

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 10<sup>TH</sup> DAY OF NOVEMBER, 2022

BEFORE

**THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION No.459 OF 2022 (T-RES)**

**BETWEEN:**

M/S. AL TISOURCE BUSINESS SOLUTIONS PVT.LTD.,  
PRITECH BLOCK, NUMBER -11  
BELLANDUR VILLAGE  
SARJAPUR, MARATHAHALLI  
RING ROAD, BENGALURU – 560 103.  
REPRESENTED BY SHRI. SHIBU THOMAS  
DIRECTOR.

...PETITIONER

(BY SRI. JOSEPH PRABHAKAR, ADVOCATE)

**AND:**

THE DEPUTY COMMISSIONER  
OF CENTRAL TAX  
GST COMMISSIONERATE BENGALURU  
EAST DIVISION-8, 2<sup>ND</sup> FLOOR  
TTMC, BMTc BUS STAND  
HAL AIRPORT ROAD, DOMMALURU  
BENGALURU – 560 071.

...RESPONDENT

(BY SMT. VANITA.K.R., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORIGINAL-IN-ORDER SL NO.264/2020-21 DTD.11.03.2021/18.03.2021 PASSED BY THE RESPONDENT VIDE ANNEXURE-A WHEREBY HE HAS REJECTED THE REQUEST TO GRANT INTEREST OF RS.11,33,55,127/- IN TERMS OF SECTION 11BB OF THE CENTRAL EXCISE ACT, 1944 READ WITH SECTION 83 OF THE FINANCE ACT 1994 AND ETC.

THIS W.P. COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

In this petition, petitioner has sought for the following reliefs:

- a) *Issue a writ of certiorari quashing the impugned Original-in-Order Sl.No.264/2020-2021 dated 11.03.2021 / 18.03.2021 passed by the respondent vide Annexure – A whereby he has rejected the request to grant interest of Rs.11,33,55,127/- in terms of Section 11BB of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.*
- b) *Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent to grant interest to the petitioner.*
- c) *Grant such other order or direction as deemed fit by this Hon'ble Court in the facts and circumstances of the case.*

2. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

3. The material on record discloses that during the period from 30.06.2010 to 20.09.2017, the petitioner filed refund claims, which were sanctioned in favour of the

petitioner during the period from 28.03.2018 to 19.05.2020, respectively. It is contended that in view of the inordinate delay and laches on the part of the respondent in not processing the refund claims of the petitioner within the prescribed period of three months from the date of receipt of the applications of the petitioner as contemplated under Section 11-BB of the Central Excise Act, 1944 (for short "the said Act of 1944"), the petitioner submitted a representation dated 12.08.2020 seeking payment of interest on the delayed refund by the respondent. It is submitted that instead of complying with the request of the petitioner, respondent issued a show-cause notice dated 20.10.2020 calling upon the petitioner as to why the request for grant of interest should not be rejected. In response thereto, petitioner reiterated its request and invited the attention of the respondent to the relevant provisions of the said Act of 1944, in particular, Sections 11-B and 11-BB of the said Act of 1944 and also cited various judgments of the Apex Courts, this Courts and other High Courts in support of its claim. It is the grievance of the petitioner that despite the aforesaid facts and

circumstances, the respondent has proceeded to pass the impugned order rejecting the claim for interest put forth by the petitioner, who is before this Court by way of the present petition.

4. Per contra, the respondent has filed its Statement of Objections and sought for dismissal of the petition *inter alia* contending that though the refund applications were made earlier, there were certain discrepancies and lacunae in the same, on account of which the respondent called upon the petitioner to furnish the details and documents and also make submissions in this regard and ultimately, pursuant to the petitioner making submissions during the period from 26.11.2018 to 04.03.2020, the respondent sanctioned the refund within the prescribed period of three months from the date of final submission of the petitioner and as such, there was no delay on the part of the respondent in sanctioning the refund and consequently, respondent was not liable to pay interest as sought for by the petitioner in the present petition and the impugned order at Annexure-A passed by the respondent rejecting the request for payment of interest

made by the petitioner does not warrant interference by this Court in the present petition.

5. I have given my anxious consideration to the rival submissions and perused the material on record.

6. The question with regard to payment of interest on delayed refunds sanctioned beyond the prescribed period of three months from the date of receipt of an application is no longer *res-integra* in view of the judgments of the following judgments of the Apex Court, this Court and other High Courts as hereunder:

- (i) ***Haldir Topsce India Pvt. Ltd. Vs. AC., GST(EAST) - 2019 (25) GSTL 24 (Del.)***
- (ii) ***Commissioner of Customs Mangalore Vs. Gimpex Ltd. – 2020 (373) ELT 512 (Mad).***
- (iii) ***Qualcomm India Pvt. Ltd. Vs. Union of India & others – 2021-VIL-407-BOM-ST***
- (iv) ***Union of India Vs. Hamdard (Waqf) Laboratories – 2017 (51) STR 214 (SC).***
- (v) ***Dee Kay Exports Vs. Union of India - 2020 (371) ELT 200 (P & H).***
- (vi) ***Manisha Pharmo Plast Pvt. Ltd. Vs. Union of India – 2020 (374) ELT 145 (SC).***
- (vii) ***Ranbaxy Laboratories Ltd. Vs. UOI – 2011 (273) ELT 3 (SC).***

7. The said position is also clarified with respect to circulars issued in this regard including the Circular dated 01.10.2002.

8. A perusal of the aforesaid judgments will indicate that there is no distinction between intentional delay or unintentional delay on the part of the respondent in passing refund orders and the period of three months prescribed in Section 11-BB is mandatory and non-passing of refund order within the prescribed period of three months from the date of submission of the refund application would automatically and straight away amount to failure to discharge statutory duty/obligation by the refund sanctioning authority consequent upon which, the petitioner would be entitled to interest under Section 11-BB on the amounts refunded to it. It is therefore clear that in the instant case, in the light of the undisputed fact that the respondent has not sanctioned refund within the prescribed period of three months from the date of submission of the refund request by the petitioner, the respondent would be

liable to pay interest in favour of the petitioner on the amounts ordered to be refunded in favour of the petitioner.

9. A perusal of the impugned order will indicate that the respondent has rejected the claim for payment of interest put forth by the petitioner on the ground that though the petitioner had filed refund applications earlier, the same were defective on account of which the respondent called upon the petitioner to rectify the defects, produce documents and make submissions and accordingly, the subject refund orders having been passed within the prescribed period of three months from the date of the final submission made by the petitioner do not cast any liability upon the respondent to pay interest is concerned, an identical issue came up for consideration before the Hon'ble Division Bench of this Court in the case of ***the Commissioner of Customs, Mangalore Vs. Gimpex Ltd – 2020 (373) ELT 512 (KAR)***, after referring to the judgments of the Apex Court in the case of ***Ranbaxy Laboratories Ltd Vs. Union of India – 2011 (273) ELT 3 (SC)*** and ***Union of India Vs. Hamdard (Wakf)***

**Laboratories – 2017 (51) STR 214 (SC)** wherein it was held as under:

*“Heard Sri. Jeevan J. Neeralagi, learned counsel appearing for appellant. Perused the records.*

2. *Order passed by CESTAT dated 24.07.2017 allowing the appeal filed by the respondent by arriving at a conclusion that interest is to be paid by the appellant from 27.01.2010 namely from the date on which the interest claimed is to be paid, has been called in question.*

3. *It is the contention of Sri. Jeevan J. Neeralagi, learned counsel appearing for appellant that Customs Refund Application (Form) Regulations, 1995, would provide for scrutiny of an application for refund to be filed in accordance with prescribed form and on such application being filed within a period of 10 working days scrutiny takes place and if it is found that application is incomplete in any manner, same would be returned and as such liability to pay interest would start from the date of receipt of complete application. He would also contend that Section 27(1)(a) of the Customs Act, 1962 would indicate that application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in Section 28C) and failure to furnish the same,*



would not entitle the applicant to contend that application is in order and as such question of payment of interest from the date of claim made by appellant i.e., from 27.01.2010 is erroneous. Hence, contending substantial question of law raised in the appeal would arise for consideration, he prays for framing of same and also seeks for same being answered in favour of the revenue.

4. Respondent herein had exported iron ore fines and was required to pay differential duty of customs @ Rs.250/- per metric tonne if the Fe content was more than 60%. Test conducted disclosed that content was 62.1% and as such respondent was directed to pay the differential duty of Rs.55,00,000/-. Not being satisfied with the analysis report, respondent sought for sealed counter samples and bank guarantee issued by the respondent to the extent of Rs.13,75,000/- was invoked. Show cause notice issued on 08.08.2008 was adjudicated by original authority in O-I-O No.13/2009 (Commissioner) and by order dated 22.09.2009 proceedings came to be dropped. It is thereafter refund claim for Rs.13,75,000/- plus interest was filed on 26.10.2009, which was returned by the authorities on 05.11.2009 on account of certain defects and it was re-submitted on 23.02.2010, which was returned by the revenue on 04.03.2010 and re-submitted by the appellant on 20.04.2010. However, said application was

*returned with deficiency memo dated 10.05.2010 for non-compliance of original observations. In the meanwhile, department had challenged the OIO No.13/2009 (Commissioner) dated 22.09.2009 before CESTAT and tribunal by Final Order No.546/2012 dated 06.08.2012 rejected the appeal of revenue and it was accepted by the department. It is thereafter fresh application for refund on 16.10.2012 seeking refund of the amount realized by department by invoking the Bank Guarantee of Rs.13,75,000/-. The adjudicating authority, adjudicated the refund claim and by order dated 27.02.2013, sanctioned the refund of Rs.13,75,000/- under Section 27(2) of the Act by holding claim has been filed within the time limit and rejected the claim for interest on the ground that application shall be deemed to have received on the date of complete application and application for refund had been returned under a deficiency memo. This order which was affirmed by the appellate authority on 16.04.2014 was carried before CESTAT by the respondent in Appeal, which was the subject matter of final order No.21121/2017.*

*5. Tribunal after considering rival contentions raised has rightly held that claims were returned due to deficiency and deficiency memos having been addressed itself would evidence that there cannot be a claim for interest as no show cause notice was issued, is erroneous*

conclusion as provisions of Section 11B of the Central Excise Act, 1944, do not contemplate for returning of any refund claims. By relying upon the judgment in the matter of **RANBAXY LABORATORIES LTD. Vs. UNION OF INDIA** reported in **2011 (273) ELT 3** whereunder it has been held that interest liability arise after expiry of three months from the date of receipt of such application has allowed the interest from 27.01.2010 namely date on which the interest was claimed by the respondent. As rightly held by the Tribunal cause of action for claiming interest would arise after 3 months from the date of filing of said refund claim. If at all the application is defective, it would only be an irregularity not illegality. On the other hand, if the application for refund had been rejected by the department on that score, the contours of refund claim would have changed, inasmuch as, on such rejection applicant in the facts obtained in a given case may opt to file an application afresh for refund, which may be or may not be in consonance with the regulations made thereunder. However, if the department or revenue chooses for returning the application for compliance of deficiencies and on compliance of deficiencies pointed, such application if adjudicated by the authorities, they cannot be heard to contend that application which was defective would not enable the applicant to claim interest from the date of application. In fact, fresh

*application filed by the applicant on 16.10.2012 was adjudicated along with earlier application dated 26.10.2009 by treating it as having merged with fresh refund application. Hence, application for refund would not be contrary to Section 11B of the Central Excise Act, 1944 and as such we are not inclined to admit this appeal, since there is no substantial question of law involved in this appeal for being adjudicated. Hence, appeal stands dismissed.”*

10. A similar view has been taken by the High Courts of Delhi, Madras, Bombay and Punjab and Haryana in the aforesaid judgments referred to *supra*. In fact, in *Hamdard's case supra*, the Apex Court has categorically held that 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 the adjudication and reject the application for refund subject to the condition that by no stretch of imagination, the adjudicatory process has to be completed within three months and cannot be carried on beyond the prescribed period of three months as contemplated under Section 11-BB of the said Act of 1944.

11. In the instant case, it is an undisputed fact that the respondent did not pass the refund sanction order within the prescribed period of three months and the delay on the part of the respondent in not passing the refund sanction order cannot be attributed or attributable to the petitioner, particularly when the adjudicatory process had to be mandatorily completed within the period of three months. It is significant to note that merely because there were certain deficiencies/lacunae in the refund claim by the petitioner, the said circumstance cannot be relied upon nor made the basis by the respondent in order to contend that it was entitled to pass the refund sanction order beyond the prescribed statutory period of three months. Under these circumstances, I am of the considered opinion that the respondent completely misdirected itself in coming to the erroneous conclusion that the period of three months would start running from the date of the final submission made by the petitioner and not from the date of submission of the refund claim and this finding, which is not only contrary to the provisions of Section 11-B and 11-BB of the said Act of 1944, but also the circular dated 01.10.2002 and the

judgments referred to *supra* and consequently, the impugned order at Annexure-A being illegal, arbitrary and contrary to law, deserves to be set aside and necessary directions are to be issued to the respondent to pay interest on the delayed payment of refund in favour of the petitioner.

12. In the result, I pass the following:

**ORDER**

- (i) Petition is hereby *allowed*.
- (ii) Impugned order dated 11.03.2021/18.03.2021 passed by the respondent vide Annexure – A is hereby set aside.
- (iii) Respondent is directed to pay/grant interest to the petitioner on the amounts already refunded in favour of the petitioner at the rate of 6% per annum after expiry of three months from the date of submission of the refund request by the petitioner as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this order.

**Sd/-  
JUDGE**

SV/Bmc