

(2017) 08 BOM CK 0030
In the Bombay High Court
Case No : 26 of 2016

The Commissioner of Central Excise, Customs & Service Tax-
Silvassa

APPELLANT

Vs

Sterlite Industries Ltd.

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Central Excise Act, 1944](#), [Section 35G](#),
[Section 11BB](#) - Appeal to High Court - Interest on delayed
refunds
[Cenvat Credit Rules, 2004](#), [Rule 5](#)

Citation : (2017) 08 BOM CK 0030

Hon'ble Judges : Anoop V. Mohta, Anuja Prabhudessai

Bench : DIVISON BENCH

Advocate : Pradeep S. Jetly, Vishal Agrawal, Isha Shah, P.k. Shetty

Final Decision : Dismissed

Judgement

1. This is a State/Revenue Appeal, filed under Section 35G of the Central Excise Act, 1944, (for short, "the Excise Act"). The Challenge is made, by raising following proposed substantial question of law-

"Whether interest is payable to the Respondent for the period 27-12-2005 to 09-03-2006, on the refund granted under Rule 5 of the CENVAT Credit Rules, 2004, even though they had not submitted all the relevant document along with the original refund claim of Rs.7,11,45,917/filed on 27-09-2004 and which was consequently revised by the Respondent to Rs.7,13,23,821/on 08-12-2005 and sanctioned on 09-03-2006?

2. The Appellant, being aggrieved by order passed by the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short, "the Appellate Tribunal"), in favour of the Respondent, preferred this Appeal. The issue in the Appeal is regarding payment of interest for delay in sanctioning of the Respondent's refund claims.

3. Both the learned counsel for the parties read and referred the facts and the provisions of law specifically, Section 11BB of the Excise Act and Rule 5 of Cenvat Credit Rules, 2004 (for short, "the Rules"). The Judgments are also cited by the parties.

4. Admittedly, the refund application was filed on 27 September 2004 for Rs.7,11,45,917/-. The same was sanctioned on 9 March 2006 for Rs.6,45,83,460/-. The other amount was rejected, as time barred. The refund claim was decided in pursuance to the provisions read with Notification No.11/2002CE(NT) dated 1 March 2002. This is also on the foundation that the interest provisions are applicable to such refund cases. Though certain queries were raised on 3 November 2004, by the Assistant Commissioner, Central Excise Division-II, Silvassa, but the refund application was not decided and/or returned, including the claim of the Respondent. There is nothing to show that for want of documents and/or otherwise, the said application was rejected. There was delay in sanctioning the refund claim from three months after 27 September 2004 to 9 March 2006. The entitlement of interest, therefore, decided and by the impugned order the Respondent's Appeal was allowed.

5. The Supreme Court in Union of India Vs. Hamdard (WAQF) Laboratories, 2016 (333) E.L.T. 193 (S.C.) , while dealing with the interest of delayed refund is payable under Section 11BB of the Central Excise Act on expiry of three months from date of receipt of application from such date till date of refund of duty, has observed that

21.It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in Ranbaxy Laboratories Limited [2011 (273) E.L.T. 3 (SC)] commends us and we respectfully concur with the same.

6. The Gujarat High Court, in the judgment of Commissioner of Central Excise Vs. Reliance Industries Ltd., 2010(259) E.L.T. 356 (Guj.) in para 11, observed as under:

" 11. There is a basic fallacy in the premise on which the contention of Revenue is based. CENVAT credit is nothing else but credit for duty paid by the supplier of inputs, which are dutiable goods manufactured by the supplier or dutiable services rendered by the service provider. In principle such goods/services when utilised for further manufacture or providing service which are dutiable already carry the duty paid component as a part of its price/value, and hence the duty payable on the ultimately manufactured goods/services rendered stands reduced to the extent of duty already paid on the inputs. Thus the duty paid on inputs by the supplier has already been actually received by the exchequer. Therefore, this

contention is, to say the least, misconceived.

quote.

7. In view of above, the Judgments Kelvinator of India Vs. Commissioner of Central Excise, Jaipur, 2004 (167) E.L.T. 365 (Tri.Del.) and Ahmedabad Steel Craft Vs. Commissioner of C. Ex., Ahmedabad, 2003 (153) E.L.T. 343 (Tri.Del.) , cited by the learned counsel appearing for the AppellantRevenue, are of no assistance to accept the case and/or proposed question of law to be decided. The Supreme Court findings and the provisions of law, so declared, as reproduced above, in our view, conclude the issue in favour of the Respondent and against the Revenue Department.

8. Therefore, taking overall view of the matter, we see that there is no any illegality and/or perversity in the order passed by the Appellate Tribunal. There is no substantial question of law involved in the matter.

9. The Revenue Appeal is, therefore, dismissed. There shall be no order as to costs.