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

CENTRAL EXCISE APPEAL NO.121 OF 2019
WITH
CENTRAL EXCISE APPEAL NO.122 OF 2019
WITH
CENTRAL EXCISE APPEAL NO.123 OF 2019
WITH
CENTRAL EXCISE APPEAL NO.124 OF 2019
WITH
CENTRAL EXCISE APPEAL NO.125 OF 2019

Lavino Kapur Cotton Pvt. Ltd.
Plot No.H-1, MIDC, Tarapur,
Boisar-401 506, Dist. Palghar ... Appellant
Versus
The Commissioner of CGST
& Central Excise,
Palghar, Commissioner at,
5th Floor, Central GST Bhavan,
Plot No.C-24,
Bandra-Kurla Complex, Bandra (East),
Mumbai-400 050 ... Respondent

* * *

Mr. Darius Shroff, Senior Advocate a/w Mr. Rahul P. Jain i/b Alpha Chambers for Appellant.

Mr. Sham Walve a/w Ms. Sangeeta Yadav for the Respondent.

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CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

RESERVED ON : 23 NOVEMBER 2022
PRONOUNCED ON : 2 DECEMBER 2022

: JUDGMENT :

[Per DHIRAJ SINGH THAKUR, J.]

. This batch of an appeals has been filed against a common

Order dated 13 October 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in Appeals bearing Nos.ST/85044/85046/86545/86555 of 2017.

2 Since the issue involved is common in all the appeals, for the purpose of facility of reference, facts of Central Excise Appeal No.121 of 2019 are being referred to.

3 The appeals were admitted on the following substantial question of law :

> "Whether the order passed by Appellate Tribunal, CESTAT, holding that the appellate company is entitled to interest u/s. 11BB of the Act only after three months of the filing of refund applications after the Tribunal Order granting refund is contrary to the decision of the Supreme court in the case of Ranbaxy Laboratories Ltd. Vs. UoI 2011-TIOL-105-SC-CX wherein the Supreme Court held that the interest is to be granted from the expiry of three months from the date of filing of the initial refund claimed and not from the date of the order of the authority finally granting refund and as such bad in law?"

Briefly stated the material facts are as under :

4 The Appellant filed four refund applications for refund of duty under the provision of Rule 5 of the CENVAT Credit Rules, 2004, amounting to Rs.59.35,217/- on various dates in 2005, 2006 and

2007.

5 The adjudicating authority rejected the refund claims of the Appellant, however, finally the same were allowed by the Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") by virtue of its Order dated 10 February 2016.

6 After the Order of tribunal was passed, the Assistant Commissioner of Central Excise gave refund of an amount of Rs.59,35,217/- to the Appellant in June 2016. However, the claim of the Appellant for grant of interest under Section 11BB of the Central Excise Act, 1944 was rejected. For facility of reference, Section 11B and Section 11BB are reproduced as under :

> *Section 11B.* ***Claim for refund of duty****.*
>
> *(1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months [1] from the relevant date [4] in such form 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 in relation to which such refund is claimed was collected from, or paid by, him and the incidence of 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 said Act and the same shall be dealt with in accordance with the provisions of subsection (2) as substituted by that Act]: 4 Provided further that] the limitation of six months shall not apply where any duty has been paid under protest.

(2) if, on receipt of any such application, the Assistant Col- lector of Central Excise is satisfied that the whole or any part of the duty of excise 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 as determined by the Assistant Collector 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 manufac- ture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant' s account current maintained with the Collector 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 paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

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

(f) the duty of excise 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 has not been passed on by the persons concerned to any other person.

Section 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: Provided 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 4[, National Tax 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.]

7 An appeal was preferred by the Appellant before the Commissioner of Central Excise (Appeals), who vide its Order dated 24 April 2017 rejected the claim of the Appellant for grant of interest under Section 11BB on the delayed refund of Rs.59,35,217/-.

8 The matter ultimately reached the Appellate Tribunal in Appeal by the Appellant, who by virtue of its Order impugned held that the Appellant was entitled to interest on the amount ordered to be refunded. The tribunal held that the right to refund in favour of the Appellant accrued in terms of the Order of the Tribunal which

was passed on on 10 February 2016 and that the right to interest in terms of Section 11BB, in favour of the Appellant would accrue only if the refund has not been made within three months of the filing of the application in terms of such an Order.

9 The tribunal, therefore, proceeded to remand the matter to examine whether the refund applications were filed in terms of the Order dated 10 February 2016 and whether such refund applications were disposed of within three months thereof. It proceeded to Order that in the event there was a delay in refund beyond three months, the Appellant would be entitled to interest and not otherwise. It further went on to hold that the Appellant was not entitled to interest merely on filing an applications for refund without there being an Order under Section 11B(2) of Central Excise Act, 1944.

10 Mr. Shroff, learned Senior Advocate appearing for the Appellant, vehemently, urged that the Tribunal has committed a gross error in not appreciating correctly the bare provisions of Section 11 as also Sections 11B and 11BB and further urged that the tribunal had failed to appreciate and follow the Apex Court judgement in the case of **Ranbaxy Laboratories Limited Vs. Union of**

India and Others[1], even when the said judgement was cited and noticed by the Appellant, but applied wrongly.

11 Mr. Walve, learned Counsel for the Respondent, on the otherhand, reiterated the view expressed in the the Order impugned passed by the tribunal.

12 We have heard learned Counsel for the parties.

13 The question which arises for our consideration is whether 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 the application for refund under Section 11B(1) of the Act or the date on which the Order of refund is made ?

14 The date of filing of application for refund before the Authority is not in dispute. Assuming that the Assistant Commissioner of Central Excise, in the present case, had proceeded to accept the claim of the Appellant for refund and proceeded to pass an Order in terms of Section 11B(2) of the Act, then in case the amount was not refunded despite such an Order, the Appellant would be entitled to interest on the delayed payment of the refund

1 (2011) 10 Supreme Court Cases 292

after the expiry of three months from the date of such an Order. Section 11B, therefore, does not at all envisage an application tobe filed seeking refund. The only application, which Section 11B envisages is an application for refund in terms of Section 11B(1) and the only Order that the said Section 11B envisages is an Order under Section 11B(2), where if satisfied, the Assistant Commissioner of Central Excise or Deputy Commissioner may make an Order for refund of the whole or any part of the duty of excise and interest if any paid on such duty paid by the Appellant.

15 With a view to ensure that despite an Order being passed in terms of Section 11B(2), the amount of refund is not withheld for an unreasonably long period of time, Section 11BB envisages payment of interest on delayed refund beyond the period of three months from the date of receipt of an application under sub-section (1) of Section 11B. The rate of interest which is payable is at a the rate not below 5 per cent and not exceeding 30 per cent per annum, which may be fixed by the Central Government in an official gazzette.

The explanation appended to Section 11BB clearly takes care of a situation, where an Order of refund is made by the Commissioner of Appeals, the Appellate Tribunal or any Court against an Order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under sub-section (2) of Section 11B, such an Order would be deemed to be an Order passed under the said sub-section (2) of Section 11B for the purposes of Section 11BB, that is payment of interest on delayed refund.

16 A reading of the aforementioned provisions makes it clear that in a case where the Order is passed by the Appellate Tribunal, as has been done in the case of the Appellant, by virtue of its Order dated 13 October 2017, the said Order is deemed to be an Order under sub-section (2) of Section 11B and interest would be liable to be paid on delayed refund and therefore, interest would be liable to be paid in terms of Section 11BB on delayed refund as if it was an Order passed under sub-section (2) of Section 11B if the amount was not refunded within three months from the date of receipt of the application under sub-section (1). This issue, however, is no longer *res integra*.

17 The Apex Court in **Ranbaxy Laboratories Limited** (supra*)* has held as under :

> "19. 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 11-BB 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 the order of refund is made."

18 In our view, therefore, the tribunal, in its Order impugned wrongly applied the judgement of the Apex Court *supra* for purposes of denying the benefit of interest on delayed refund by holding that it was not entitled to the same from the date of the application under Section 11B(1), but only after the expiry of three months from the date of the Order of the tribunal dated 10 February 2016, if such applications were filed in terms of the said Order and were disposed of within three months thereof.

19 Be that as it may, we allow the appeals and answer the question in favour of the Appellant.

(VALMIKI SA MENEZES, J.) **(DHIRAJ SINGH THAKUR, J.)**

RAJESH VASANT CHITTEWAN

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