**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 29.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.4447 of 2021**

Kothari Sugars and Chemicals Limited,
No.115, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
Represented by its Company Secretary,
Mr.R.Prakash. ... Petitioner

v.

1.The Commissioner of CGST & Central Excise,
Chennai -I Commissionerate – North,
121 Uthamar Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Assistant Commissioner of CGST & Central Excise,
Tiruvottiyur Division,
Chennai Commissionerate North,
New No.459 (Old No.317), Anna Salai, Teynampet,
Chennai 600 018. ...Respondents

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 of the 2nd respondent culminating in the passing of the impugned order bearing No.21/2019-2020 (R) dated 20.02.2020 and quash the same partly, in so far as it rejects the interest claim of the petitioner on the refund amount of

Rs.66,68,656/- from 16.11.1994 and consequently direct the respondents herein to consider the petitioner's request for grant of interest on the said refunded amount of Rs.66,68,656/- from 16.11.1994 till 24.02.2020 and award the same to the petitioner, under the provisions of Section 11 BB of the Central Excise Act.

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|---|---|
| For Petitioner | : Mr.Joseph Kodianthara<br>Senior Counsel |
| For Respondents | : Mr.S.Gurumoorthy<br>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:

2.1. The petitioner is engaged in the manufacture of Poly-Isobutylene. Petroleum gas is the feed stock for such manufacture. Petroleum gas was supplied by Madras Refineries Ltd., presently Chennai Metro Corporation

Ltd. The supplies were effected through dedicated pipelines. The petroleum gas which was supplied was normally not consumed / used entirely in the manufacturing process. In other words, the supplies were normally in excess of the quantity of petroleum gas required for the manufacturing process. The excess or the unused feed stock was returned to the supplier viz., MRL. The Government vide notification No.159 / 89 – CE dated 17.07.1989 exempted the petitioner and similar downstream units from excise duty in respect of the quantity of the petroleum gas returned as unused / excess quantity. The above notification was revoked vide notification No.64 / 24-CE dated 01.03.1994. The exemption was however restored shortly thereafter vide notification No.116 / 94-CE dated 24.06.1994. The petitioner claimed refund of Rs.1,10,63,620/- for the period 01.03.1994 to 23.06.1994 vide application dated 16.11.1994 representing the duty paid on gas returned as unused / excess quantity. The claim for refund was rejected for the period 01.03.1994 to 16.05.1994 representing a sum of Rs.66,58,656/- on the premise that it was barred by limitation while granting refund of a sum of Rs.43,94,963/- for the period 17.05.1994 to 23.06.1994.

2.2. Aggrieved, the petitioner preferred an appeal before the

Commissioner Appeals which rejected the petitioner's claim for refund of Rs.66,68,656/- for the period 01.03.1994 to 16.05.1994 vide order dated 27.05.1996. The matter was carried by way of appeal before the CESTAT wherein refund of Rs.66,68,656/- for the period 01.03.1994 to 16.05.1994 was granted vide order dated 27.04.2005. The revenue carried the matter by way of appeal before this Court in CMA No.4057 of 2005. This Court was pleased to affirm the order of the CESTAT vide order dated 18.06.2019. Pursuant thereto, the petitioner was granted refund on 20.02.2020 by the revenue for the period 01.03.1994 to 16.05.1994 of Rs.66,68,656/-.

2.3. Against the above background the question that arises for consideration is whether the interest would start accruing 3 months from the date of application of refund i.e., 16.11.1994 until the refund was paid on 20.02.2020 in terms of Section 11BB of the Act (or) from the date of the order of this Court in C.M.A.No.4057 of 2005 dated 18.06.2019. The revenue rejected the claim for interest by placing reliance on Section 35 F and 35 FF of the Act while submitting that interest would commence only after 3 months from the final adjudication i.e., by the High Court vide order in C.M.A.No.4057 of 2005 dated 18.06.2019.

3. The learned counsel for the petitioner would submit that the impugned order of assessment denying the petitioner's claim that interest would start accruing 3 months from the date of filing an application i.e., 16.11.1994 by placing reliance on Section 35 FF of the Act is misconceived. Since 35 FF deals with interest on delayed refund of amount deposited under Section 35 F i.e., pre-deposit and would have no bearing on interest on delayed refunds which is governed by Section 11 BB of the Act. It is further submitted that the issue is no longer res integra and stands covered by the Judgment of the Supreme Court in the case of *Ranbaxy Laboratories Ltd., v. Union of India* reported in *2011 (273) ELT 3 (SC)*.

4. To the contrary, it was submitted by the learned counsel for the respondents by placing reliance on the counter that Section 11B deals with refund of duty paid by the assessee and Section 11BB of the Act deals with payment of interest on delayed refunds. It was submitted by placing emphasis on the Explanation to Section 11BB of the Act that the order passed by the High Court is deemed to be the order passed under Sub

section (2) of Section 11B of the Act. The order having been passed by the High Court on 18.06.2019 interest would accrue only if refund is not sanctioned within 3 months from the date of communication of the order of the High Court.

5. Heard both sides. Perused the material 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 receipt of application for refund (or) on the expiry of 3 months from the date of the order to the adjudicating authority/ Court stands resolved by the judgment of the Supreme Court *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:

*Ranbaxy Laboratories Ltd. v. Union of India, (2011) 10 SCC 292 : 2011 SCC OnLine SC 1420 at page 296*

***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., 16.11.1994 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 16.11.1994 (date of application for refund) until 20.02.2020 when the refund 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.

**29.09.2023**

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

To

1.The Commissioner of CGST & Central Excise,
Chennai -I Commissionerate – North,
121 Uthamar Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Assistant Commissioner of CGST & Central Excise,
Tiruvottiyur Division,
Chennai Commissionerate North,
New No.459 (Old No.317), Anna Salai, Teynampet,
Chennai 600 018.

**MOHAMMED SHAFFIQ,J.**

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