

M/S Ranbaxy Laboratories Ltd vs Union Of India & Ors on 21 October, 2011

Equivalent citations: 2011 AIR SCW 6359, 2011 (10) SCC 292, AIR 2012 SC (SUPP) 238, (2011) 4 CURCC 70, (2011) 12 SCALE 164

Author: D.K. Jain

Bench: Anil R. Dave, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6823 OF 2010

RANBAXY LABORATORIES LTD.

-- APPELLANT

VERSUS

UNION OF INDIA & ORS.

-- RESPONDENTS

WITH

CIVIL APPEAL NO. 7637 OF 2009

AND

CIVIL APPEAL NO. 3088 OF 2010

JUDGMENT

D.K. JAIN, J.:

1. The challenge in this batch of appeals is to the final judgments and orders delivered by the High Court of Delhi in W.P. No.13940/2009 and the High Court of Judicature at Bombay in Central Excise Appeal Nos.163/2007 and 124 of 2008. The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short "the Act"). In short, the question is 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 for refund or on the expiry of the said period from the date on which the order of refund is made?

2. As aforesaid, in all these appeals the question in issue being the same, these are being disposed of by this common judgment. However, in order to appreciate the controversy in its proper perspective, a few facts from C.A. No. 6823 of 2010 may be noted. These are as follows:

The appellant filed certain claims for rebate of duty, amounting to Rs.4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate.

3. A show cause notice was issued to the appellant on 5th July 2005, proposing to reject their claim for interest on the ground that rebate had been sanctioned to them within three months of the receipt of order of the Commissioner (Appeals) dated 30th September, 2004. Upon consideration of the reply submitted by the appellant, relying on Explanation to Section 11BB of the Act, the Assistant Commissioner rejected the claim.

4. Against the said order, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the appeal and directed the Assistant Commissioner to compute and pay the interest to the appellant. Aggrieved by the said direction, the Assistant Commissioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal'). However, the appeal was dismissed by the Tribunal on the ground that it did not have jurisdiction to deal with a rebate claim. Feeling aggrieved, the Assistant Commissioner filed a revision application before the Joint Secretary, Ministry of Finance, Govt. of India

who vide his order dated 30th July 2009 set aside the order passed by the Commissioner (Appeals) and held that the appellant was not entitled to interest under Section 11BB of the Act.

5. Being dissatisfied with the said order, the appellant filed a writ petition in the High Court of Delhi. Relying on the decision of this Court in *Union of India & Anr. Vs. Shreeji Colour Chem Industries*¹, by the impugned order, the High Court has affirmed the decision of the revisional authority and held that the appellant is not entitled to interest under Section 11BB of the Act. Hence, in the lead case the assessee is in appeal before us. However, in the connected appeals, the High Court of Judicature at Bombay having affirmed the decisions of the Tribunal, upholding the claim of the assessee 1 (2008) 9 SCC 515 for interest under Section 11BB of the Act, the revenue is the appellant.

6. Learned counsel appearing for the assessee contended that the language of Section 11BB of the Act is clear and admits of no ambiguity, 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 Act and such liability continues till the refund of duty. Learned counsel urged that reliance on the decision of this Court in *Shreeji Colour Chem Industries* (supra) by the Delhi High Court in rejecting the claim for interest is misplaced. It was contended that the said judgment deals with two kinds of interest, viz. (i) equitable interest because of delayed refunds and (ii) statutory interest payable under Section 11BB of the Act. According to the learned counsel in terms of the latter, the judgment supports the assessee's claim, but the High Court has erroneously applied the principle laid down for payment of equitable interest.

According to the learned counsel, the said decision clearly holds that an assessee is entitled to interest under the said Section after the expiry of three months from the date of receipt of application for payment of refund. In support of the claim, learned counsel commended us to the order passed by this Court in *Union of India Vs. U.P. Twiga Fiber Glass Ltd.*², whereby the appeal preferred by the revenue against the decision of the Allahabad High Court has been dismissed.

In the said decision, following the decision of the Rajasthan High Court in *J.K. Cement Works Vs. Assistant Commissioner of Central Excise & Customs*³, the Allahabad High Court had held that the relevant date for the purpose of determining the liability to pay interest under Section 11BB of the Act is with reference to the date of application, laying claim for refund and not the actual determination of refund under Section 11B(2) of the Act. To bolster the claim, learned counsel placed strong reliance on a number of Circulars on the point, issued by the Department of Revenue, Ministry of Finance, Govt. of India, clarifying that with the insertion of new Section 11BB of the Act, the department had become liable to pay interest under the said Section if the refund applications were not processed within three months from the date of receipt of refund applications.

² 2009 (243) E.L.T. A27 (S.C.).

3 2004 (170) E.L.T. 4

7. Mr. Arijit Prasad, learned counsel appearing for the revenue, on the other hand, submitted that since in the present cases no refunds were sanctioned under Section 11B of the Act, the provisions of Section 11BB of the Act were not attracted. In the alternative, it was submitted that the refund orders having been sanctioned within three months of the passing of orders by the appellate authority, interest under the said Section was not payable.

8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under:

"11B.Claim for refund of duty.-(1) Any person claiming refund of any duty of excise and interest, if any, paid on such 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:

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub- section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-----

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) (5)
....."

Section 11BB, the pivotal provision, reads thus:

"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 or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, 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."

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.

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate Vs. Inland Revenue Commissioners⁴ and Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax⁵).

4 [1921] 1 K.B. 64 5 (2010) 8 SCC 739

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, 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 Circular reads thus:

"Circular No.670/61/2002-CX, dated 1-10-2002 F.No.268/51/2002-CX.8 Government of India Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi 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 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."

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 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 11B(1) of the Act.

13. We, thus find substance in the contention of 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. (supra).

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 the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, 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 11B 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 11BB, non-payment within three months from the date of the commencement of Section 11BB 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."

The special leave petition is dismissed. No costs."

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.

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.

16. As a sequitur, C.A.No.6823 of 2010, filed by the assessee is allowed and C.A.Nos.7637/2009 and 3088/2010, 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 11BB 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.

17. However, on the facts and in the circumstances of the cases, there will be no order as to costs.

.J. (D.K. JAIN)J. (ANIL R. DAVE) NEW
DELHI;

OCTOBER 21, 2011.

R.S.