IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.9348 of 2020

M/s.Herrenknecht India Private Limited
GNT Road, No.11, Alinjivakkam Village,
Ponneri Taluk, Thiruvallur District,
Chennai - 600 067
By its Director N.Venkatasubramanian

…Petitioner

Vs

The Assistant Commissioner of GST & Central Excise,
Ponneri Division,
Chennai Outer GST Commissionerate
R-40, A1, 100 Feet Road,
Mogappair, Chennai - 600 037.

…Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus directing the respondent herein to consider the representation dated 19.12.2019 of the petitioner followed by the two reminders dated 17.01.2020 and 20.02.2020 sent on behalf of the petitioner seeking the payment of the interest on the sanction of the rebate/refund beyond the period of three months in terms of Sec.11BB of the erstwhile Central Excise Act.

For Petitioner : Mr.N.Viswanathan
For Respondents : Mr.T.L.Thirumalaisamy
Senior Panel Counsel

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O R D E R

Heard Mr.Viswanathan, learned counsel for the petitioner and Mr.T.L.Thirumalaisamy, learned Senior Panel Counsel for the respondent.

2. The petitioner is in the second round of litigation before this Court and seeks a mandamus directing the Assistant Commissioner (GST) to consider representation dated 19.12.2019 and subsequent reminders seeking payment of interest on the rebate sanctioned beyond the period of three months from date of filing of claim as per Section 11BB of the Central Excise Act, 1944 (in short 'Act').

3. Mr.Viswanathan points out that the language of Section 11BB is clear to the effect that interest is liable to be paid, if refund/rebate is not sanctioned within a period of three months from the date of receipt of refund claim. He relies in this regard upon a judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. V. Union of India (273 ELT 3).

4. In that case, the claim for refund was made in 2003 and come to be rejected in 2004. The order of rejection was reversed in September, 2004 and the rebate sanctioned thereafter by the Commissioner (Appeals). An appeal was filed by the Revenue challenging the Appellate order before the CESTAT that was dismissed. The rebate was granted in January, 2005 and in April, 2005 the assessee therein, i.e, Ranbaxy Laboratories Ltd. filed a claim for interest under Section 11BB of the Act. On the aforesaid facts, the Bench, considering the provisions of 11 B providing for claim for refund of duty and Section 11BB dealing with interest on delayed refunds held as follows:

> '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.'

5. The Bench thereafter reiterated the settled proposition of law to the effect that fiscal legislation would have to be strictly construed and nothing further read into the provision and nothing implied. A circular of the Central Board of Excise and Customs, New Delhi, dated 01.10.2002 reiterating an earlier circular dated 02.06.1998 that stressed the importance of disposing rebate/refund claims within three months from date of receipt of such application, stating that the provisions of Section 11 BB would stand attracted 'automatically' in the case of any refund sanctioned beyond the period of three months, was also noticed. The conclusion of the Court was to the effect that the liability of the revenue to interest under Section 11BB commences from the date of expiry of 3 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 the the order of refund was made.

6. For the sake of completion of narration, I extract Section 11BB below:-

1[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, 2 [not below five per cent. and not exceeding thirty per cent. per annum as is for the time being fixed 3[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:.......

7. The ratio of the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. (Supra) is applicable on all fours to the present matter. As the representation of petitioner dated 19.12.2019 seeking interest is still pending, it would suffice that the respondent be directed to consider the aforesaid representation in light of the judgment of the Supreme Court in the case of Ranbaxy Laboratories (supra) within a period of eight (8) weeks from today after hearing the petitioner either via video conferencing or physical hearing as may be mutually convenient to the parties.

8. The Writ Petition is disposed of in the aforesaid terms. No costs. Connected Miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner of GST & Central Excise,
Ponneri Division,
Chennai Outer GST Commissionerate
R-40, A1, 100 Feet Road,
Mogappair, Chennai - 600 037.

+1 cc to Mr.T.L.Thirumalaisamy Advocate sr38062
+1 cc to M/s.N.Viswanathan Advocate sr38177

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