A UNION OF INDIA & ORS.

v.

M/S. HAMDARD (WAQF) LABORATORIES

(Civil Appeal No. 1666 of 2006)

B FEBRUARY 25, 2016

[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

Central Excise Act, 1944 – s.11-BB – Interest on delayed refunds – Adjudication on classification of a sweetened non-alcoholic beverage – Thereafter, application by assessee for refund of duty – C *Refund of duty by the competent authority – As no interest was paid on refund amount, writ petition by the assessee – High Court directed the Revenue to pay interest – On appeal, held: The adjudicatory process for refund of duty is required to be concluded within three months – The liability of the Revenue to pay interest u/s. 11BB* D *commences from the date of expiry of three months from the date of receipt of application for refund u/s.11B(1) – In the present case, there is delay in grant of refund – Assessee is, therefore, entitled to interest.*

Ranbaxy Laboratories Limited v. Union of India & Ors. **(2011) 10 SCC 292: 2011 (13) SCR 1 – relied on.**

E

Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors. ***(1997) 5 SCC 536: 1996 (10) Suppl. SCR 585 – distinguished.***

Hamdard (Wakf) Laboratories v. Collector of Central Excise, Meerut **(1999) 6 SCC 617 – referred to.**

F

Case Law Reference

(1999) 6 SCC 617	**referred to**	**Para 3**
2011 (13) SCR 1	**relied on**	**Para 12**
1996 (10) Suppl. SCR 585	**distinguished**	**Para 19**

G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1666 of 2006.

Yashank P. Adhyaru, Sr. Adv., Sanjai Kumar Pathak, Ritesh Kumar, B. Krishna Prasad, Advs. for the Appellants.

H

S. B. Upadhyay, Sr. Adv., Ms. Pawan Upadhyay, Ms. Anisha Upadhyay, Ms. Param Mishra, Kaustuv P. Pathak, Sarvjeet P. Singh, Ms. Sharmila Upadhyay, Ms. Neeru Vaid, Advs. for the Respondent. A

The Judgment of the Court was delivered by

DIPAK MISRA, J. The respondent, M/s. Hamdard (Waqf) Laboratories, is engaged in the business of manufacture and sale of various items including Rooh Afza which is a sweetened non-alcoholic beverage, and the respondent treated it to have been classified under the sub-heading 2201.90 of the Schedule to the Central Excise Tariff Act, 1986 (for short, 'the Tariff Act'), but the Revenue did not accept the classification claimed by the assessee-respondent on the foundation that it was classifiable under the sub-heading 2107.91 of the Tariff Act. B C

2. Because of the cavil relating to classification, steps were taken for recovery of the differential duty and keeping in view the demands made, the respondent-manufacturer started paying the duty as demanded by the concerned authority. Be it stated, the initial adjudicator, that is, the Assistant Commissioner of Central Excise, did not accept the stand of the assessee. The said grievance compelled the respondent to prefer an appeal before the Commissioner (Appeals) who negatived the stand of the assessee. Being grieved the assessee preferred an appeal before the Central, Excise and Service Tax Appellate Tribunal (for short, 'the tribunal'), which, agreed with the view expressed by the fora below and consequently dismissed the appeal. D E

3. The decision rendered by the tribunal, was called in question by the assessee in Civil Appeal No. 7766 of 1995. The two-Judge Bench in ***Hamdard (Wakf) Laboratories vs. Collector of Central Excise, Meerut***[1] adverted to the issue of classification pertaining to the product, namely, Sharbat Rooh Afza and posed the question whether the said "Sharbat" was within the tariff heading 2201.90 as contended by the assessee or under heading 2107.91 as the excise authorities would maintain and after adverting to various aspects, accepted the stand of the assessee that it is a non-alcoholic beverage and repelled the stand of the Revenue and resultantly allowed the appeal. F G

4. Be it mentioned here that this Court in its judgment dated 4th August, 1999 had stated that it falls within the term of heading 2201.90

[1] (1999) 6 SCC 617

H

A and accordingly, set aside the order passed by the tribunal and further directed for consequential relief to follow. For the sake of completeness, paragraphs 7 and 8 of the said decision are extracted below:-

> "7. The Tribunal would also appear to have concluded that the said sharbat was not a beverage but a preparation for the same. The fact that these tablespoonfuls of the said sharbat have to be added to a glass of water to make it drinkable does not, in our view, make the said sharbat not a beverage but a preparation for a beverage. Were that so, many beverages which are squash would not be beverages [See for example para 5 of this Court's judgment in the case of *Parle Exports (P) Ltd. (Northern Industries* vs. *CCE (1988) 37 ELT 229 (Tribunal)* and para 12 et seq. Of the Tribunal's judgment in the case of *Northland Industries (From the judgment and order dated 4.5.1995 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. No.65 of 1994*]. It seems to us that the phrase "preparations for lemonades or other beverages" in clause (j) of Note 5 of Chapter 21 was intended to refer to the industrial concentrates from which aerated water and similar drinks are mass produced and not to preparations for domestic use like the said sharbat.
>
> 8. It was necessary for the respondents to have shown, having regard to the terminology of Heading 21.07, that the said sharbat was "not elsewhere specified or included". That, in our view, was not done. In fact, as we see it, it falls within the terms of Heading 2202.90."

F At this juncture, it is necessary to state that initially when the judgment was pronounced on 04.08.1999, paragraph 8 mentioned "within the terms of heading 2201.90" and the same has been corrected by a corrigendum. We shall advert to the factum of rectification and its impact at a later stage.

G 5. After the judgment was pronounced, the respondent filed an application on 25th August, 1999 for grant of refund. The Revenue, in response, vide letter No.C.No.V(18) Ref/311/99/7041 dated 27.09.1999 communicated to the respondent-assessee as follows:-

> "You are requested to furnish the evidences showing that the incidence of duty debited/deposited by you for Rs.3.74 crores has

H

not been passed on to your customers.

It has also been observed that you have not submitted copy of protest letter under Rules 233B of the C.E. Rules in respect of Rs.54,00,000/- debited by you in PLA vide entry No.956 dated 26.5.95.

You are directed to submit the above documents within three days of receipt of this letter so that your claim may be processed."

6. The said letter was replied to on 30.09.1999. The relevant part of the reply reads as follows:-

"The deposit of amount of Rs.3,20,00,000.00 was made directly in the Bank against TR 6 for which no credit was taken in the PLA and the balance amount of Rs.54,00,000.00 was debited from the PLA under protest in presence of Superintendent, Central Excise, Range-IV, Div. I Ghaziabad. In this way when the amount was not utilised by us in any way other than making deposits against the Adjudications Order of the Assistant Commissioner, then the question or scope of passing it on to the consumer does not arise. However, we certify that we had not passed on this amount of Rs.3,74,00,000.00 to our customers.

In the debit entry No.956 dated 26.5.95 in the PLA after debiting the amount of Rs.54,00,000.00 against the Adjudication Order of Asstt. Commissioner it was clearly mentioned that the debit was made under Protest which was also witnessed/authentication by the Superintendent, Central Excise, Range-IV, Div.I, Ghaziabad at that time."

7. After receipt of the said reply, the matter was taken up by the competent authority, that is, the Assistant Commissioner (Div. I), Ghaziabad. The said authority recorded the history of the litigation and order passed by this Court and opined as follows:-

"I have carefully examined the claim papers and submission made by the party in their reply and at the time of personal hearing. Regarding deposit of Rs.5,40,000.00 in PLA vide Entry No.956 dated 26.6.95 under protest, I observed that the contention of the party is tenable as the letter of protest dated 8.9.94 protest all payments made under protest on 8.9.94 and their view finds support in the case of CCE, Meerut vs. Citurgia Biochemical Ltd.

A 1998 (101) 568 (SC). Even otherwise, I find that the payment of Rs.54 lacs which was endorsed "under protest" had been verified and authenticated on the same date i.e. on 26.5.95 by the Range Superintendent and the same is sufficient compliance of Rule 2338.

Regarding passing on the duty element to the Customers, I B carefully examined the O-I-A 600-CE/MRT/94 dated 10.01.95 passed by the Commissioner (appeal), Ghaziabad, who had decided in the above O-I-A that the assessable value in relation to any excisable goods, does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods. Therefore, in the case for cum duty price, the abatement of excise duty and C other taxes is to be allowed for determining the assessable value of the goods for the purpose of levy of excise duty thereon and accordingly passed order that differential duty payable by the appellants should be recalculate by the Assistant Collector after allowing the abatement of excise duty and other admissible D deduction, if any, from the wholesale price."

Being of this view, the said authority allowed the application for refund.

8. Be it mentioned here that after the application for refund was filed and the Revenue was in correspondence with the assessee, it required E the assessee to get a rectification order from this Court with regard to a typographical error pertaining to the classification. As stated earlier, in the original order of this Court, the classification was mentioned as 2201.90 which was corrected by a corrigendum making it "2202.90". Be that as it may, we clearly state that it has neither any bearing nor F impact on the present lis.

9. Presently to the flash back. In pursuance of the order passed by the competent authority, an amount of Rs.3,74,00,000/- was refunded by cheque no.639266 dated 15.11.2000 payable at PNB Navyug Market, Ghaziabad. As no interest was paid by the appellant, the respondent G filed a Civil Miscellaneous Writ Petition No. 249 of 2001 before the High Court of Judicature at Allahabad. The Division Bench, considered the judgment rendered by this Court in Civil Appeal No.7766 of 1995, took note of the time prescribed for disposal of the application for refund, the language employed in Section 11-BB of the Central Excise Act, 1944 (for short, 'the Act') and further appreciating the conduct of the H parties, opined that the liability for payment of interest is statutory and it

is the bounden duty of the Assistant Commissioner to pay interest from 26th November, 1999 till 15th November, 2000 at the rate specified under Section 11-BB of the Act. The aforesaid conclusion impelled the Division Bench to allow the writ petition with costs which was assessed at Rs.10,000/-. The said order is the subject matter of appeal by special leave.

10. We have heard Mr. Yashank Adhyaru, learned senior counsel along with Mr. Sanjai Kumar Pathak, learned counsel for the appellants and Mr. S.B. Upadhyay, learned senior counsel and Ms. Sharmila Upadhyay, learned counsel for the respondent.

11. The facts which we have adumbrated herein-above are not in dispute. It is contended by Mr. Adhyaru, learned senior counsel appearing for the Revenue that Section 11-B which deals with grant of refund of duty has to be strictly construed and, if there is no compliance with the conditions enumerated therein, the application has to be rejected. Elucidating the said argument, learned senior counsel would submit that if there is a defective application or an application not meeting the requisite criteria stipulated under the statutory provision, it is to be held that there is no application in the eye of law and hence, the period has to commence from the date when the defects are rectified. In essence, the submission is that the prescription of three months in the said provision has to commence when the application is appositely rectified to bring it in order, and there has to be adjudication to arrive at the necessitous conclusions as enshrined in the said provision, otherwise, the persons who are not entitled to get refund would be in a position to avail the benefit of refund and the interest on technical score. To buttress the said submission, he has paid immense stress on the factual matrix. It is urged by him that there was no proper application and, in fact, when the defects were communicated, they were not appositely corrected and things only came to light at the time of adjudication and thereafter in quite promptitude, the amount was paid by way of a cheque and hence, the claim of interest is absolutely unjustified and resultantly, the grant of interest by the High Court is wholly unsustainable.

12. Mr. Upadhyay, learned senior counsel appearing for the respondent would contend that in the absence of a particular form *in praesenti* the application was in order from the inception and, in any case, the period commences from the date of submission of the application which is required to be filed within one year. It is put forth by him that

A the time runs from that day and it is open to the Revenue to ask the assessee to remove the defects and if the defects are not removed it can reject the application but it has to be done within the statutory period, but under no circumstances, there can be an assumed extension of time by the Revenue. To bolster the said submission, reliance has been placed on ***Ranbaxy Laboratories Limited*** vs. ***Union of India & Ors.***[2]

B

13. To appreciate the controversy in proper perspective, it is seemly to refer to the provisions dealing with refund and interest. Section 11-B deals with claim for refund of duty and interest, if any, paid on such duty. The said provision reads as under:-

C "**Section 11B. Claim for refund of duty and interest, if any, paid on such 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

D 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

E 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

F 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 said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

G **Provided** further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commis-

---

H [2] (2011) 10 SCC 292

sioner 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 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 account current 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.

A (3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or 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).

B [Emphasis added]

14. Section 11-BB deals with interest of delayed refunds. The said provision is extracted below:-

Section 11-BB. Interest on delayed refunds.—If any duty ordered to be refunded under sub-section (2) of section 11B to C 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 D 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-E 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.

F

Explanation.- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner G (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

15. Sub-section (2) of Section 11-B stipulates filing of an application by the assessee before the competent authority. It also postulates that H 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 11-BB 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 11-B is not refunded within three months from the date of receipt of the application under Section (1) of Section 11-B, 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 11-B. We have been apprised of the circular dated 30th May, 1995. It deals with interest of delayed refund under Section 11-BB. Paragraph 2 of the said circular being relevant is reproduced below:-

"2. Keeping the above in view, the following instructions are being issued regarding refunds claimed under section 11 BB of CE & SA, 1944:-

(a) Refund application must invariably be filed in the office of the Assistant Collector and not with the Range Superintendent.

(b) Immediately on receipt of an application, the same must be scrutinized by an officer, not below the rank of an Inspector for its completeness.

(c) Preliminary scrutiny should be carried out with regard to completeness of the information in the proforma already prescribed, verification of supporting documents to substantiate the refund claims and to evidence payment of duty.

(d) An acknowledgment should be issued immediately after the above mentioned verification which will be an evidence of the receipt of refund application in terms of Section 11-BB. The period of 3 months in terms of Section 11-BB shall be counted from the date following the date of receipt of refund application up to the date of dispatch of cheque for refund.

(e) The Collector should direct the Divisional Assistant Collector to designate an officer by name who will carry out the initial verification and issue the acknowledgment thereof.

(f) Such acknowledgment must be issued within 48 hours of the receipt of the refund application, excluding holidays.

(g) Where the refund application is found to be incomplete a letter shall be issued stating the deficiencies therein the additional information/document required within 48 hours of the receipt. In such cases the letter shall be issued only with the approval of a Superintendent and the period of 3 months, for purpose of Section 11-BB shall count from the date of receipt of all the requisite information or documents.

(h) The Collector may use a cyclostyled Performa for the purpose of intimating the deficiencies or for acknowledgment of the receipt of the refund application.

(I) Check-lists of various documents which should be filed with the refund claims of different types are annexed herewith to be used as guidelines. However, the list may not be treated as exhaustive and any other documents, if required, may be included therein and called from the assessee."

16. Mr. Upadhyay, learned senior counsel has rested his stand on paragraph (g) which provides that where the refund application, is found to be incomplete, a letter shall be issued stating the deficiencies therein within 48 hours. The said circular is issued by the Government of India, Ministry of Finance (Department of Revenue), New Delhi it is binding on the Revenue but the Revenue had not pointed out any deficiency in the application within 48 hours. On the contrary, it had issued a letter on 27th September, 1999. We have already reproduced the said communication. On a studied scrutiny of the said letter, it is quite vivid that the two aspects were mentioned by the Revenue. They relate to the arena whether the assessee has passed on the duty to others; and whether the amount that was deposited was done under protest. The assessee was granted three days time and within a span of three days, i.e., 30th September, 1999, the same was complied with by stating that the duty had not been passed on by the assessee to any consumer and the amount was deposited under protest. With the said communication,

the proceedings commenced so that the competent authority could be satisfied as provided under sub-section (2) of Section 11-B. During that process, a communication was made on 1st December, 1999 to get the order passed by this Court rectified as there was a mistake with regard to the classification. We have already stated that the rectification in the order has no bearing on the determination of interest. No special emphasis can be laid on the said aspect. As is evident, after production of documents, ledgers and other documents, the adjudicating authority passed an order dated 16.11.2000 granting refund.

17. The seminal issue is be whether there has been delay in grant of refund and consequently, whether the respondent-assessee is entitled to interest. Keeping in view the enumerated facts, the submissions canvassed and the provisions referred to, it is necessary to appreciate the principle stated in ***Ranbaxy Laboratories Limited*** (supra). In the said case, the question arose whether the liability of the Revenue to pay interest under Section 11-BB 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. The two-Judge Bench after analyzing the provision has held as follows:-

> "12. 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

A date from which interest becomes payable under Section 11BB of the Act.

13. 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
B 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
C 11BB of the Act becomes payable.

[Emphasis supplied]

18. While dealing with the said facet, the Court also referred to circular dated 01.10.2002 issued by the Central Board of Excise and
D Customs, New Delhi 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 the application. Appreciating the import of the said circular, the Court opined as follows:-

"12. Thus, ever since Section 11BB was inserted in the Act with
E 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."

F The ultimate conclusion was recorded thus:-

"19. 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
G 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."

19. We will be failing in our duty if we do not refer to the larger Bench decision rendered in ***Mafatlal Industries Ltd. & Ors. vs. Union***
H

of India & Ors.[3] which has been emphatically relied upon by Mr. Adhyaru, learned senior counsel for the Revenue. He has drawn our attention to paragraphs 83 and 91. Relying on the said paragraphs, it is contended by Mr. Adhyaru that the onus is on the assessee to satisfy the competent authority that he has not passed on the burden of duty to others, for the claim of refund is founded on the said bedrock. The Bench dealing with this facet has expressed thus:-

> "... Where the petitioner-plaintiff alleges and establishes that he has not passed on the burden of the duty to others, his claim for refund may not be reused. In other words, if he is not able to allege and establish that he has not passed on the burden to others, his claim for refund will be rejected whether such a claim is made in a suit or a writ petition. It is a case of balancing public interest vis-a-vis private interest. Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected) without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes. The money really belongs to a third party – neither to the petitioner/plaintiff nor to the State – and to such third party it must go. But where it cannot be so done, it is better that it is retained by the State. By any standard of reasonableness, it is better that it is retained by the State. By any standard of reasonableness, it is difficult to prefer the petitioner-plaintiff over the State. ..."

20. In paragraph 91, this court was dealing with the constitutional validity of Section 11-B. It was contended that there is no reason why the person who becomes entitled to refund of duty, as a result of appeal or courts order, should also be made to apply and satisfy all the requirements of sub-sections (1) and (2) of Section 11-B, when he is entitled to such refund as a matter of right. The said contention was not accepted by the Court and while not accepting the larger Bench stated that:-

> "... Such a holding would run against the very grain of the entire philosophy underlying the 1991 Amendment. The idea underlying

[3] (1997) 5 SCC 536

A the said provisions is that no refund shall be ordered unless the claimant establishes that he has not passed on the burden to others. Sub-section (3) of the amended Section 11-B is emphatic. It leaves no room for making any exception in the case of refund claims arising as a result of the decision in appeal/reference/writ petition. There is no reason why an exception should be made in favour of such claims which would nullify the provision to a substantial degree. So far as "lack of incentive" argument is concerned, it has no doubt given us a pause; it is certainly a substantial plea, but there are adequate answers to it. Firstly, the rule means that only the person who has actually suffered loss or prejudice would fight the levy and apply for refund in case of success. Secondly, in a competitive market economy, as the one we have embarked upon since 1991-92, the manufacturer's self interest lies in producing more and selling it at competitive prices — the urge to grow. A favourable decision does not merely mean refund; it has a beneficial effect for the subsequent period as well. It is incorrect to suggest that the disputes regarding classification, valuation and claims for exemptions are fought only for refund; it is for more substantial reasons, though the prospect of refund is certainly an added attraction. It may, therefore, be not entirely right to say that the prospect of not getting the refund would dissuade the manufacturers from agitating the questions of exigibility, classification, approval of price lists or the benefit of exemption notifications. The disincentive, if any, would not be significant. In this context, it would be relevant to point out that the position was no different under Rule 11, or for that matter Section 11-B, prior to its amendment in 1991. Sub-rules (3) and (4) of Rule 11 (as it obtained between 6-8-1977 and 17-11-1980) read together indicate that even a claim for refund arising as a result of an appellate or other order of a superior court/authority was within the purview of the said rule though treated differently. The same position continued under Section 11-B, prior to its amendment in 1991. Sub-sections (3) and (4) of this section are in the same terms as sub-rules (3) and (4) of Rule 11; if anything, sub-section (5) was more specific and emphatic. It made the provisions of Section 11-B exhaustive on the question of refund and excluded the jurisdiction of the civil court in respect of all refund claims. Sub-rule (3) of Rule 11 or sub-section (3) of Section 11-B (prior to 1991) did not

B

C

D

E

F

G

H

say that refund claims arising out of or as a result of the orders of a superior authority or court are outside the purview of Rule 11/ Section 11-B. They only dispensed with the requirement of an application by the person concerned which consequentially meant non-application of the rule of limitation; otherwise, in all other respects, even such refund claims had to be dealt with under Rule 11/Section 11-B alone. That is the plain meaning of sub-rule (3) of Rule 11 and sub-sections (3) and (4) of Section 11-B (prior to 1991 Amendment). There is no departure from that position under the amended Section 11-B. All claims for refund, arising in whatever situations (except where the provision under which the duty is levied is declared as unconstitutional), has necessarily to be filed, considered and disposed of only under and in accordance with the relevant provisions relating to refund, as they obtained from time to time. We see no unreasonableness in saying so."

21. As far the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle laid down in ***Ranbaxy Laboratories Limited*** (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in ***Ranbaxy Laboratories Limited*** (supra) commends us and we respectfully concur with the same.

22. Tested on the aforesaid premises, we do not perceive any infirmity in the order passed by the High Court and, accordingly, the appeal, being sans substratum, stands dismissed. There shall be no order as to costs.

Kalpana K. Tripathy Appeal dismissed.