
(2012) 01 BOM CK 0115
In the Bombay High Court
Case No : Writ Petition No. 9100 of 2011

Union of India

APPELLANT

Vs

Jindal Drugs Limited

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Central Excise Rules, 2002 — Rule 18
Central Excises and Salt Act, 1944 — Section 11B, 11B(1), 11B(2), 11BB
Constitution of India, 1950 — Article 226

Citation : (2012) 114 BOMLR 779 : (2012) 190 ECR 3

Hon'ble Judges : M.S. Sanklecha, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : A.S. Rao, for the Appellant; Prakash Shah, for the Respondent

Final Decision : Dismissed

Judgement

Dr. D.Y. Chandrachud

1. The Respondent had filed 191 rebate claims under Rule 18 of the Central Excise Rules 2002 between April 2006 and November 2006 in the total amount of Rs. 17.15 Crores. On 13 March 2007 (followed by a corrigendum dated 2 April 2007) a notice to show cause was issued to the Respondent to explain why the rebate claims should not be rejected on the ground that the duty paid nature of the exported goods could not be ascertained or verified in terms of Rule 18 read with notification 19/2004 C.E.(NT) dated 6 September 2004. The Assistant Commissioner (Rebate) Central Excise (Raigad) rejected the rebate claims by an order dated 3 April 2007. The order of the Assistant Commissioner was set aside by a Division Bench of this Court in writ petition under Article 226 of the Constitution on the ground of bias, by a judgment dated 27 April 2007 and a fresh adjudication of the show cause notice was directed to be carried out. Following the order of the Division Bench the Commissioner of Central Excise, Raigad by his order dated 6 December 2007 dropped the notice to show cause. The Assistant Commissioner (Rebate) Raigad sanctioned the rebate claims

without interest by six orders respectively dated 14 January 2008, 4 March 2008, 5 March 2008, 5 March 2008, 3 April 2008 and 3 April 2008 respectively. On 8 May 2008 a notice to show cause was issued to the Respondent to explain why the claim of interest in the amount of Rs. 1.36 Crores in respect of the 191 claims should not be rejected on the ground that it was not admissible u/s 11BB of the Central Excise Act 1944. By his order dated 3 June 2008 the Assistant Commissioner (Rebate) held that interest was not admissible to the Respondent. In appeal, the Commissioner of Central Excise (Appeals) set aside the order of the Assistant Commissioner on 24 July 2008 and allowed the claim for interest in the amount of Rs. 1.36 Crores. The Government of India in the exercise of its revisional jurisdiction has dismissed the revision application.

2. Counsel appearing on behalf of the Petitioner submitted that the entitlement of the Respondent to a rebate was crystallized only on 6 December 2007 when the notice to show cause was dropped by the Commissioner of Central Excise. The rebate claims were sanctioned within a period of three months thereafter by the Assistant Commissioner (Rebate) and hence, no interest was payable. On the other hand, it has been urged on behalf of the Respondent that the law has been settled by the judgment of the Supreme Court in *Ranbaxy Laboratories Ltd. Vs. Union of India (UOI) and Others*, and consequently no interference in the exercise of the jurisdiction under Article 226 of the Constitution is warranted.

3. The Supreme Court in its decision in *Ranbaxy (supra)* considered the provisions of Section 11B and 11BB of the Central Excise Act 1944 and held that Section 11BB lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under subsection (1) of Section 11B, then the Applicant shall be entitled to interest at such rate as may be fixed by the Central Government. The Supreme Court observed that the explanation to Section 11BB introduces a deeming fiction to the effect that where the order for refund is not made by the Assistant Commissioner but by an appellate authority or the Court, then for the purposes of the Section the order passed by the appellate authority or the Court shall be deemed to be an order under subsection (2) of Section 11B. Having observed as aforesaid, the Supreme Court also held that the explanation does not effect a postponement of the date from which interest becomes payable u/s 11BB and interest under the provision would become payable if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Hence, it is now a settled position in law that the liability of the Revenue to pay interest u/s 11BB commences from the expiry of three months from the date of receipt of the application for refund u/s 11B(1) and not on the expiry of the said period from the date on which an order for refund is made. The submission which has been urged on behalf of the Revenue is directly in the teeth of the law as laid down by the Supreme Court. The order passed by the Commissioner (Appeals) granting interest and as confirmed by the revisional authority does not hence fall for interference under Article 226 of the Constitution. The Petition is accordingly dismissed.