(2014) 07 DEL CK 0337

In the Delhi High Court

Case No : W.P. (C) 2647/2014

Rajan Overseas APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Customs Act, 1962 — Section 3

Citation : (2014) 308 ELT 443 : (2014) 48 GST 31

Hon'ble Judges : Vibhu Bakhru, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rajiv Tuli and Ankur Ved Tuli, Advocate for the Appellant; Sonia Sharma, Sr. Standing Counsel with Vijay Chandra, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.

1 Issue notice.

2. Ms. Sonia Sharma, Senior standing counsel accepts notice.

3. This writ petition has been filed to impugn an order dated 13.02.2014 passed by the Commissioner, Central Excise (Appeals) (hereinafter referred to as the ''impugned order''). By the impugned order, the appeal filed by the petitioner challenging the order of the Assistant Commissioner, Central Excise rejecting the request of grant of interest on delayed refunds, was rejected.

4. The limited controversy to be addressed in the present case is, whether in the given circumstances, the petitioner is entitled for interest on the refund sanctioned u/s 11B of the Central Excise Act, 1944 (hereinafter referred to as the ''Act'') which was claimed by the petitioner under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as the ''2002 Rules'').

5. Brief facts of the case are that the petitioner - M/s. Rajan Overseas Pvt. Ltd. is engaged in the manufacture and export of stainless steel cutlery and utensils.

During the relevant period, the said goods were exempted from the payment of Central Excise Duty by a Notification No. 10/2003 Central Excise dated 01.03.2003. The petitioner had filed 16 rebate claims u/s 11B of the Act read with Rule 18 of the 2002 Rules, claiming refund of an aggregate amount of Rs. 16,17,527/- of the Additional Duty of Customs or Countervailing Duty (in short CVD), on the raw material imported and used in or in relation to the manufacture of the final products. The Deputy Commissioner of Central Excise passed three orders (Order-in-original No. R-190/REF/08-09 dated 28.11.2008, R-191/REF/08-09 dated 28.11.2008 and R-134/REF/08-09 dated 21.10.2008) whereby the rebate claims for amounting to Rs. 7,29,636/- were sanctioned u/s 11B of the Act read with Rule 18 of the 2002 Rules and rebate claims amounting to Rs. 8,80,332/- were disallowed, as it was considered that the CVD levied u/s 3 of the Customs Tariff Act, 1985 was not duty in respect of which rebate was admissible under Rule 18 of the 2002 Rules.

6. Aggrieved by the disallowance of the rebate claims, the petitioner preferred three appeals against the order-in-originals before the Commissioner of Excise (Appeals). By a combined order dated 17.07.2009, the Commissioner of Central Excise (Appeals) dismissed the said appeals. Against the order dated 17.07.2009, the petitioner preferred a revision application before the Joint Secretary (Revision Applications), Government of India and by an order dated 13.06.2012, the said revision application was allowed and rebate claims for an amount of Rs. 8,80,332/- were sanctioned.

7. Pursuant to the order dated 13.06.2012, the Assistant Commissioner, Central Excise sanctioned the refund of an amount of Rs. 8,80,332/- by an order dated 15.09.2013.

8. Thereafter, the petitioner filed an application dated 15.10.2013 seeking interest at the rate of 8% p.a. or above, for the period the rebate claims were pending with the respondent. In the said application, the petitioner also referred to a common order passed by this court in WP(C) No. 3696/2011 and WP(C) No. 3215/2011, decided on 17.09.2012, wherein the court had allowed the refund of the amount alongwith interest at the rate of 8% per annum from the expiry of two months from the date when the claims were rejected by the first authority. By a order dated 17.12.2013, the said application was rejected by Assistant Commissioner, Central Excise and the petitioner was directed to take appropriate legal course to process the claim of interest.

9. The petitioner filed an appeal before the Commissioner of Excise (Appeals) challenging the rejection of the application for interest by the Assistant Commissioner, Central Excise. The said appeal was also dismissed by an order dated 13.02.2014; first of all, for the reason that the petitioner had not challenged the order dated 13.06.2012 whereby refund for an amount of Rs. 8,80,332/- was sanctioned without interest and, secondly, for the reason that the order dated 17.12.2013 issued by the Assistant Commissioner, Central Excise was not an appealable order.

10. Aggrieved by the same, the petitioner has filed the present writ petition.

11. We have heard the learned counsel for the parties.

12. The petitioner has referred to a common order dated 17.09.2012 passed by this court in WP(C) No. 3696/2011 and in WP(C) No. 3215/2011, whereby this court had disposed of said writ petitions in the following terms:-

(ii) That the disposal of direction in this case means that the claim of the respondent that input against duty/became payable from the date the claim was rejected by the first authority i.e. on 30.10.2008. In WP (C) 3696/2011 the said date is 5.4.2007. Consequently, it is also clarified that the Revenue shall make payment of interest on the said amount in the case of Rs. 10,74,449/- (WP(C) 3215/2011) w.e.f. 1.1.2009 till date of deposit in this Court i.e. 31.5.2011.

Revenue shall also ensure that balance sum of Rs. 74,449/- together with interest for the said sum from 31.5.2011 till date @ 8% shall be paid, over and above the interest for the period 1.1.2009 to 31.5.2011 within four weeks from today.

(iii) In the case of WP (C) 3696/2011, since the entire deposit of Rs. 16,73,018/- was made on 21.6.2011, the sum in addition to the principal along with interest accrued in Court would be payable from 1.6.2007 till 21.6.2011 @ 8% on the said amount of Rs. 16,73,018/-. This too shall be paid to the respondent no. 2/ applicant within four weeks from today.

13. As is apparent from the above quoted order, this court had allowed the refund of the duty alongwith interest from expiry of two months from the date when the claim was first rejected by the concerned Authority.

14. In the present case, the claim of the refund of the additional duty deposited by the petitioner was rejected by the Deputy Commissioner of Central Excise by its orders dated 28112008 and 21.10.2008. The claim of the petitioner that it is entitled to rebate of CVD is no longer res integra and the said question has been decided in favour of the petitioner, albeit, after a considerable lapse of time. In the present case, there has been an inordinate delay in allowing the rebate claims filed by the petitioner considering that the raw materials were imported almost eight years ago. In view of the above and following the decision of this court in WP(C) No. 3696/2011 and in WP(C) No. 3215/2011, it is appropriate that interest at the rate of 8% be granted to the petitioner on the refund sanctioned by the authority from the expiry of three months from the date when the claim was first rejected by the concerned Authority.

15. Accordingly, the present petition is allowed and the interest at the rate of 8% is granted to the petitioner on the sum of Rs. 8,80,332/- from the expiry of three months from the date when the claim was first rejected by the concerned Authority till the refund of the amount.

16. With the aforesaid directions, the present petition stands disposed of.

