

(2022) 02 CESTAT CK 0017

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 51525, 51526, 51527 Of 2018

M/s Sonic Biochem Extractions Ltd. Vs Commissioner, CGST And Central Excise And Indore?

Date of Decision : 17-02-2022

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 15, 35
Central Excise Act, 1944 — Section 11B(1), 11BB

Citation : (2022) 02 CESTAT CK 0017

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

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue involved in all the three Appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Briefly stated, the facts of the case are that the Appellant herein is engaged in the manufacture of Soya Flour, Soya Flacks, Soya Grits, texture Vegetable Proteins etc., falling under Chapter 15 to 35 of the Central Excise Tariff Act, 1985. The Appellant mostly exports the said products to outside the country. For exportation of the said goods, the Appellant avails the services of goods transport agencies, C.H.A., business auxiliary service and port service. Since, the said services are defined as taxable services under the Finance Act, 1994, service tax liability was discharged by the service providers or the appellant under the Reverse Charge Mechanism. In view of the fact that those services were availed/ utilized for the purpose of exportation of the goods, the Appellant had filed the refund applications before the department under Notification No. 41/2007-ST dated 06.10.2007, claiming refund of service tax paid on above taxable services. The refund applications filed by the Appellant were adjudicated, in denying the benefit of refund on the ground that the Appellant did not submit the relevant documents at the time of filing the applications. The original orders passed by the department were appealed against before the learned Commissioner (Appeals), which were also rejected by upholding the findings recorded in the original orders. The orders passed by the Commissioner (Appeals) were further

appealed against by the Appellant before the Tribunal. Vide Order No. 54528-54532/2016 dated 10.10.2016, the Tribunal has allowed the Appeals by way of remand to the original authority with the directions for granting opportunity for submissions of necessary documents and for de-novo adjudication of the refund claims. Pursuant to the remand directions of the Tribunal, the original authority took up de-novo proceedings and passed the adjudication orders in sanctioning the refund amount to the Appellant. Since, the original authority did not consider payment of interest on delayed sanction of refund in terms of Section 11BB of the Central Excise Act, 1944, the Appellant had filed Appeal against such de-novo adjudication orders before the learned Commissioner (Appeals). The Appeals filed by the Appellant were rejected on the ground that there was no delay on the part of the department in sanctioning the refund amount inasmuch as the refund applications were processed after submission of all the relevant documents by the appellant and that since the refund was granted within the stipulated time frame of three months, the benefit provided under Section 11BB *ibid* for grant of interest shall not be available to the appellant. Feeling aggrieved with the impugned orders, the Appellant had preferred these Appeals before the Tribunal.

4. Shri Ankur Upadhyay, learned Advocate appearing for the Appellant submitted that the refund applications filed by the Appellant way back in 2009 were decided vide the adjudication orders passed in the year 2016, pursuant to the remand directions contained in the order dated 10.10.2016 passed by the Tribunal. Thus, by referring to Section 11BB *ibid*, he submitted that since the refund was ultimately granted beyond three months from the date of filing of the refund applications, the Appellant should be eligible for the benefit of interest at the rate prescribed by the Central Government. To strengthen such stand, the learned Advocate has relied upon the judgment of Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. vs. Union of India-2011 (273) E.L.T. 3(S.C.)* and *Union of India vs. Hamdard (WAQF) Laboratories-2016 (333) E.L.T. 193 (S.C.)*

5. On the other hand, Shri Ravi Kapoor, the Learned Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that since the revised refund application together with all relevant documents were filed by the Appellant on 24.03.2017, there was no delay in sanction of the refund amount upon scrutinisation of such relevant documents submitted subsequently. Thus, he submitted that in absence of any delay in sanction of the refund amount in favour of the Appellant, the provisions of Section 11BB do not have any application for payment of the interest amount, as claimed by the Appellant. He has relied upon the judgment of Hon'ble Supreme Court in the case of *Mihir Textile Ltd-1997(92) E.L.T. 9(S.C.)* and the judgment of Hon'ble Himachal Pradesh High Court in the case of *C.C.E. Vs. M/s Indian Overseas Corporation-2009(234) E.L.T. 405(H.P.)*, to support the case of Revenue that the Appellant should not be eligible for the interest amount claimed by them.

6. Heard both sides and examine the case records.

7. I find that the learned Assistant Commissioner in the original order dated 12.09.2017 had considered the refund application filed by the appellant during the year, 2009 and thereafter, sanctioned the refund amount in question to the Appellant in the year 2017. The provisions for grant of interest on delayed refunds are contained in Section 11BB *ibid*, which reads as under:-

"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."

8. On plain reading of the above statutory provisions, it transpires that if the refund amount is not paid within the stipulated time frame of three months from the date of filing of the application, then the department is exposed to the interest liability for the period of expiry of three months till the date of actual sanction of the refund amount. Considering the Revenue loss on account of payments of interest for delayed sanction of refund, the Central Board of Excise and Customs (CBEC) vide Circular dated 30.05.1995 had clarified that if any defect in refund application is observed by the department, then the same had to be communicated to the party/claimant within 48 hours from the time of receipt of the refund application. It is an admitted fact on record that the department had not observed the guidelines provided in the Circular dated 30.05.1995. Since, the refund applications filed by the Appellant in 2009 were ultimately considered for grant of refund in the year 2017, admittedly there is delay and as such, the provisions of Section 11BB *ibid* are automatically attracted for payment of interest on the delayed sanction of the refund amount. I find that there is no substance in the submissions made by the learned AR for Revenue that the revised application filed by the Appellant in the year 2017 were to be considered as the relevant date of filing of applications for grant of refund inasmuch as the original authority nowhere in the order dated 12.09.2017 had considered such facts. Rather, in the first paragraph of the original order, it had specifically been recorded that the refund application filed on 29.06.2009 was considered for grant of the refund amount. On examination of the records available in the case file vis-a-vis the statutory provisions, I have no hesitation in accepting the fact that there is in fact delay in grant of refund amount to the appellant and therefore, for such delayed sanction of refund, the appellant should be compensated by way of payment of interest. I also find that the issue arising out of the present dispute is no more *res integra* in view of the judgment relied upon by the learned Advocate for the Appellant. In the case of *Ranbaxy Laboratory Ltd (Supra)*, the Hon'ble Apex Court have held that interest on delayed refund is payable under

Section 11BB *ibid* on the expiry of period of three months from the date of receipt of application under Section 11B (1) *ibid*. Similarly, in the case of Hamdard (WAQF) Laboratories (*Supra*), it has been held that in case of delay in sanction of the refund amount beyond three months, on the date of filing of the application, interest is admissible to the claimant/assessee. The ratio judgments relied upon by the learned AR for Revenue are distinguishable from the facts of the present case inasmuch as, the issue of grant of exemption or benefit of notification was the subject matter of dispute in those decided cases and not in context with the grant of benefit of interest for delayed sanction of the refund amount, which is very clearly spelt out in Section 11BB *ibid*. Since, there is no ambiguity in plain reading of the said statutory provision, different interpretation cannot be placed to decide the present issue otherwise.

9. In view of foregoing discussions, I do not find any merits in the impugned orders passed by the learned Commissioner (Appeals), in denying the benefit of interest to the Appellant. Therefore, by setting aside the impugned orders, the Appeals are allowed in favour of the Appellants, with consequential benefit of interest.

(Order dictated in the open court)