



आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(71)10/Ahd-South/2019-20 / 10858 to 10862

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-017-2019-20
दिनांक Date : 24-05-2019 जारी करने की तारीख Date of Issue 31/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. 11/AC/18-19-Ref दिनांक: 25.02.2019 issued by Assistant Commissioner, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Sri Sai Vishwas Polymers
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रक्रिया के दौरान हुई हो।

(ii) 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.

(b) 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।



... 2 ...

(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।

(b) 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।

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

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।

(d) 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.

(1) 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 दिनोंक 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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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 .

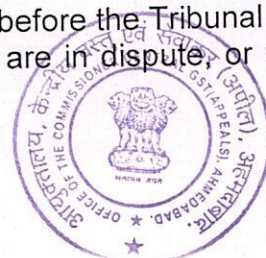
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

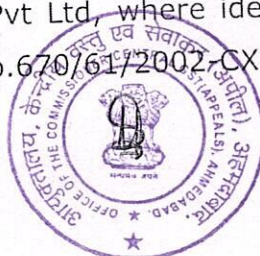
This appeal has been filed by M/s Sri Sai Vishwas Polymers, 316, Pratibha Puls Complex, Opp.Narol Gam, Narol-Aslali Highway, Narol, Ahmedabad [hereinafter referred to as "the appellant"] against Order-in-Original No.11/AC/18-19 -Ref dated 25.02.2019 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of CGST, Division-IV, Ahmedabad South Commissionerate [hereinafter referred to as the "adjudicating authority"].

2. The facts of the case are that the appellant has filed a refund claim amounting to Rs.3,10,09,824/- on 06.12.2018 before the adjudicating authority as an interest amount, accrued towards delayed sanction of rebate claims vide OIO No.518 to 530/AC/17-18 dated 28.05.2018. The rebate claims in question were sanctioned by the adjudicating authority as per order of Appellate authority, vide his OIA No.AHM-EXCUS-001-APP-418 to 435-2017-18 dated 19.03.2018 passed in favour of the appellant. Since the interest claim found not admissible, a show cause notice dated 24.12.2018 was issued to the appellant for rejecting the said claim and later on, vide impugned order, the adjudicating authority has rejected the interest claim on the grounds that the interest can be claimed, if any delay in sanctioning of refund within three months from the date of disposal of appeal in appellant's favour.

3. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that:

- Interest on delayed refund is to be calculated from the date immediately after the expiry of three months from the date of receipt of refund application till the date of refund of such duty; that Section 11BB of CEA clarifies above position.
- The issue has been settled in favour of the appellant by judgement of Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories Ltd & Ors and CBEC Circular No.670/61/2002-CX dated 01.10.2002;
- The adjudicating authority has misplaced decision of Hon'ble Supreme Court in case of M/s Shreeji Color Chem Industries and Hon'ble High Court of Kerala in case of Sony Pictures Network India Pvt Ltd.

4. Personal hearing in the matter was held on 21.05.2019. Shri Bharat Raichandani, Advocate appeared for the same and reiterated the grounds of appeal. He further submitted that the decision of M/s Sony Pictures [2017 (353) ELT 179-Ker] and CBEC circular No.802/35/2004-CX dated 08.12.2004 relied on by the adjudicating authority in impugned order related to the "pre-deposit" refund under Section 35 of CEA; that the instant case is relating to rebate under Section 11 B of CEA. He further drew attention to the paras of decision of Hon'ble Supreme Court in the case of M/s Ranbaxy Lab Pvt Ltd, where identical facts are mentioned and also covered CBEC Circular No.670/61/2002-CX dated 01.10.2002. He also



submitted that the letter dated 13.04.2018 submitted by them to the adjudicating authority has not the application but intimating the OIA and the said letter cannot be construed as "application for refund" which was filed on different dated in 2016.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as at the time of personal hearing. The limited issue to be decided in the matter is relating to the admissibility of interest on delayed sanction of rebate claim; that whether the interest is admissible after the expiry of three months from date of original application of rebate claim or after the expiry three months from the date of decision of Appellate Authority/Tribunal.

6. The payment of interest on delayed refund governs under Section 11BB of CEA which reads as under:

*"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".*

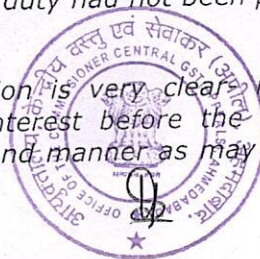
As per Section 11BB of CEA *supra*, interest on delayed refund shall be paid-

- (iii) any applicant;
- (iv) from the date of receipt of application.

7. I find that an application in case of "Rebate" is made under Rule 18 of C.Ex. Rules 2004 read with Section 11B of C.Ex Act 1944. This application of "Rebate" is filed within one year of the export as mandated in Sec 11B *supra*. There is no provision in the law, which shifts this date of filing to a later date. There is no provision either for a second filing of this application at any subsequent date (under Rule 18 of C.Ex. Rules 2004 read with Section 11B of C.Ex Act 1944). If it happens so, it will be hit by the limitation under sec 11B *ibid*. Therefore, in the statutory provision there is only one date on which an application of "Rebate" can be filed.

Section 11B. Claim for refund of duty and interest, if any, paid on such duty. - Any person claiming refund of any duty of excise and interest, if any, paid on such (1) **duty may make an application** for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise **before the expiry of one year from the relevant date in such form and manner as may be prescribed** and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person

The above statutory provision is very clear and may make an application for refund of such duty and interest before the expiry of one year from the relevant date in such form and manner as may be prescribed and there is no



way this statutory limitation will be postponed. Therefore there will be only one date of application when the application has been made w.r.t. Sec 11B *ibid*.

8. The background for filing the interest claim on 06.12.2018 in the instant case is that the appellant had filed various rebate claims before the departmental authority in the month of December 2016 and vide OIO dated 04.04.2017, the authority has rejected the claims. As the Appellate authority vide his order dated 19.03.2018 has allowed the rebate claims in favour of the appellant, the appellant vide **his letter dated 13.04.2018 brought the O-I-A to the notice of the adjudicating authority and requested for consequential relief.** Vide OIO dated 28.05.2018, the adjudicating authority has sanctioned the said rebate claim. The letter is reproduced here and in view of my above narration, it can be construed as the "application" under Rule 18 of C.Ex.Rules read with Sec 11B *ibid*.

Sri Sai Vishwas Polymers

Date: 13.04.2018
Place: Ahmedabad

To,
The Ld. Assistant Commissioner,
Central Excise Division IV, Ahmedabad -I,
5th Floor, Central Excise Bhavan,
Near Polytechnic, Ambavadi,
Ahmedabad 380 015

Sir,

Sub: Order-in-appeal no. AHM-EXCUS-001-APP-418 to 435-2017-18 dated 19.03.2018.

Re: Refund of Rs. 11, 31, 61, 968/- along with interest

Kindly refer subject issue. The Ld. Commissioner (Appeals) vide subject order dated 19.03.2018 rejected the department appeals and allowed the appeals filed by us against order-in-original no. 01 to 11/AC/17-R dated 04.04.2017 and order-in-original no. 12 to 13/AC/17-R dated 04.04.2017 with consequential relief. A copy of the said order is enclosed herewith. Accordingly, you are requested to refund Rs. 11, 31, 61, 968/- along with interest forthwith.

Kindly take the above on record and acknowledge receipt of the same.

Thanking You,

Yours Faithfully,

For M/s Sai Vishwas Polymers
Mr. Yashraj B. Pathak
For, SRI SAI VISHWAS POLYMERS
Encl: As above
AUTHORIZED SIGNATORIES

(Bhant Prichandani)
Advocate

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9. In the instant case, I find that the show cause notice for rejecting the refund claim was issued mainly on the basis of CBEC Circular No. 802/35/2004-CX dated 08.12.2004 and Hon'ble High Court of Kerala's decision in case of M/s Sony Network India Pvt Ltd [2017 (353) E.L.T. 179]. However, the adjudicating authority has rejected the said claim only on the basis of Hon'ble Supreme Court's decision in case of M/s Shreeji Colour Chem Industries [2008 (230) E.L.T. 199 (S.C.)]. On perusal of CBEC's Circular and decision of M/s Sony Picture Network Pvt Ltd supra,



I observe that the same are not applicable to the instant case as the circular and decision stipulates interest on **delayed refund of "pre-deposit" amount under Section 35 of CEA**. The instant case is relating to interest delayed refund of "rebate" claim under Section 11B of CEA. The CBEC Circular No.802/35/2004-CX supra reads as under:

Subject : Return of **deposits made in terms of Section 35F** of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962.

Reference earlier instructions on the above subject and looking to the instances arising out of non-implementation of the judicial orders, the Board has reason to review and reiterate the earlier Circulars on the subject of non-implementation of orders of CESTAT or any Final Authority in relation to returning **pre-deposits** made as per directions of CESTAT or any other Final Authority in **terms of Section 35F of the Central Excise Act, 1944 & Section 129E of the Customs Act, 1962**. The Board has taken a strict view with regard to non-returning of such deposits.

2.As we are all aware the CESTAT has in a number of such cases awarded **interest on pre-deposits** where its orders have not been implemented and the Department had challenged this and filed Civil Appeals in the Supreme Court.

3.The Board has noted the observations of the Hon'ble Supreme Court in its order dated 21-9-2004 and has decided that **pre-deposits** shall be returned within a period of three months of the disposal of the appeals in the assessee's favour.

4.Accordingly, the contents of the Circular No. 275/37/2000-CX. 8A dated 2-1-2002 [2002 (139) E.L.T. T38], as to the modalities for return of the pre-deposits are reiterated. It is again reiterated that in terms of Hon'ble Supreme Court's order such **pre-deposit** must be returned within 3 months from the date of the order passed by the Appellate Tribunal/Court or other Final Authority unless there is a stay on the order of the Final Authority/CESTAT/Court, by a superior Court.

5.Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers. All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers.

M/s Sony Picture Network Pvt Ltd supra held that:

"Interest - **Delayed refund of pre-deposit** - Relevant date for calculating interest - Rate of interest - Assessee entitled to get refund of amount within a period of three months of disposal of the appeals in its favour"

In Para 12 of the decision of M/s Sony Picture Network Pvt Ltd also, a reference has been made regarding notification dated 02.01.2012 and 08.12.2004 issued in respect of refund/return of deposit which reads as under:

12. However the Notifications dated 2-1-2002 and 8-12-2004 issued in respect of refund/return of **deposits made under Section 35F of CEA, 1944 and Section 129E of Customs Act, 1962** are clear in this regard. The relevant portion of the Notification dated 2-1-2002 read thus:-

"Subject : **Return of deposits** made in terms of Section 35F of the Central Excise Act, 1944 and Section 129E of Customs Act, 1962 - Reg.



The issue relating to **refund of pre-deposit** made during the pendency of appeal was discussed in the Board meeting. It was decided that since the practice in the Department had all along been to consider such deposits as other than duty, such deposits should be returned in the event the appellant succeeds in appeal or the matter is remanded for fresh adjudication.

2. It would be pertinent to mention that the Revenue had recently filed a Special Leave Petition against Mumbai High Court's order in the matter of **NELCO LTD.**, challenging the grant of interest on delayed refund of pre-deposit as to whether:

10. It is clearly noticeable that the said Circular and decision of M/s Sony Picture Network Pvt Ltd only speaks about **return of pre-deposit** under Section 35 F of CEA, which has to be made within three month of date of order in favour of assessee. Therefore, the said clarification and decision cannot be made applicable to the instant case as the instant case is relating to refund/rebate under Rule 18 of Central Excise Rules, 2002 read with Section 11B of CEA. Therefore, the department has wrongly cited the above circular and decision in the instant case. As per provisions of Rule 18 of CER, the appellant is eligible for rebate of duty paid on excisable goods exported or duty paid on materials used in the manufacture or processing of such goods exported, on making application under the provisions of Section 11B of CEA. As per provisions of Section 11B (1) of CEA, the appellant is required to may make an application for refund of such duty to the authority before the expiry of one year [from the relevant date. The clause (2) of Section 11B stipulates that on receipt of any such application, the authority may make an order for refund of such duty paid. 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 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. Thus, the only interpretation of Section 11BB 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 i.e the original application filed for getting the refund/rebate.

11. In the instant case, I find that the adjudicating authority has rejected claim by considering the date of application as date on which the request made by the appellant for consequential benefit, in pursuance of OIA dated 19.03.2018.

12. As stated above, the adjudicating authority has come to the said conclusion only on the basis of decision of Hon'ble Supreme Court in the case of M/s Shreeji Colour Chem Industries [2008 (230) E.L.T. 199 (S.C.)]. The head note of the said decision is reproduced below.

"Interest - Delayed payment of refund - Refund claim for Rs. 2,50,394 under Rule 173L of erstwhile Central Excise Rules, 1944 rejected by original authority by order dated 24-7-1991 - Refund of Rs. 2,50,394 sanctioned on 27-8-2004 after CESTAT order in favour of assessee - Interest sought by assessee from 26-8-1995 - High Court directed payment of interest from 24-7-1991 - Section 11BB introduced in Central Excise Act, 1944 from 26-5-1995



- Written demand required if interest claimed on ground of equity and no such demand made in impugned case - Assessee entitled to interest from three months after filing claim after Tribunal's order i.e. 12-4-2004 to date of sanction of refund i.e. 26-8-2004 - Section 11BB ibid - Rule 173L ibid. [paras 3, 9, 10]".

13. The adjudicating authority has stated in the impugned order that the decision of Hon'ble Supreme Court in case of M/s Ranbaxy Laboratories Ltd [2011 (273) ELT 3] was mainly based on the decision of M/s Shreeji Colour Chem Industries supra, hence the decision of M/s Shreeji Colour Chem Industries is squarely applicable to the instant case and accordingly he held that the date of application under Section 11B (a) of CEA should be considered on 13.04.2018. For relying the case of M/s Shreeji Colour Chem Industries, I find that the adjudicating authority has relied para 14 of the Hon'ble Supreme Court's order in case of M/s Ranbaxy Laboratories Industries supra ignoring para 15 of the said decision. Para 14 of the decision reads as under:

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), 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 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 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.

14. It is pertinent to point out here that the interest sought by the assessee in M/s Shreeji Colour chem Industries pertains to the year 1991 i.e before existence of Section 11BB of CEA. This has been noted by Hon'ble SC in its order (if interest claimed on ground of equity). The same is quoted below:

9. As was observed in para 3 referred to above, **if the claim of interest is on equitable ground**, a written demand therefor is imperative.

10. In the instant case admittedly **no such written demand has been made**. In terms of Section 11BB(1), the respondent-assessee is entitled to interest from 12th April, 2004 to 26th August, 2004. The quantum shall be worked out and the amount shall be paid within a period of four weeks. The order of the High Court is accordingly modified and the appeal is allowed to the aforesaid extent. No costs.

Therefore, Shreeji order is entirely on a different ground because Sec 11BB was not in exitance . In para 9 of the decision of Hon'ble Supreme Court in case of M/s Ranbaxy Laboratory Ltd, the Hon'ble Court stipulates the purpose of Section introduction of 11BB of CEA which stated 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”.

In para 15 of the said decision, I find that the Hon'ble Court has clearly answered the question as to whether 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 (original) for refund or on the expiry of the said period from the date on which the order of refund is made?. The answer of the Hon'ble Court is as under:

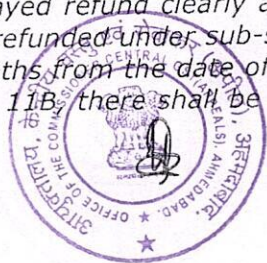
"15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the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

15. Further, I find that the Hon'ble Supreme Court, by following the case of M/s Ranbaxy Laboratories Ltd, has decided similar issue in case of Union of India V/s HAMDARD (WAQF) LABORATORIES [2016 (333) E.L.T. 193 (S.C.)]. The Hon'ble Court upheld that:

Interest on delayed refund - Relevant date - Submission of application - Interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on expiry of three months from date of receipt of application from such date till date of refund of duty - Instant case application for refund filed on 25-8-1999 - Defects if any in refund application ought to have been communicated within 48 hrs as stipulated in C.B.E & C. Circular dated 30-5-1995 - Department issuing letter much later on 27-9-1999 seeking clarification on unjust enrichment which was replied to by assessee within 3 days - Order of refund was passed much later on 16-11-2000 - Interest for delayed refund admissible to assessee - Apex Court's decision in 2011 (273) E.L.T. 20 (S.C.) relied while 1997 (89) E.L.T. 247 (S.C.) distinguished on facts - Section 11BB of Central Excise Act, 1944.

Para 15 of the said decision further clarify that:

"15. Sub-section (2) of Section 11B stipulates filing of an application by the assessee before the competent authority. It also postulates that the said authority is required to be satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty is refundable. The application, as submitted by Mr. Adhyaru, has to be an application in law. Section 11BB which deals with interest on delayed refund clearly and categorically predicates that if any duty ordered to be refunded under sub-section (2) of Section 11B is not refunded within three months from the date of receipt of the application under sub-section (1) of Section 11B, there shall be paid to the applicant interest at



the notified rate 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. The significant words are "expiry of three months from the date of receipt of such application". In the instant case, the application was filed on 25th August, 1999. The said application, needless to emphasise, was preferred under sub-section (2) of Section 11B...."

In view of above decisions, it is clearly apparent that interest on delayed refund under Section 11BB of CEA should be given immediately after expiry of three months from the date of original refund application.

16. In the instant case, the Ld. Advocate has further relied on Hon'ble High Court of Gujarat's decision in case of M/s Kamakshi Tradeexim (India) Pvt Ltd [2017 (351) ELT 102]; Hon'ble High Court of Mumbai's decision in case of M/s Jindal Drugs Pvt Ltd [2016 (342) ELT 17]. By following the decision of M/s Ranbaxy Laboratory Ltd supra, the Hon'ble High Court of Gujarat has held 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 the order of refund is made." . In M/s Jindal Drugs Pvt Ltd supra, the Hon'ble Court has held that the applicant "entitled to refund to refund from date immediately after expiry of three months from the date of receipt of original refund application till date of receipt of refund amount".

17. In above all, I find that the CBEC has issued a circular in the 2002 regarding non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing rebate claim. The CBEC has directed all field formation to follow the said circular scrupulously. I reproduce the said circular here under:

I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/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 the refund/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.



18. In view of above discussion and decisions of Hon'ble Court as well as Board's Circulars referred to above, the issue involved such as, payment of interest on delayed sanction of refund is no more *res integra*. Admittedly, in this case initially refund claim was filed by the appellant in the month of December 2016 and the same has been finally sanctioned on 28.05.2018. In that circumstance, the appellant is entitled to claim interest after three months from December 2016 till 28.05.2018. Therefore, by applying ratio of above referred decisions and other facts discussed above, I do not find any merit in the impugned order. Therefore, I set aside the same.

19. In view of above discussion, I allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

U. Shankar

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : .05.2019

Attested

M. V. V. Mohanan
(Mohanan V.V.) 15/5/19
Superintendent (Appeals),
CGST, Ahmedabad.



BY R.P.A.D

To,
M/s Sri Sai Vishwas Polymers,
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Narol-Aslali Highway, Narol, Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad South
4. The Assistant Commissioner, Division IV, Ahmedabad South.
- ✓ 5. Guard file.