



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240364SW000000D26A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3869/2023 (2197-220)
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-245/23-24 and 20.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	04.03.2024
(ङ)	Arising out of Order-In-Original No.	GST-06/REFUND/11/AM/INTAS/2021-22 dated 23.2.2023 passed by The Assistant Commissioner, CGST Division-VI, Ahmedabad North.
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Intas Pharmaceuticals Ltd. Corporate House, Near Sola Bridge S.G. Highway, Thaltejing Ahmedabad - 380054

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

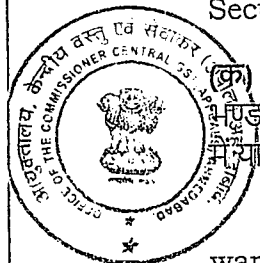
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौधी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

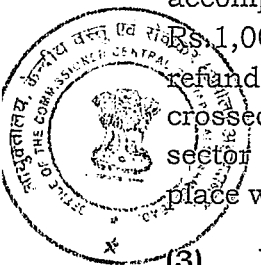
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है ।



In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (4) खंड (Section) 11D के तहत निर्धारित राशि;
- (5) लिया गलत सेनवैट क्रेडिट की राशि;
- (6) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना में अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (iv) amount determined under Section 11 D;
- (v) amount of erroneous Cenvat Credit taken;
- (vi) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

The present appeal has been filed by M/s. Intas Pharmaceuticals Ltd., Corporate House, Nr. Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 (in short 'the *appellant*') against the OIO No. GST-06/Refund/11/AM/Intas/2021-22 dated 23.02.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST & Central Excise, Division-VI, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant had filed a claim seeking refund of Rs.70,77,439/-, in respect of the common input service tax credit distributed to their SEZ unit through ISD Invoice/Challans. The claim was filed on 29.10.2014 in terms of Notification No.12/2013-ST dated 01.07.2013, for the quarter July,2014 to September,2014. The A.C., Service Tax, Division-II, Ahmedabad rejected the claim vide OIO No.SD/02/Ref-257/NT/2014-15 dated 25.03.2015. Being aggrieved, the appellant went in appeal and Commissioner (A) vide OIA No.AHM-SVTAX-000-APP-158-15-16 dated 22.03.2016, partially allowed and partially rejected the claim. Aggrieved by the OIA, the appellant preferred an appeal before Hon'ble CESTAT, Ahmedabad which was decided by the Tribunal vide F.O. No. A/12827/2018 dated 28.11.2018 and the case was remanded to the adjudicating authority. In the remand proceedings, the claim was again rejected vide OIO No.GST-06/Refund/06/AC/JRS/Intas/2020-21 dated 15.06.2020. The appellant preferred appeal and Commissioner (A) vide OIA-AHM-EXCUS-002-APP-047/2020-21 dated 01.02.2021 again remanded the matter to the adjudicating authority. The claim was accordingly adjudicated vide OIO No. GST-06/Refund/06/AC/JRS/Intas/2021-22 dated 22.06.2021, wherein the claim was rejected on the findings that the computation of credit distribution is contrary to the provisions of law and that the claim was hit by limitation as the date of payment of relevant challans furnished by the appellant crossed the period of one year. Aggrieved, the appellant again preferred appeal and in third round of litigation, the Commissioner(A) vide OIA No. AHM-EXCUS-002-APP-16/2022-23 dated 25.07.2022, remanded the case to the adjudicating authority. The appellant in pursuance of the said OIA, filed a revised claim of Rs.33,14,876/- based on fresh computation made as per the provisions of Circular No.178/4/2014-ST dated 11.07.2014, Notification No.05/2014-CE(NT) dated 24.02.2014 and Notification No.12/2013-ST dated 01.07.2013. The adjudicating authority vide the impugned order sanctioned the refund of Rs.33,14,876/- under Section 11B. However, the interest of delayed refund claimed by the appellant under Section 11BB of the CEA, 1994 was rejected.

3. Aggrieved by the impugned order, the appellant is in appeal on following ground;

- The computation or documentary evidence submitted on 13.02.2023 is with reference to original refund claim dated 27.10.2014. Assuming without admitting that the refund claim dated 13.02.2023 as held by the Adjudicating Authority, cannot be filed on 13.02.2023 (as averred in the impugned order) in terms of Notification No. 12/2013-ST dated 01.07.2013 for the quarter July, 2014 to September, 2014. Therefore, obviously, the computation submitted on 13.02.2023, is only with reference to original refund claim dated 27.10.2014 only. The Adjudicating Authority has erroneously held the complete refund process was delayed because of wrong original refund claim by the claimant under



various reasons mentioned under OIO's / OIA's and CESTAT Order i.e. time bar matter. It is submitted that on perusal of various Orders-in-Original, Orders-in-Appeal and order passed by CESTAT, it becomes clear that the reasons for rejection of refund claim are different and not the computation of refund alone.

- The Adjudicating Authority has adjudicated the entire refund application filed on 27.10.2014 for refund of Rs. 70,77,439/-. This is the reason that he has partly sanctioned the refund claim and partly rejected the refund claim. In other words, he has not adjudicated the refund of revised computation amount submitted on 13.2.2023. Appellants are enclosing a statement showing the date wise events right from filing of refund application dated 27.10.2014 to issuance of Order-in-Original dated 23.02.2023 marked as Annexure-1 which clearly shows that the impugned order is passed with reference to original refund claim dated 27.10.2014 and not in relation to any computation dated 13.2.2023. In fact, Adjudicating Authority has raised the requirement of Original Vendor Invoices only on 18.05.2020. Appellants submitted Zerox copies of Invoices issued by vendor on 26.05.2020 and 01.06.2020. Thus, it is clear that the date of 13.02.2023 has no relevance and imaginary and it appears that the Adjudicating Authority has brought this date in the picture just to reject the payment of interest on the delayed payment of refund amount. It is therefore submitted that the correct date of filing refund application i.e. 27.10.2014 is relevant for the purpose of computing interest on delayed sanction of refund claim of Rs. 33,14,876/- under Section 11BB of the Central Excise Act, 1944 as made applicable in the case of Service Tax matters vide Section 83 of the Finance Act, 1994 read with Section 142 (3) of CGST Act, 2017. The impugned Order-in-Original No: GST-06/Refund/11/AM/Intas/2021-22 dated 23.02.2023 was received on 02.03.2023. The refund claim was filed on 27.10.2014.
- From the language of Section 11BB of the Central Excise Act, 1944, it is clear that in as much as the revenue becomes liable to pay interest at the prescribed rate on refunds on the expiry of three months from the date of receipt of application under Section 11B (1) of the Central Excise Act, 1944 and such liability continues till the refund of duty. Thus, the Appellants are entitled to interest from date of expiry of three months from date of receipt of application for rebate till the date of sanction of refund to Appellants.
- Honorable Supreme Court of India in case of RANBAXY LABORATORIES LTD. Versus UNION OF INDIA reported in 2012 (27) S.T.R. 193 (S.C.) has held as under: *"Interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiring of period of three months from the date of receipt of application under Section 11B(1) ibid and not from the date of order of refund or Appellate Order allowing the refund- Explanation to proviso to Section 11BB ibid introduces a deeming fiction that where order for refund is not made by Asstt. Commissioner/Dy. Commissioner, but by Appellate Authority, such appellate order shall be deemed to be an order under Section 11B(2) ibid - This explanation does not postpone the date from which interest becomes payable to*



under Section 1 IBB ibid - It is manifest from the provision of Section 11B of Central Excise Act, 1944. "

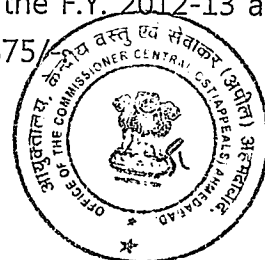
- Circular dated 1st October 2002, has been issued by the CBEC, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months.
- The appellant also placed reliance of following case laws and claimed that the Adjudicating Authority has erred in not sanctioning Interest on amount of refund sanctioned. Appellants are entitled to interest from date of expiry of three months from date of receipt of application for rebate till the date of sanction/payment of refund to Appellants.
 - MANISHA PHARMO PLAST PVT. LTD.-2020 (374) E.L.T. 145 (S.C.)
 - Rajasthan High Court decision passed in the case of J.K. Cement Works – 2004 (170) E.L.T. 4 (Raj)
 - FABRIMAX ENGINEERING PVT. LTD. - 2022 (379) E.L.T. 604 (Bom.)

4. Personal hearing in the matter was held on 05.02.2024 through virtual mode. Shri Hasit Dave, Advocate appeared on behalf of the appellant and stated that the appellant is seeking interest of delayed refund. He referred to the judgment of Hon'ble High Court of Karnataka passed in the case of AL Tisource Business Solutions Pvt Ltd- (2023) 4 Centax 70 (Kar). He also promised to submit additional submission in two days.

4.1 The appellant vide email submitted the synopsis of the case, copy of relevant case-laws and requested to set-aside the impugned order for not granting the interest claimed and grant consequential relief to the appellant.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the documents available on record. The issue to be decided in the present appeal is whether the appellant is eligible for interest on the amount of Rs.33,14,876/- sanctioned under Section 11B.

5.1 In the present case, the appellant filed refund of Rs.70,77,439/- on 29.10.2014 which was originally rejected on various grounds. After various rounds of litigations, it was observed that the appellant while filing the original refund claim pertaining to the quarter July,14 to September, 2014, followed current F.Y. for distribution purpose which was not relevant period prescribed under Notification No.05/2014-CE(NT) dated 24.02.2014. As wrong method of calculation was followed, the appellant vide letter dated 13.02.2023, produced fresh calculation by following the F.Y. 2012-13 as relevant period and arrived at the revised refund figure of Rs. 33,14,875/-



5.2 As the original refund claim filed was for the amount of Rs.70,77,439/-, the adjudicating authority vide the impugned order sanctioned the claim of Rs. 33,14,875/- and rejected the remaining claim of Rs.37,62,563/- as per the revised calculation submitted by the appellant. The interest claimed by the appellant was rejected on the grounds that the revised claim of Rs. 33,14,875/- was submitted by the appellant with complete documentary evidence only on 13.02.2023 and that the process to file complete refund was delayed due to wrong filing of original refund claim by the appellant. From the above facts, it is clear that the adjudicating authority vide the impugned order has decided the original refund claim of Rs.70,77,439/- filed on 29.10.2014, as the refund amount was restricted to the revised calculation submitted by the appellant.

5.3 To examine whether the appellant shall be eligible for interest on the refund sanctioned under Section 11B, relevant provisions of Section 11BB shall come in to play, which is reproduced below;

Section 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 , National Tax 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.

5.4 Section 11BB of Central Excise Act, 1944 clearly stipulates that if any duty is ordered to be refunded under sub-section (2) of Section 11B of the Act to the applicant and the same is not refunded within three months from the date of receipt of such application under sub-section (1) of Section 11B of the Act, then the applicant would be entitled to interest. This interest would be payable immediately after the expiry of three months from the date of receipt of such application till the date of refund of the duty. In a nutshell, once an application for refund has been made and the same is granted within a period of three months of receipt of such application, there would be no liability to pay interest. However, if the refund is granted after the expiry of the period of three months from the date of receipt of the application, then interest would also be payable on the amount of refund granted, from the date immediately after the expiry of three months from the date of receipt of such application, till the date of refund.

5.5 In the instant case, the original refund claim was filed on 29.10.2014 and after multiple rounds of litigation the refund was sanctioned on 23.02.2023 i.e. after the



lapse of 8 years. As the amount was not refunded within three months from the date of receipt of original application made under sub-section (1) of Section 11B of the Act, I find that the appellant would be entitled to interest in terms of Section 11BB, from 01.02.2015 to till the date of refund sanctioned.

5.6 The appellant has relied on following case laws, which I find are squarely applicable to the present case. Hon'ble Supreme Court of India in the case of RANBAXY LABORATORIES LTD. Versus UNION OF INDIA- 2011 (273) E.L.T. 3 (S.C.) held that;

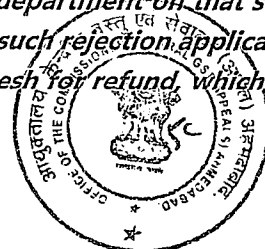
"9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

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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 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."

5.7 Similarly, hon'ble High Court of Karnataka at Bengaluru in the case of Commissioner of Customs, Mangalore Versus Gimpex Ltd. -2020 (373) E.L.T. 512 (Kar.) held that;

*"5. Tribunal after considering rival contentions raised has rightly held that claims were returned due to deficiency and deficiency memos having been addressed itself would evidence that there cannot be a claim for interest as no showcause notice was issued, is erroneous conclusion as provisions of Section 11B of the Central Excise Act, 1944, do not contemplate for returning of any refund claims. By relying upon the judgment in the matter of Ranbaxy Laboratories Ltd. v. Union of India reported in 2011 (273) E.L.T. 3 whereunder it has been held that interest liability arise after expiry of three months from the date of receipt of such application has allowed the interest from 27-1-2010 namely date on which the interest was claimed by the respondent. As rightly held by the Tribunal cause of action for claiming interest would arise after 3 months from the date of filing of said refund claim. **If at all the application is defective, it would only be an irregularity not illegality. On the other hand, if the application for refund had been rejected by the department on that score, the contours of refund claim would have changed, inasmuch as, on such rejection, applicant in the facts obtained in a given case may opt to file an application afresh for refund which may***



be or may not be in consonance with the regulations made thereunder. However, if the department or revenue chooses for returning the application for compliance of deficiencies and on compliance of deficiencies pointed, such application if adjudicated by the authorities, they cannot be heard to contend that application which was defective would not enable the applicant to claim interest from the date of application. In fact, fresh application filed by the applicant on 16-10-2012 was adjudicated along with earlier application dated 26-10-2009 by treating it as having merged with fresh refund application. Hence, application for refund would not be contrary to Section 11B of the Central Excise Act, 1944 and as such we are not inclined to admit this appeal, since there is no substantial question of law involved in this appeal for being adjudicated. Hence, appeal stands dismissed."

[Emphasis Supplied]

5.8 Further, it would be appropriate to rely on Circular No. 670/61/2002-CX, dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months.

*"Circular No. 670/61/2002-CX, dated 1-10-2002
F. No. 268/51/2002-CX.8*

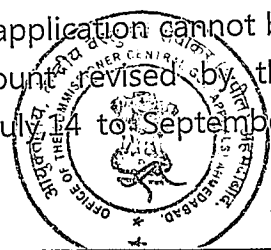
Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing – regarding

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever therefund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX, dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of therefund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed."

(Emphasis supplied)

5.9 In the instant case, the appellant originally filed refund claim of Rs.70,77,439/- on 29.10.2014, subsequently, the claim was revised to 33,14,875/- vide letter dated 13.02.2023. The findings of the adjudicating authority that interest does not accrue as the claim with complete documents were submitted only on 13.02.2023, is not acceptable for the reason that the department never returned the claim being defective. In fact, the claim was rejected earlier but during countless rounds of litigations the matter was remanded for re-examination of the claim. Thus, the argument that the original claim was faulty hence, date of such application cannot be considered, appears to illogical especially because the amount revised by the appellant was in respect of the same period (for the quarter July 4 to September,

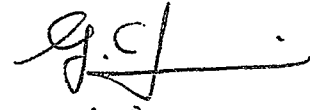


2014) for which the original claim was filed. This logic is further strengthened by the order portion of the impugned order, where the adjudicating authority himself decided the claim in entirety/totality.

6. In light of above discussion and findings, I am of the considered opinion that the statutory interest ought to commence after non-payment within three months from the date of application. The claim of the appellant regarding statutory interest under Section 11BB of the Act is therefore allowed in the above terms. I also find that the delay is not caused by the adjudicating authority. Delay occurred due to litigation process.

7. I, therefore, set aside the impugned order to the extent of not granting the interest on refund and allow the appeal filed by the appellant for the interest purpose only.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.



(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 20.02.2024

Attested



Superintendent (Appeals)
CGST, Ahmedabad



By RPAD/SPEED POST

To,
M/s. Intas Pharmaceuticals Ltd.,
Corporate House, Nr. Sola Bridge,
S.G. Highway, Thaltej,
Ahmedabad-380054

Appellant

The Assistant Commissioner
CGST, Division-VI
Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Superintendent (System), CGST, Appeal, Ahmedabad., (For uploading the OIA)
- ✓ 4. Guard File.

