***, decided on ***18.01.2018***.

6. Counsel for the respondent contended that interest was paid within three (03) months from the date of order passed by the Tribunal, thus department is not liable to pay interest.

7. After having scrutinized record of the case and hearing arguments of both sides, we find that as per Section 11BB of the Central Excise Act, 1944, if duty is not refunded within three (03) months from the date of application, applicant is entitled to interest. In the present matter, refund application was filed on 03.09.2009 which was rejected and the petitioner unsuccessfully assailed said order before Commissioner (A). The petitioner filed further appeal before the Tribunal which vide order dated 21.02.2018 **(Annexure P-3)** allowed appeal of the petitioner and accordingly, the respondent sanctioned refund on 27.09.2018. Hon'ble Supreme Court in the case ***Ranbaxy Laboratories Ltd.*** <u>*Versus*</u> ***Union of India, 2011 (273) E.L.T (S.C)*** has clearly held that interest is payable from the expiry of three months from the date of filing refund application and not from the date of favourable order of Appellate Authority. Relevant portion of judgment is reproduced as under:

> *" **8**. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under:*
>
> > *"**11B. Claim for refund of duty. -** (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty* ***<u>may make an application for refund of such duty</u>*** *and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise* ***<u>before the expiry of one year from the relevant date</u>*** *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 :

Provided *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:*

Provided *further that the* ***limitation of one year shall not apply where any duty has been paid under protest****.*

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise 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 of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise 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) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable

goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

***Provided** further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.*

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) ……………………………………………………………………………

(5) ……………………………………………………………………………

Section 11BB, the pivotal provision, reads thus :

*“ **11BB. Interest on delayed refunds. -***

*If any duty ordered to be refunded under sub-section (2) of section 11B 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 11B 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 11B, 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."*

9. *It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB 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 11B 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 Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant*

Commissioner of Central Excise or 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 11B 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 11BB of the Act. Manifestly, interest under Section 11BB of the 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 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 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

10. *It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. [See: Cape Brandy Syndicate v. Inland Revenue Commissioners, [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax, (2010) 8 SCC 739].*

11. *At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The*

Circular reads thus:

"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."

(Emphasis supplied)

12. *Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.*

13. *We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under :*

"   Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under subsection (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare

Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

The special leave petition is dismissed. No costs."

***14.** At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.*

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

8. From the reading of Section 11BB and above quoted judgment, it is quite apparent that liability of interest relates back to date of filing application and not date of order passed by one or another authority. As the respondents failed to sanction refund within three (03) months from the date of application, thus they are liable to pay interest for the delayed period.

In the present case, refund application was filed on 03.09.2009 **(P-1)** which was rejected by the respondent vide order dated 30.04.2010. The refund was ultimately sanctioned on 27.09.2018 when the Tribunal allowed appeal of the petitioner, thus, respondents are liable to pay interest w.e.f. expiry of three (03) months from 03.09.2009.

9. In view of our above findings, present petition deserves to be allowed and accordingly **allowed**. The respondents are hereby **directed** to pay interest at prescribed rate within one (01) month from the date of receipt of certified copy of this order, **failing which** the Sanctioning/Competent Officer shall be liable to pay interest @ 6% on the amount due from his/her own pocket, apart from liable to be hauled up in contempt proceedings.

(JASWANT SINGH)
JUDGE

October 24, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*