

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.10840 of 2022

(Arising out of OIA-VAD-EXCUS-002-APP-165-2022-23 dated 02/08/2022 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

BOMBARDIER TRANSPORTATION INDIA PVT LTDAppellant

Plot No 724 Iii Gidc Savli Gidc Savli Po Manjusar Taluka Savli
Savli, Gujarat

VERSUS

C.C.E. & S.T.-VADODARA-IIRespondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:

Shri Mrugesh Pandya, Advocate for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10191 /2023

DATE OF HEARING: 10.01.2023
DATE OF DECISION: 01.02.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for the interest on refund already sanctioned.

02. Shri Mrugesh Pandya, learned counsel appearing on behalf of the appellant submits that the learned Commissioner (Appeals) has taken the date of refund application as a letter dated 22.02.2022 submitted for refund of service tax and applicable interest whereas, the refund application was filed on 13.06.2011 which was rejected and the matter travelled up to this tribunal. The Tribunal vide order No. A/12474/2021 dated 07.10.2021 on the very refund matter allowed the appeal accordingly, the refund was sanctioned which was filed way back on 13.06.2011. He submits that it is

settled law that the interest shall be payable after three months from the date of filing of refund application. Therefore for the appellant is legally entitled for the interest after expiry of three months from the date of filing refund claim which in the present case is 13.06.2011. He placed reliance on the following judgments:-

- M/s. Ranbaxy Laboratory Ltd.- 2011 (273) ELT 3 (S.C.)
- Manish Pharmo Plast Pvt. Ltd.- 2020 (374) ELT 145 (S.C.)
- Harmdard (WAQF) Laboratories- 2013 (333) ELT 193 (S.C.)
- Tata Chemicals Ltd.- 2016 (334) ELT 133 (Tri.-Ahmd.)
- Tata Chemicals Ltd.- 2016 (334) ELT A53 (Guj.)
- M/s. Comparex India Pvt. Ltd.- 2022 (11) TMI 2- CESTAT NEW DELHI
- Reliance Industries Ltd.- vide order No.A/11315-11316/2022 dated 31.10.2022
- Vikram Plastics- 2019 (370) ELT 1635 (Tri.-Ahmd.)

03. Shri Tara Prakash, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. On careful consideration of the submission made by both the sides and perusal of records, we find that there is no dispute that the appellant had initially filed the refund application on 13.06.2011. It is this refund claim which was rejected by the sanctioning authority and the matter had travelled up to this Tribunal. This tribunal vide order No. A/12474/2021 dated 07.10.2021 allowed the appeal of the appellant. Consequent to this order, the sanctioning authority has granted the refund, however, the interest was not allowed. Learned Commissioner (Appeals) in the appellant's appeal before him rejected the claim of interest on the ground that the appellant have claimed the refund after the tribunal's order vide letter dated 22.02.2022 therefore, the refund was sanctioned within three months from that date. The learned Commissioner (Appeals) also interpreted the

provision of Section 11BB of the Central Excise Act, 1944 and the circulars in this context. After consideration of the finding of the learned Commissioner (Appeals). We find that the learned Commissioner (Appeals) has gravely erred in misinterpreting the overall provision and clarification of board circular. The provision of Section 11BB is very clear, according to which the claimant shall be entitled for the interest after expiry of three months from the date of refund application. In the present case, the refund application was admittedly filed on 13.06.2011 and it is this case which was under litigation up to the tribunal and subsequently, the appellant succeeded in this refund case only. In this case, the refund application was filed on 13.06.2011 shall be treated as refund application as mentioned under Section 11BB.

4.1 As per the tribunal order, the appellant stand entitled for the refund right from the date of application i.e. 13.06.2011 accordingly, the appellant is legally entitled for the interest after the expiry of three months from the date of refund application i.e. 13.06.2011. The judgment of Hon'ble Supreme Court in the case of M/s. Ranbaxy Laboratory Ltd (supra) is directly applicable in the facts of the present case. The relevant para of the said judgment is reproduced below:-

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.

From the plain reading of the above observation of the Hon'ble Supreme Court, we do not find any ambiguity on the position that if the refund is not sanctioned within three months from the date of filing, the appellant is entitled for the interest on the refund sanctioned. Accordingly, we are of the considered view that in the present case also the appellant is legally entitled for the interest on refund.

05. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 01.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul