

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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10548 of 2023- DB

(Arising out of OIA-AHM-EXCUS-001-APP-20-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad)

ZYDUS LIFESCIENCES LTD

.....Appellant

Scheme No. 63 Survey No 536 Khoraj,
Near Vaishnodevi Circle S G Highway,
Gandhinagar, Gujarat- 380015

VERSUS

**Commissioner of
CGST & Central Excise Ahmedabad South**

.....Respondent

Office of the Commissioner of CGST and Central Excise,
Ahmedabad South, 7th Floor, GST Bhawan,
Near Polytechnic, Ambawadi,
Ahmedabad, Gujarat- 380015

WITH

- (i) **Service Tax Appeal No. 10549 of 2023- DB (Zydus Lifesciences Ltd)**
- (ii) **Service Tax Appeal No. 10550 of 2023- DB (Zydus Lifesciences Ltd)**
- (iii) **Service Tax Appeal No. 10551 of 2023- DB (Zydus Lifesciences Ltd)**
- (iv) **Service Tax Appeal No. 10552 of 2023- DB (Zydus Lifesciences Ltd)**
- (v) **Service Tax Appeal No. 10553 of 2023- DB (Zydus Lifesciences Ltd)**
- (vi) **Service Tax Appeal No. 10554 of 2023- DB (Zydus Lifesciences Ltd)**
- (vii) **Service Tax Appeal No. 10555 of 2023- DB (Zydus Lifesciences Ltd)**
- (viii) **Service Tax Appeal No. 10556 of 2023- DB (Zydus Lifesciences Ltd)**
- (ix) **Service Tax Appeal No. 10557 of 2023- DB (Zydus Lifesciences Ltd)**
- (x) **Service Tax Appeal No. 10558 of 2023- DB (Zydus Lifesciences Ltd)**
- (xi) **Service Tax Appeal No. 10559 of 2023- DB (Zydus Lifesciences Ltd)**
- (xii) **Service Tax Appeal No. 10560 of 2023- DB (Zydus Lifesciences Ltd)**
- (xiii) **Service Tax Appeal No. 10561 of 2023- DB (Zydus Lifesciences Ltd)**
- (xiv) **Service Tax Appeal No. 10562 of 2023- DB (Zydus Lifesciences Ltd)**

[(Arising out of OIA-AHM-EXCUS-001-APP-26-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad), (Arising out of OIA-AHM-EXCUS-001-APP-16-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad), (Arising out of OIA-AHM-EXCUS-001-APP-17-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad), (Arising out of OIA-AHM-EXCUS-001-APP-19-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad), (Arising out of OIA-AHM-EXCUS-001-APP-29-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad), (Arising out of OIA-AHM-EXCUS-001-APP-21-2023-24 dated

17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-25-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-18-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-27-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-28-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-23-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-22-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-15-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad),(Arising out of OIA-AHM-EXCUS-001-APP-24-2023-24 dated 17/05/2023 passed by Commissioner (Appeals) of CGST & Central Excise, Ahmedabad)]

APPEARANCE:

Shri Jigar Shah, Advocate for the Appellant

Shri P Rameshwaram, Additional Commissioner (AR) for the Respondent

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

Final Order No._ 12311-12325/2023

DATE OF HEARING: 05.09.2023

DATE OF DECISION: 18.10.2023

RAMESH NAIR

The issue involved in the present case is that whether interest on delayed refund is payable after three months from the date of filing of refund application in terms of Section 11BB of the Central Excise Act, 1944 or from the date of order of this Hon'ble Tribunal allowing the refund claim.

1.1 The brief facts of the case are that the appellant are *inter alia* engaged in the manufacture and supply of pharmaceutical products as well as in providing Business Auxiliary Services. The Appellant had formed a partnership firm having name and style of "Zydus Healthcare" (hereinafter referred to as "the Firm") with two other partners. Under the deed of partnership, it was decided that the Appellant will be an active partner of the firm providing market infrastructure, product development and its promotion, etc. The Appellant received remuneration from the firm for carrying out the aforementioned activities and discharged Service Tax on the said remuneration. The Appellant did not collect the Service Tax from the firm. However, the above Service Tax was paid under the mistaken belief that the Appellant and the Firm are distinct persons and the Appellants are rendering "Business Auxiliary Services". The Appellants were advised by their legal consultants that it cannot be said that being a partner of the firm

the Appellant rendered any service to the firm and any remuneration received by them cannot be considered as payment received for any service provided to the firm.

1.2 The Appellant had also entered into a Trade Mark License Agreement with the Firm, in terms of which, the Appellant own the rights in the trademarks in respect of goods set out as Annexure in the Agreement. The Firm desired to obtain a license from the Appellant to use the licensed trademarks in respect of the products in connection with the Firms business in India. In consideration of such right, the Firm shall pay to the Appellant a royalty in form of annual trademark licensing fees. The Appellant paid service tax on the amount of royalty received from the Firm under a bona-fide belief that the activity is classifiable under the category-Intellectual Property Service. Subsequently, on a careful study of the transaction, the Appellant realized that there existed a relationship of partner and partnership firm between the Appellants and the Firm. The Firm is strictly not a person or a legal entity distinct from its members i.e. partners. Thus, it does not have any independent existence. Therefore, the Appellant realized that the payment of consideration in the form of royalty received by a partner is nothing but a share of the profit. The partner cannot be considered as providing any service to the Firm. Accordingly, the Appellant being a partner in the Firm cannot be considered to be rendering any service to the Firm which can be made eligible to service tax under the provisions of Finance Act, 1994. Moreover, the Appellant had not recovered the said amount as service tax from the Firm and thus, the burden of service tax was not passed on to the Firm.

1.3 In view of the above, the Service Tax was erroneously paid by the Appellant and accordingly they filed several refund claims for the said amount of service tax along with interest.

1.4 Various Show Cause Notices were issued to the Appellant proposing to reject the refund claims on the ground that they were providing 'Business Auxiliary Services' defined in Section 65 (19) of the Finance Act, 1994 and therefore, they were not entitled to refund of the service tax. The Show Cause Notices were adjudicated vide Orders-in-Original and the proposal in the SCNs were confirmed and the refund claims were rejected. Being aggrieved by the same, separate appeals were filed before Learned Commissioner (Appeals), who, vide Orders-in-Appeal upheld the decision of

the Adjudicating Authority. Being aggrieved by the Orders-in-Appeal, the Appellant filed separate appeals before the Tribunal. This Tribunal, vide Final Order dated 27.04.2021 held that the Appellants were not liable to pay service tax on the remuneration received as they are a partner in the firm, which is the service recipient. Thus, the service tax paid is liable to be refunded. Aggrieved by the order of the Tribunal dated 27.04.2021, the Revenue Department preferred separated tax appeals before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat, vide judgment dated 30.03.2022 dismissed the appeals filed by the Revenue Department.

1.5 On 04.04.2022, the Appellant filed letter for release of refund of Service Tax paid by them in view of the Final Order dated 27.04.2021 passed by the CESTAT. On 30.05.2022, the Appellant received a letter for personal hearing in respect of refund arising out of Order of the Tribunal dated 27.04 2021.

1.6 The Learned Assistant Commissioner, CGST, Division-VII, Ahmedabad – South, vide Orders-in-Original dated 29.11.2022 and 13.12.2022 sanctioned the refund claims under Section 11B of the Central Excise Act, 1944. In the given Orders-in-Original, Ld. Assistant Commissioner observed that the Appellant are eligible for interest under Section 11BB of Central Excise Act, 1944 after three months from filing of the Applications for refund i.e., 05.04.2022, which is when the Application dated 04.04.2022 filed by the Appellant was received by the office of Ld. Commissioner.

1.7 The Appellant submitted a letter on 06.01.2023 to the Ld. Assistant Commissioner stating that the interest has been calculated from the date when intimation was made to the Authority regarding the favorable Final Order passed by the Tribunal. However, in terms of Section 11BB of the Central Excise Act, 1944 the Appellant are entitled to interest from the expiry of three months from the date of the application for refund. In support of the above, the Appellant also placed reliance on the judgement of Hon'ble Supreme Court in the case of Ranbaxy Laboratories Ltd. vs. Union of India, 2011-TIOL-105-SC-CX.

1.8 Aggrieved by the Orders-in-Original, the Appellant filed Appeals before the Commissioner (Appeals). The Ld. Commissioner (Appeals) vide Orders-in-Appeal dated 17.05.2023 and 10.05.2023, partially allowed the appeals to the extent of granting of interest from the date of the Order dated 27.04.2021 passed by this Tribunal. However, to the extent the Appellants

were contending that they are entitled to interest from the date of the Refund Application, the said plea was not accepted. Aggrieved by the Impugned Orders, to the extent it is against the Appellant, the Appellant have preferred the present appeals before this Tribunal on the ground as detailed in appeal memo.

2. Shri Jigar Shah, Learned Counsel appearing for the appellant at the outset submits that the issue involved in the present case involving grant of interest on refund from the expiry of three months from the date of refund application is no longer res integra and has been settled in the favor of the Appellant in a recent decision of this Hon'ble Tribunal. The Hon'ble Tribunal in the case of Bombardier Transportation India Pvt. Ltd, vs. C.C.E. & S.T, Vadodara, 20223 (2) TMI 69, dated 01.02.2023 has held that the claimant shall be entitled for the interest after expiry of three months from the date of refund application.

2.1 Similar findings have been made in the following decisions of various Hon'ble Tribunals:

- M/s Champion Flavours, Meerut vs. Commissioner CGST, Jammu, 2023(5) TMI 1188
- M/s SRF Ltd vs. Commr. GST & Central Excise, 2023 VIL 567 CESTAT Chennai
- Commr. CE & ST (LTU), Mumbai vs. M/s Asian Panits Ltd. 2023-VIL-404-CESTAT-MUM-CE

In view of the above submissions, the Appellant state that the present appeals deserve to be allowed by granting of the interest from the expiry of three months from the date of filing of the Refund Claim.

2.2 He submits that Ld. Appellate Authority erred in observing that the Appellant became eligible for refund of the service tax as a consequence of the Order dated 27.04.2021 passed by this Hon'ble Tribunal. The Appellant are entitled to the interest from the expiry of three months from the date of refund application i.e. 11.01.2011 and not from 27.07.2021 i.e., three months from the date of favorable Final Order passed by this Tribunal. Despite the detailed submissions by the Appellants, the Impugned Orders proceed on the premise that interest on the delayed refund should be granted after three months from the date of Final Order passed by this

Tribunal. Therefore, the interest on delayed refund should be calculated from the expiry of three months from the date of application i.e., 11.01.2011.

2.3 He submits that the Impugned Orders refer to the definition of relevant date under Explanation (B)(ec) to Section 11B of the Central Excise Act, 1994 for determining the date of receipt of application of refund under Section 11BB of the Central Excise Act, 1944. The Appellant submit that the reliance placed on the said provision by the Ld. Appellate Authority is misplaced for the reason that the said sub-clause is applicable to the cases where refund claim is required to be filed for the first time on account of duty becoming refundable as a consequence of judgment, decree, order or direction of appellate authority, appellate tribunal or any court. The said provision is not applicable where the refund claim is already filed which was disputed by the Department and subsequently sanctioned with delay, as in the present case. Furthermore, neither the SCNs nor the OIOs mention sub-clause (ec) of Explanation to section 11B(5) as a ground for calculating the interest under Section 11BB.

2.4 In support of his submission learned counsel rely upon the judgment of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories (Supra). The above judgment was relied upon in a recent judgment in the case of Herrenknecht India Pvt. Ltd. vs. Assistant Commissioner, CGST Chennai, 2020 (12) TMI 910- Madras High Court wherein it was held that liability of the revenue to interest under Section 11BB 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 was made.

2.5 Learned counsel also placed reliance upon the following judgments:

- Qualcomm India Pvt. Ltd. vs. Union of India, 2021 (5) TMI 738 – Bombay High Court
- Union of India vs. Swaraj Mazda Ltd., 2010 (3) TMI 1036 – SC
- CCE, Ahmedabad vs. Olympic Synthetics, 2007 (11) TMI 293- (Tri.-Ahd.)
- Commissioner of Central Excise, Silvassa vs. Sterlite Industries Ltd., 2017 (8) TMI312 – Bombay High Court
- Purnima Advertising Agency Pvt. Ltd. and Ors. Vs. Union of India and Ors., 2016 (42) STR 785 (Guj.)

2.6 In view of the above submissions and settled position of law, the Impugned Orders have erred in granting interest from 28.07.2021 i.e., three months from the date of Final Order passed by this Hon'ble Tribunal and not from the date of expiry of three months from the date of application of refund. Thus, the Impugned Orders deserve to be quashed and set aside.

2.7 He further submits the Learned Appellate Authority erred in not placing reliance on the Ranbaxy Laboratories Ltd. vs. UOI – 2011 (10) TMI 16 – Supreme Court and other cases cited by the Appellants on the ground that they are applicable in the facts and circumstances of the cases.

2.8 He submits that Learned Appellate Authority, at Para 7 in the Impugned Order has wrongly reasoned that the above-mentioned judgement of Ranbaxy Laboratories Ltd. (supra) is not applicable on the ground that the cited case deals with delay of sanction of rebate while the present case is related to the refund claimed in respect of the service tax self-assessed and paid. Additionally, the Ld. Appellate Authority is also incorrect in their reasoning that the cases relied upon by the Appellant did not involve any issue of taxability and refund consequent to the determination of taxability.

2.9 He further submits that the case of Ranbaxy Laboratories (supra) is applicable in the present case. The given case though the case before the Hon'ble Supreme Court was about delay sanction of the rebate, the ratio of the case discusses the interpretation and application of the Section 11BB of the Central Excise Act, 1944. In view of the above submissions and settled position of law, the Impugned Order has erred in its reasoning that the judgement in case of Ranbaxy Laboratories Ltd. vs. UOI 2011 (273) ELT 3(SC) and other cases relied upon by the Appellant are not applicable on the ground that the present case is distinct from those cases cited.

2.10 Without prejudice to the above submissions, he submits that the appellant is entitled for interest on the refund of service tax not only from three months after filing the refund application but also from the date of deposit of such service tax. In the case of Omega Elevators vs. CCE, Ahmedabad, 2023 (1) TMI 738-CESTAT Ahmedabad, this Hon'ble Tribunal, after referring to the earlier judgment in the case of Parle Agro Pvt. Ltd. Vs. Commissioner, CGST, Noida, 2021 (5) TMI 870-CESTAT Allahabad, observed that any amount paid during the course of investigation and/or pending litigation is ipso facto considered as pre-deposit and the assessee shall be entitled for interest on such amount from the date of payment till the date of refund of such amount. In view of the above submissions, the Appellants

pray that the Orders-in-appeal, to the extent they are against the Appellants, be quashed and set aside and the subject appeals filed by the Appellant be allowed with consequential reliefs.

3. Shri P. K. Rameshwaram, Learned Additional Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that the refund was crystallized only after the Tribunal order dated 27.04.2021 thereafter the appellant approached the department on 04.04.2022 therefore the date of the refund application was rightly treated as 04.04.2022 accordingly the Adjudicating Authority has rightly held that the appellant is entitled for interest only after three months from the date of refund application i.e. 04.04.2022. Accordingly, there is no infirmity in the order and the impugned order needs to be upheld. He placed reliance on this Tribunal's final order No. A/11132/2022 dated 08.09.2022 in the case of Electrothem India Ltd.

4. We have carefully considered the submission made by both the sides and perused the record. In the present case the appellant have suo-moto paid the Service Tax and subsequently they had filed refund applications. It is the said refund applications which had been processed and rejected by the department, thereafter this Tribunal vide order No. A/11661-11675/2021 dated 27.04.2021 decided the matter of refund considering the merit of the case whereby in the refund matter only the appeals were allowed. Thereafter, the revenue filed civil appeals before the Hon'ble High Court of Gujarat and the High Court has upheld the order of this Tribunal dated 27.04.2021. Subsequently, the appellant approached department for release of their refund which were already filed. It is those refund applications which are finally decided by the department and sanctioned the refund. Now the issue before us is as to from which date the appellant is entitled for interest on the refund already sanctioned. The provision for grant of interest on refund is provided under section 11BB of the Central Excise Act, 1944, which is applicable in the matter of Service Tax by virtue of Section 83 of Finance Act, 1994. The said section 11BB is reproduced below:

Section 11BB in the Central Excise Act, 1944

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 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, 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.”

4.1 As per the above section 11BB the assessee is entitle for the interest on the refund after three months from the date of filing of application for refund. In the present case there is no dispute that after making suo-moto payment of Service Tax, the appellant first time filed the refund application on the various dates as given in the respective refund claims filed first time. It is these dates on which the refund applications were filed. Accordingly, as per the Section 11BB the appellant are entitled for the interest after three months from such dates of filing the refund applications. The contention of the department is that since the appellant vide letter 04.04.2022 requested for release of their refund the said date was considered as refund application date, which is absolutely incorrect as the entire refund matter was the subject matter of the litigation right from the day when appellant had filed the refund application. Therefore, as soon as the matter was finally decided i.e. by this Tribunal vide order dated 27.04.2021 the refund matter was settled but the entire proceeding of refund was initiated from filing of refund application by the appellant on the dates of filing their refund applications. Therefore it is not the date of the letter dated 04.04.2022 the date of applications, whereas, the actual date of application is the dates when first time refund applications were filed and as per section 11BB the appellant are entitled for interest on the refund after three months from the date of such applications.

4.2 The contention of the Revenue which is based on sub clause (ec) of clause (B) of Sub Section (5) of the Section 11B of the Central Excise Act, 1944 shall apply only in a case where there is a demand case where initially the demand is confirmed by the lower Authority, and when the same is set aside by the Tribunal /High Court /Supreme Court then only refund arises. In such case only, after setting aside the demand the refund arises out of such order by which demand was set aside and in that case only the interest is payable from the three months after the date of order of Tribunal/High

Court/Supreme Court as the case may be. However, the contention of the revenue does not apply in a case where there is no demand but the case is of refund of suo-moto payment of service tax. Accordingly, the appellant is legally entitled for the interest after three months from the date of application for refund made first time. This issue has been considered in various judgments particularly in the Apex Court judgment of Ranbaxy Laboratories Ltd. (Supra), wherein the following judgment was passed:

“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 subsection 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 subsection (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 Commissioners* [1921] 1 K.B. 64 and *Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax* (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."

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:

The special leave petition is dismissed. No costs." "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 subsection (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 nonpayment 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 assessee 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."

The fact of the present case is identical to the facts in the aforesaid Hon'ble Supreme Court judgment, in the above judgment also it was the department's contention that the interest is payable from the date of refund order. Hence the ratio of the aforesaid Apex Court judgment is directly applicable.

4.3. This issue has been considered in various other judgments cited by the appellant. In the case of *Qualcomm India Pvt. Ltd. vs. Union of India*, 2021 (5) TMI 738 – Bombay High Court, wherein, the Hon'ble Bombay High Court referred to various judgments and circular dated 01.10.2002 issued by the Central Board of Excise and Customs, New Delhi regarding non-payment of interest in refund/rebate cases which were sanctioned beyond three months of filing of application. The Central Board stressed that provisions of section 11BB of the Central Excise Act are attracted automatically for any refund sanctioned beyond the period of three months. The jurisdictional officers were impressed upon not to wait for instructions from any superior officer for grant of interest.

4.4. The positions of law on the issue in hand were also enunciated by the Hon'ble Supreme Court in the case of *Union of India vs. Swaraj Mazda Ltd.*, 2010 (3) TMI 1036 – SC Order. Further, in the case of *Commissioner of Central Excise, Silvassa vs. Sterlite Industries Ltd.*, 2017 (8) TMI312 – Bombay High Court, it was reiterated that the interest on delayed refund is payable under Section 11BB of the Central Excise Act on expiry of three months from date of receipt of application till the date of refund of duty.

4.5. In the case of *CCE, Ahmedabad vs. Olympic Synthetics*, 2007 (11) TMI 293, this Hon'ble Tribunal in identical facts, observed that interest has to be quantified from the date of receipt of such application; in as much as the expression used in the said Section is-"receipt of such application" and not

as "fresh application" hence, interest is required to be quantified from the date of filing of refund application.

4.6. Similar issue was dealt with by the Hon'ble High Court of Gujarat in the case of Purnima Advertising Agency Pvt. Ltd. and Ors. Vs. Union of India and Ors., 2016 (42) STR 785 (Guj.), the petitioner company had paid excess service tax. The Hon'ble High Court while deciding the matter referred the Ranbaxy Laboratories (Supra) case and observed that on a plain reading of section 11BB of the Central Excise Act, it is evident that the object behind such provision is to provide for payment of interest to a party commencing from a period after three months from the date of application till the date of actual refund. The reason is not far to see, namely, that a party should not be prejudiced on account of any delay in deciding the application or on the ground that the party might have to challenge the order of refund before any other forum.

4.7. In the present case also the department is considering the date after the Tribunal has passed the order. We find that it is the order on refund which was settled by the Hon'ble Gujarat High Court in Revenue's civil appeal in favour of the appellant whereby the refund claim of the appellant stand accrued to the appellant way back on the date of filing of refund application. However, merely because matter of refund travel up to Tribunal and then Hon'ble High Court the date of filing of application for refund does not get altered and the same is taken from the first filing of refund before the department as mentioned. Therefore, being identical facts and the question of law involved the ratio of the above Supreme Court judgment and other judgments discussed above are directly applicable in the present case. Therefore, there is absolute no doubt that the appellant is entitled for the interest after three months from the date of refund applications as mentioned in respective refund applications filed first time after suo-moto payment of Service Tax and interest thereon.

4.9 The appellant also made submission, without prejudice to their claim of interest after three month date of application, that since the tax itself was not payable the appellant are entitled for interest right from date of deposit of such Service Tax. In this regard we find that it is the appellant who suo-moto paid the service tax and there is no demand from the department. We are aware that this Tribunal has passed the order allowing the interest from the date of deposit but it is only in those cases where the amount of refund is related to the deposit made during the investigation of any demand case.

Such deposit was treated as pre-deposit for filing the appeal. However, in the present case the amount of refund is not towards any pre-deposit.

4.10 As regard the submission of the appellant that the service tax was paid without authority of law, therefore, the interest on refund of such service tax is payable from the date of deposit, though we find force in this submission but we are of the view that these nature of cases have been considered by the Hon'ble High Courts particularly dealing with writ petitions and the Hon'ble High court/ Supreme Court granted interest from the date of deposit under their inherent power in writ jurisdiction. However, this Tribunal being a creature under the Customs and Central Excise Act is bound by the statute of such Acts. Accordingly, in the facts of the present case this Tribunal can order for grant of interest only in terms of section 11BB and not beyond that. Needless to say that the Appellant have liberty to approach the Hon'ble High court for the interest from the date of deposit till the date which is after three months from the date of filing of application.

4.11 As per our above discussion and finding, we are of the clear and considered view that the appellant are entitled for the interest from completion of three months from the date of refund applications till the date of sanction of refund.

5. Accordingly the impugned orders are set aside. Appeals are allowed in the above terms.

(Pronounced in the open court on 18.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)