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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE SUJOY PAUL
&
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 16th OF NOVEMBER, 2022

WRIT PETITION No. 2656 of 2022

BETWEEN:-

ACC LIMITED (KYMORE CEMENT WORKS) A
COMPANY INCORPORATED UNDER THE
COMPANIES ACT 1956 THROUGH ITS
AUTHORIZED SINGNATORY SHRI RAJEEV
AWASTHI AGED AROUND 51 YEARS S/O SHRI
R.N. AWASTHI HAVING ITS REGISTERED
OFFICE AT CEMENT HOUSE 121 MHARSHI
KARVE ROAD MUMBAI 400020 R/O ACC
LIMITED PARAYAWAS BHAWAN A BLOCK II
FLOOR JAIL ROAD ARERA HILLS M.P. NAGAR
BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI DEVNATH AND SHRI AKSHAY SAPRE, ADVS.)

AND

1. UNION OF INDIA THROUGH SECRETARY
REVENUE/ CHAIRMAN CENTAL BOARD OF
EXCISE AND CUSTOMS MINISTRY OF FINANCE
DEPARTMENT OF REVENUE NORTH BLOCK
NEW DELHI (DELHI)
2. COMMISSIONER OF CGST AND CENTRAL
EXCISE JABALPUR II GST BHAWAN MISSION
CHOWK NAPIER TOWN (MADHYA PRADESH)
3. ASSISTANT COMMISSIONER CGST AND
CENTRAL EXCISE DIVISION SATNA CENTRAL
REVENUE BUILDING RAJENDRA NAGAR CIVIL
LINES SATNA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ABHIJEET SHRIVASTAVA, ADV.)

.....

ORDER

Sujoy Paul, J.

The petitioner-company initially filed this petition assailing the impugned notice dated 3.9.2021 (Annexure P-1) with further prayer for refund of the claim to the petitioner alongwith interest.

2. Learned counsel for the parties at the outset fairly submitted that vide Order-in-Original No.02/AC/REF/STN/2022-23 dated 5.8.2022, the office of Assistant Commissioner, Central Goods and Service Tax and Central Excise Division, Satna directed sanction rebate claim of Rs.1,40,02,152/-. Thus, it is jointly contended by learned counsel for the parties that the only question deserves consideration is whether the petitioner is entitled to get interest on this refund.

3. Shri Devnath learned counsel for the petitioner assisted by Shri Akshay Sapre shown his interest only for getting interest on the said refund. By taking this court to Section 11BB of the Central Excise Act 1944, (in short 'the Act'), which deals with '*interest on delayed refunds*', it is contended that the plain language of Statute makes it clear that if any amount is directed to be refunded is not refunded within three months from the date of receipt of application under Sub Section 1 of that Section, the applicant shall be paid interest at such rates fixed by the Statute. It is contended that the relevant application was filed by the petitioner way back on 3.9.2014 (Annexure P-2) whereas the respondents paid the refund only on 5.8.2022. Thus, the petitioner became entitled to get interest after three months from 3.9.2014. The respondents contested this claim mainly on the ground that after having passed the order of refund dated 5.8.2022, the competent authority has become *functus officio*. Attention is drawn on Para-5.3 of the reply. In support of aforesaid claim of interest, learned counsel for the petitioner has placed reliance on the

judgment of Supreme Court reported in **2011 (10) TMI 16- Supreme Court =2011 (10) SCC 292 (Ranbaxy Laboratories Ltd. Vs. Union of India and others)**).

4. Sounding a *contra* note, Shri Abhijeet Shrivastava, learned counsel for the respondents submits that the respondents have objection on the claim of interest raised by the petitioner. He raised singular objection by contending that as mentioned in Para-5.3 of the short reply, the adjudicating authority became *functus officio* and, therefore, question of payment of interest does not arise.

5. Learned counsel for the parties confined their arguments to the extent indicated above.

6. We have heard learned counsel for the parties at length on this aspect.

7. Relevant portion of Section 11B reads thus :-

"**11-BB. Interest on delayed refunds.** "If any duty ordered to be refunded under sub-section (2) of Section 11-B 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 11-B 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 or any court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of Section 11-B, 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.Ã,Â"

(Emphasis supplied)

8. The question for our consideration is whether there exists any liability of the revenue to pay interest under Section 11BB of the Act and whether it commences from the date of expiry of three months from the date of receipt of application for refund *or* on the expiry of the said period from the date on which the order of refund is made. Interestingly, curtains are finally drawn on this issue by the Supreme Court way back in 2011 in the case of **Ranbaxy Laboratories Ltd (supra)**. No other judgment was cited before us by learned counsel for the parties.

9. The Apex Court considered the language employed in Section 11BB alongwith a circular of Government of India, Ministry of Finance Department alongwith CBDT Circular No.670/61/2002-CX dated 1.10.2002. The Apex Court poinantly held as under :-

"12. Thus, ever since Section 11-BB was inserted in the Act with effect from 26-5-1995, the Department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11-B(1) of the Act.

13. We, thus find substance in the contention of the learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in ***U.P. Twiga Fiber Glass Ltd.*** [(2009) 243 ELT A-27 (SC)] In the said case, while dismissing the special leave petition filed by the Revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in *J.K. Cement Works v. CCE & Customs* [(2004) 170 ELT 4 (Raj)] vide para 33:

The special leave petition is dismissed. No costs. A close reading of Section 11-BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11-B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non-payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11-BB, non-payment within three months from the date of the commencement of Section 11-BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference.Â™

The special leave petition is dismissed. No costs.Â

14. At this stage, reference may be made to the decision of this Court in *Shreeji Colour Chem Industries* [(2008) 9 SCC 515], relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11-BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that the application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12-1-2004, the Court directed payment of statutory interest under the said section from 12-4-2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the Revenue.

15. In view of the above analysis, our answer to the question formulated in para 1 supra is that the liability of the Revenue to pay interest under Section 11-BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11-B(1) of the Act and not on the expiry of the said period from the date on which the order of refund is made.

16. As a sequitur, CA No. 6823 of 2010, filed by the assessee is allowed and CAs Nos. 7637 of 2009 and 3088 of 2010, preferred by the Revenue are dismissed. The jurisdictional Excise Officers shall now determine the amount of interest payable to the assessees in these appeals, under Section 11-BB of the Act, on the basis of

the legal position, explained above. The amount(s), if any, so worked out, shall be paid within eight weeks from today."

(Emphasis supplied)

10. In our opinion, the present controversy is squarely covered by the judgment of the Supreme Court in **Ranbaxy Laboratories Ltd (supra)**. The language of Section 11BB is plain and unambiguous. It casts a duty on the respondents to pay the interest on delayed refunds, if refund is not made within three months from the date of receipt of application under Sub Section 1 of the relevant Section. Indisputably, the said application was filed by the petitioner on 3.9.2014 (Annexure P-2).

11. We do not see any merit in the singular objection raised by learned counsel for the respondents that upon passing the order of refund, the competent authority became *functus officio*. In our judgment, when language of the Statute is clear and unambiguous, it must be given effect to irrespective of consequences. (See **1992 (4) SCC 711 (Nelson Motis Vs. Union of India and another)**). The Statute makes it obligatory for the respondents to pay the interest on delayed payment and, therefore, if respondents have chosen to undertake an exercise partially by only refunding the amount without interest, they cannot wriggle out from their statutory responsibility to pay the interest.

12. As a consequence, the petition is **allowed**. The respondents shall now determine the amount of interest payable to the petitioner under Section 11BB of the Act in the light of Section 11BB of the Act as interpreted by the Supreme Court in **Ranbaxy Laboratories Ltd (supra)** and after calculating the amount of interest shall pay the same to the petitioner within eight weeks from the date of communication of this order.

13. The petition is **allowed** to the extent indicated above. No order as to cost.

(SUJOY PAUL)
JUDGE

bks

(PRAKASH CHANDRA GUPTA)
JUDGE

