(2012) 08 BOM CK 0240

In the Bombay High Court

Case No : Writ Petition No. 6613 of 2012

Union of India — APPELLANT

Vs

Focus Contrade Pvt. Ltd. — RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11BB

Citation : (2013) 292 ELT 322

Hon'ble Judges : R.Y. Ganoo, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.S. Jetly with J.B. Mishra, for the Appellant; Prakash Shah with Jas Sanghvi instructed by y PDS Legal, for the Respondent

Judgement

1. This writ petition is filed by the Revenue to challenge the order dated 24th February 2012 whereby the Joint Secretary to the Government of India has dismissed the revision application filed by the Revenue and upheld the order passed by the Commissioner (A). The relevant facts are that: during the period from September 2006 to November 2006, 17 rebate claims were filed by the respondent No. 1-assessee. Show-cause notices were issued by the adjudicating authority on 14th February 2007 to show cause as to why the said rebate claims should not be rejected. As the claim was likely to be rejected, the assessee by various letters called upon the adjudicating authority to keep the matter in abeyance in view of the representation pending before the Ministry of Finance. Thereafter, in view of the retrospective amendment of Rule 18 of the Central Excise Rules, 2002 by Finance Act, 2008, the rebate claims were sanctioned by order-in-original dated 17th June 2008.

2. Subsequently on 3rd July 2008, the assessee made an application seeking interest on the sanctioned rebate claim u/s 11BB of the Central Excise Act, 1944. By an order-in-original dated 13th March 2009, the claim for interest u/s 11BB was rejected. On appeal filed by the assessee, the Commissioner (A) by order dated 4th March 2010 set aside the order-in-original dated 13th March 2009 and

held that the assessee is eligible for interest u/s 11BB.

3. Challenging the order of Commissioner (A), the Revenue filed a revision application and the Joint Secretary to the Government of India by his order dated 24th March 2012 upheld the order of the Commissioner (A) by relying upon the judgment of the Apex Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India (UOI) and Others, and an unreported judgment of this Court in the case of Union of India v. Jindal Drugs Limited in Writ Petition No. 9100 of 2011 decided on 30th January 2012.

4. Counsel for the Revenue sought to distinguish the judgment of this Court in the case of Jindal Drugs Limited (supra) on the ground that in the present case it is the assessee who by various letters had requested the adjudicating authority not to pass an order on the applications claiming rebate, whereas, in the case of Jindal Drugs Limited the claim was rejected. It is further contended by the counsel for the Revenue that the rebate claim has been paid within three months from the date of sanctioning the claim and, therefore, no interest is payable to the assessee.

5. We see no merit in the above contention, because, it is not the case of the Revenue that but for the letters addressed by the assessee, the Revenue would have allowed the rebate claim of the assessee. In fact, in the present case, show-cause notices were issued calling upon the assessee to show cause as to why the rebate claims should not be rejected. As in the present case, even in the case of Jindal Drugs Limited (supra) the rebate claim was admittedly paid within three months of sanctioning the claim. Therefore, since the issue is covered by the decision of this Court in the case of Jindal Drugs Limited (supra), in our opinion, no fault can be found with the decision of the Joint Secretary to the Government of India in rejecting the revision application filed by the Revenue. In this view of the matter, we see no merit in the writ petition and the same is hereby dismissed with no order as to costs.