IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2023

PRONOUNCED ON : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3604 of 2021

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

v.

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 is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records connected with order in Original No.1 of 2021 dated 15.01.2021 passed by the respondent pursuant to the specific directions issued by this Court in W.P.No.9348 of 2020 dated 27.11.2020 to consider the claim of the petitioner for sanction of the interest on the belated payment of the refund under Section 11BB of the Central Excise Act in terms of the ratio laid by the judgment of the Hon'ble Supreme Court whereas the same had been rejected by the respondent totally overlooking the specific directions issued by this Court and to quash the same for having been passed contrary to law by violating the principles of judicial discipline and consequently direct the said respondent to forthwith pay the interest.

For Petitioner	: Mr.N.Vishwanathan
For Respondent	: Mr.V.Sundareswaran, Senior Panel Counsel

ORDER

The short question that arises for consideration in this writ petition is whether interest under Section 11BB of the Central Excise Act, 1944 (for short "the Act") would accrue from the date of expiry of 3 months from the date of receipt of application for refund (or) on the expiry of 3 months from the date of communication of the order of the Appellate authority / Court.

2.Brief Facts:

i. The petitioner is a 100% subsidiary of M/s. Herrenknecht AG, Germany. The petitioner is engaged in design, development and manufacture of Tunnel Boring Machines (TBM). The petitioner is also engaged in export of TBM and its parts. The petitioner had availed CENVAT Credit of duty and tax paid on inputs and input services used in the manufacture of the finished products. The CENVAT Credit was utilized for payment of duty on their finished goods in terms of the CENVAT Credit Rules, 2004.

ii. The petitioner had cleared a refurbished TBM in semi-knocked down condition for export to M/s. Herrenknecht AG, Germany. The petitioner claimed rebate of Rs. 2,99,45,260/- in relation to the said export. Whileso, a show cause notice No.2 of 2016 dated 02.02.2016 was issued by the Principal Commissioner, Chennai 1 Commissionerate requiring the applicant to show cause as to why CENVAT Credit availed on CVD/SAD paid during import of used TBM should not be recovered inasmuch as they had availed credit of duty paid on goods used in a process not amounting to manufacture. The rebate claim filed by the petitioner on 07.07.2016 came to be rejected vide order in Original No. 177 / 2016 (R) dated 10.10.2016 on the premise that the process carried out by the petitioner did not amount to manufacture.

iii. The petitioner preferred an appeal in Appeal No.314/2017 (CTA-

II) which was also rejected vide order dated 31.10.2017 reiterating the view that the process carried out by the petitioner did not constitute manufacture and thus not entitled to CENVAT Credit.

iv. Whileso, the Principal Commissioner of Central Excise, Chennai I passed an order in Original No.52/2017 dated 11.05.2017 holding that the process carried out by the petitioner amounted to manufacture in terms of Section 2(f) of the Act.

v. A writ petition was filed challenging the order in Appeal No.314/2017 dated 31.10.2017 on the premise that though the same was passed subsequent to the Order in Original No.52/2017 dated 11.05.2017 wherein it was found that the activity carried out by the petitioner amounted to manufacture the same was not taken into account. This Court was pleased to set aside the order in Appeal No. 314/2017 in W.P.No.2139/2018 directing the Commissioner Appeals II to hear the appeal afresh and to pass orders adverting to the order in Original No.52/2017 dated 11.05.2017 and also the acceptance of the said order by the Committee of Chief Commissioners.

vi. After analyzing the entire facts, the Commissioner Appeals vide order dated 27.08.2019 in Appeal No.221/2019 remitted the matter back to the Adjudicating Authority to consider the rebate claim subject to fulfillment of other criteria stipulated in the statute. The above order in Appeal also stood accepted by the Committee of Commissioners on 06.11.2019. Thereafter, the rebate claim was taken up pursuant to letter dated 03.01.2019 filed by the petitioner enclosing copies of the Order in Appeal and the order of this Court. The rebate claim was sanctioned vide order in Original No.13/2019 (R) dated 09.12.2019 under Section 11B of the Central Excise Act r/w Rule 18 of the Central Excise Rules, 2002.

vii. The petitioner vide letter dated 19.12.2019 claimed interest on the rebate of Rs.2,99,45,260/- from 11.10.2016 i.e., completion of 3 months from the date of application claiming rebate to 17.12.2019 i.e., when the rebate was actually sanctioned.

viii. Thereafter, a writ petition in W.P.No.9348 of 2020 was filed by the petitioner seeking a Mandamus directing the respondent to consider the request for interest. This Court was pleased to issue a Mandamus while observing that the judgment of the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd., v. Union of India* is applicable on all fours to the present matter and directed the respondent to consider the representation for interest in the light of the said judgment.

ix. The impugned order came to be passed pursuant to the above direction of this Court and after affording an opportunity of personal hearing to the petitioner, rejected the petitioner's claim of interest on the premise that originally the petitioner's claim for rebate filed on 11.07.2016 was rejected vide order dated 10.10.2016 i.e., within 3 months from the receipt of the application. Hence, the question of delay in refund and consequential interest does not arise. The impugned order also sought to rely on the deeming contained in the proviso to Section 11BB of the Act whereby the order passed by the Appellate Authority or a Court is deemed to be an order passed under sub Section 2 for the purpose of Section 11B of the Act. It was further stated that the rebate claim was sanctioned / crystalized only vide order dated 19.12.2019. Thus the question of interest due to delay in grant of rebate does not arise. It is this order of the respondent which is challenged.

3. It is the case of the petitioner that the impugned order is contrary to

the judgment of the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories* reported in *2011 (273) ELT 3 (SC)* and also the direction of this Court in W.P.No.9348 of 2020 wherein it has been held that the judgment of the Hon'ble Supreme Court in *Ranbaxy* would apply on all fours to the case of the petitioner.

4. To the contrary, the learned counsel for the respondent would place reliance on the counter and submitted by placing emphasis on the Explanation to Section 11BB of the Act that in view of the deeming contained therein, the interest payable on delayed refund under Section 11BB of the Act would accrue only in the event of delay in making the refund beyond 3 months from the date of the order of the adjudicating authority / appellate authority / Court.

5. Heard both sides. Perused the materials on record.

6. This Court finds that the present issue viz., whether the liability of the Revenue to pay interest under Section 11BB of the Act would

accrue/commence from the date of expiry of 3 months from the date of application for refund (or) on the expiry of 3 months from the date of the order of the adjudicating authority/ Court stands resolved by the judgment of the Hon'ble Supreme Court in *Ranbaxy Laboratories Ltd., v. Union of India*, reported in *2011 (273) ELT 3* wherein after finding that the appellant's claim for rebate of duty was rejected by the Assistant Commissioner and was subsequently allowed in appeal which was affirmed in further appeal before the Joint Secretary, Government of India it was held as under:

> <u>*Ranbaxy Laboratories Ltd. v. Union of India, (2011) 10 SCC 292 :*</u>
> ***12.*** *It is manifest from the aforeextracted provisions that Section 11-BB of the Act comes into play only after an order for refund has been made under Section 11-B of the Act. Section 11-BB 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 11-B 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 the proviso to Section 11-BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or the 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 11-B 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 11-BB of the Act.

(emphasis supplied)

6.1. It is clear from the above extract that the submission of the learned counsel for the respondent on the basis of the Explanation to Section 11BB of the Act to suggest that in view of the deeming contained therein, the interest payable on delayed refund under Section 11BB of the Act would accrue only in the event of delay in making the refund beyond 3 months from the date of the order of the adjudicating authority / appellate authority / Court was rejected by the Hon'ble Supreme Court. The Hon’ble Supreme Court thereafter proceeded to place reliance on the circular dated 02.06.1998 wherein it has been clarified that the provisions of Section 11BB of the Act would stand attracted automatically for any refund sanctioned beyond a period of 3 months from the date of application. The relevant portion is extracted hereunder:

*"**15.** At this juncture, it would be apposite to extract a Circular dated 1-10-2002, issued by the Central Board of Excise and Customs, New Delhi, wherein referring to its earlier Circular dated 2-6-1998, 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 11-BB of the Act. Significantly, the Board has stressed that the provisions of Section 11-BB 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 11-BB of the 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. The Board has been receiving a large number of representations from the 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, the Board would like to stress that the provisions of Section 11-BB of the 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 the higher appellate authority for grant of interest. Simultaneously, the Board would like to draw attention to Circular No. 398/31/98-CX, dated 2-6-1998 [(1998) 100 ELT T-16] wherein the 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, the 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)

16. *Thus, ever since Section 11-BB was inserted in the Act with effect from 26-5-1995, 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 11-B(1) of the Act.*

17. *We, thus find substance in the contention of the 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. [(2009) 243 ELT A-27 (SC)] 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: (ELT p. A-27)*

"Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in J.K. Cement Works v. CCE & Customs [(2004) 170 ELT 4 (Raj)] vide para 33: (ELT p. 11)

'33. A close reading of Section 11-BB, 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 sub-section (2) of Section 11-B 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 11-BB, non-payment within three months from the date of the commencement of Section 11-BB 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."

6.2. The above judgment of the Hon'ble Supreme Court in the case of Ranbaxy has been subsequently followed in the case of *Manisha Pharmo Plast Private Ltd., v. Union of India* reported in (*2021) 13 SCC 240*. Following the above judgments of the Hon'ble Supreme Court, this Court has no hesitation to hold that interest on refund in terms of Section 11 BB of the Act would accrue in the event of delay in grant of refund beyond 3 months from the date of application i.e., 11.07.2016 in the present case.

6.3. In the light of the above discussion, the respondents are directed to calculate the statutory interest in terms of Section 11 BB of the Act i.e., 3 months from 11.07.2016 (date of application for refund) until 17.12.2019 when the rebate was actually granted and pay the same within 4 months from the date of receipt of a copy of this order.

7. For all the above reasons, the writ petition stands disposed of accordingly. No costs.

10.11.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
shk/spp

MOHAMMED SHAFFIQ,J.

shk/spp

To

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

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