(2009) 12 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) No. 13940 of 2009

Ranbaxy Laboratories Limited APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 18-12-2009

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

Citation : (2009) 12 DEL CK 0213

Hon'ble Judges : Siddharth Mridul, J;A.K. Sikri, J

Bench : Division Bench

Advocate : M.P. Devnath with Mr. Abhishek Anand, for the Appellant; S.K. Dubey with Mr. Amit Chadha and Mr. Vanshdeep Dalmia, Advocates for the respondent Nos. 1 and 2, Mr. Mukesh Anand with Mr. Shailesh Tiwari, Sumit Batra and Mr. R.C.S. Bhadoria, Advocates for the respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The present writ petition is filed by the Ranbaxy Laboratories Limited by way of an appeal against the order dated

30.07.2009 of the Ld. Jt. Secretary, Ministry of Finance, Gov. of India disallowing thereby the claim of the petitioner regarding interest on delayed

payment of rebate claims in terms of Section 11BB of Central Excise Act, 1944.

2. The factual matrix of this case leading to the present appeal started when the Ld. Jt. Secretary, Ministry of Finance, Gov. of India disallowed the

appeal of the respondents therein and upholding thereby the order of the Ld. Commissioner (Appeals-II), Central Excise, Indore in favour of the

petitioner herein regarding certain rebate claims amounting to Rs. 4, 84, 52, 227 /- made by the petitioner during the period April & May 2003,

which, initially, had been denied by the Assistant Commissioner of Central Excise, Ujjain.

3. Thereafter, its claims having been allowed by the Ld. Jt. Secretary, the petitioner filed a claim for interest amounting to Rs. 43,96,943 /- on

delayed payment of rebate claims on the ground that in terms of Section 11BB of Central Excise Act, 1944 the petitioner is entitled to receive

interest from the date of filing of rebate claim till the date of sanctioning & payment of rebate claim. However, the Assistant Commissioner of

Central Excise, Ujjain, vide order dated 10.01.06, rejected this claim as made by the petitioner on the ground that the rebate has been sanctioned

within three months of the receipt of order in original dated 30.09.04 and, therefore, by virtue of application of explanation to section 11BB,

petitioner is not entitled for interest as claimed for.

4. Feeling aggrieved, the petitioner went in appeal before the Ld. Commissioner (Appeals-I), Central Excise and Customs, Indore, who allowed

the appeal vide order dated 16.03.06 and consequently directed the respondent therein to compute and pay interest to the petitioner.

5. Now it was the turn of the Department to feel aggrieved and consequently an appeal was preferred by the Revenue against the aforesaid order

before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi. The Tribunal dismissed the appeal on the ground of lack of jurisdiction.

The Revenue decided to keep pursuing the matter before the Ld. Jt. Secretary, Ministry of Finance, Gov. of India by way of a revision application.

Ld. Jt. Secretary vide order dated 30.07.09 allowed the application of the Department and set aside the order dated 16.03.06 of Ld.

Commissioner (Appeals-I).

6. It is clear from the above that the question is as to whether the petitioner is entitled to claim interest on delayed payment of rebate claims. To put

differently, under the said provision, for which period the interest is allowed, whether the period for which the interest is leviable would be from the

date the amount was paid till its refund or from the date of application for interest on refund is made.

7. Learned counsel for the petitioner submits that since the interest if compensatory in nature, it has to be allowed from the date when the amount

was paid by the petitioner to the Government as this amount was withheld/kept by the Government unauthorizedly during all this period. He also

referred to various judgments of different High Court in respect of his plea. His further submission was that even the Board had issued clarification

in this behalf on the same lines. All these arguments would be of no avail to the petitioner in view of the recent judgment of the Supreme Court in

the case of Union of India (UOI) and Another Vs. Shreeji Colour Chem Industries, . The Supreme Court interpreted this very provision, namely,

Section 11BB of the Act, which provision is worded as under :-

11BB. Interest on delayed refunds. - 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 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 :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of

that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from

such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of

refund of such duty.

Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal (National Tax Tribunal) or any court against

an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the

order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed

under the said sub-section (2) for the purposes of this section.

8. This provision states that interest is to be paid 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. The Supreme Court interpreted that this would mean that interest is payable only after the expiry of

three months from the date on which application for refund is made and not when the amount is deposited. The contention of the petitioner that equitable interest was also payable was rejected by the Court in view of the specific statutory provision. Relevant portion of the judgment of the

Supreme Court reads as under :-

8. A three-Judge Bench of this Court in Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another,

dealt with the position relating to grant of statutory interest. In paras 58 & 59 it was inter alia observed as follows:

58. The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the

amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is

no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax u/s 214 is not paid from the date

of payment of the tax. Nor is it paid till the date of refund. It is paid only up to the date of the regular assessment. No interest is at all paid on

excess amount of tax collected by deduction at source. Before introduction of Section 244(1-A) the assessee was not entitled to get any interest

from the date of payment of tax up to the date of the order as a result of which excess realisation of tax became refundable. Interest u/s 243 or

Section 244 was payable only when the refund was not made within the stipulated period up to the date of refund. But, if the assessment order

was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate

order.

59. Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid

whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent

proceeding.

9. In Clariant International Ltd. and Another Vs. Securities and Exchange Board of India, it was observed as follows:

30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force

of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds there for, for which a written demand is mandatory.

31. In absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate. Such interest is

payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. See The Municipal Corporation of Delhi

Vs. Smt. Sushila Devi and Others, .

As was observed in para 30 referred to above, if the claim of interest is on equitable ground, a written demand therefor is imperative.

10. In the instant case admittedly no such written demand has been made. In terms of Section 11BB(1), the respondent- assessee is entitled to

interest from 12th April, 2004 to 26th August, 2004. The quantum shall be worked out and the amount shall be paid within a period of four

weeks. The order of the High Court is accordingly modified and the appeal is allowed to the aforesaid extend. No costs.

9. Bound by the aforesaid judgment, as we are, we find no merit in the present writ petition which is dismissed.

No costs.

