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(2015) 12 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 2362, 2464 Of 2006

Commissioner Of Central Excise Bhopal — APPELLANT

Vs

M/s Raymond Ltd. — RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:
Central Excise Act, 1944 — Section 11BB, 11B, 11B(1), 11B(2)

Citation : (2015) 12 CESTAT CK 0010

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Kannu Verma Kumar, Prashant Shrivastava

Final Decision : Allowed/Dismissed

Judgement

1. Feeling aggrieved with the impugned order dated 07.04.2006, both the assessee as well as the Revenue have filed appeals before this Tribunal. The

issue involved in this case relates to interest claim under Section 11BB of the Central Excise Act, 1944 for delayed sanction of refund filed under

Section 11B ibid.

2. Brief facts of the case are that in the Union Budget-2004, Notification No.30/2004 dated 09.07.2004 was issued by the Central Government,

granting full exemption to textile goods, subject to condition that Cenvat credit on inputs is not availed. The assessee opted for the said exemption and

decided to reverse the Cenvat credit lying as such in its factory on 08.07.2004 along with Cenvat credit availed on inputs contained in work in progress

as well as finished fabrics lying in stock as on the said date. The assessee reversed an ad hoc amount of Rs.6.76 Crores on 20.07.2004 in its PLA for

the credit availed on inputs as well as on the finished products lying in the factory. However, the amount debited was found to be in excess to the tune of Rs.55,66,808/-, for which the assessee had filed the refund application before the jurisdictional Central Excise authority. The refund application was

allowed by the Assistant Commissioner vide order dated 03.01.2006 and Rs.55,74,792/- was paid to the assessee on 03.01.2006. Since the interest

amount on delayed sanction of refund claim was not paid by the Department in terms of Section 11BB ibid, the assessee had filed appeal before the

ld. Commissioner (Appeals) against the original order dated 03.01.2006. The appeal was disposed of by the ld. Commissioner (Appeals) vide the

impugned order dated 07.04.2006, holding that since all the relevant particulars in connection with the refund claim were furnished by the assessee on

22.11.2004, the said date should be taken as the date of filing the refund application and for calculating the period for which the interest is due, the

time taken by the assessee to file the reply to show cause notice will be excluded.

3. The assessee has preferred this appeal against the impugned order on the ground that since the refund application complete in all respect was

submitted before the authorities on 24.09.2004, the said date is to be considered as the relevant date for the purpose of Section 11B ibid and the

assessee is entitled for interest under Section 11BB ibid from the date of expiry of three months from the date of filing of application, till the refund

was ultimately sanctioned. On the other hand, the contention of Revenue are that verification of the documents submitted by the assessee continued

till 23.06.2005 and thereafter, the adjudication order was passed on 03.01.2006. Thus, the Revenue argued that the impugned order holding the

relevant date of filing the refund application as 22.11.2004 is not legally sustainable.

4. Heard both sides and examined the case records.

5. The facts are not under dispute that the assessee had paid excess duty, to which it is entitled for refund; that the detailed documents in support of

claim of refund were furnished on 22.11.2004; and that upon completion of adjudication proceedings, the refund claim was sanctioned and the amount

was paid by the Department to the assessee on 03.01.2006.

6. Section 11B ibid deals with the manner of claiming the refund of duty and sanction by the proper officer of the Department. Section 11BB ibid

provides for payment of interest on delayed refunds. The statutory provision is extracted herein below:-

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â??11BB. Interest on delayed refunds. â?

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 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.â??

7. On perusal of the above statutory provision, it reveals that the liability of the Revenue to pay interest under Section 11BB ibid commences from the

date of expiry of three months from the date of receipt of application of refund under sub-section (1) of Section 11B ibid. Time taken for verification

of documents, issuance of show cause notice and adjudication of the dispute by Revenue should be excluded for the purpose of computation of the

period for sanctioning the refund. In this case, since the assessee had submitted all the desired documents on 22.11.2004, such date should be

considered as the relevant date for filing the refund application. Since the refund amount was not paid within three months from the date of its filing,

the assessee is entitled for interest from the date of expiry of three months from filing the refund application i.e. 21.02.2005, till the date of actual

payment of the refund amount i.e. 03.01.2006.

8. The issue regarding payment of interest on delayed sanction of the refund claim is no more res integra and stands settled by the judgment of

Honâ??ble Supreme Court in the case of Ranbaxy Laboratories Ltd. â?" Vs. â?" Union of India, reported in 2011 (273) E.L.T. 3 (S.C.). The

relevant paragraph in the said judgment is extracted herein below:-

â??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,

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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 refundable. 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.â??

9. In view of the foregoing, the appeal filed by the assessee is allowed and appeal of Revenue is dismissed.

(Dictated and pronounced in open court)

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