

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH –COURT NO. 4

Excise Appeal No. 55256 of 2023

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-196-22-23 dated 23.01.2023 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal)

Bharat Heavy Electricals Limited

Appellant

(Excise & Taxation Division)
Block-VI, Annexe WWGF
P.O. Piplani, Bhopa - 42022

Versus

**Commissioner of CGST & Central Excise,
Bhopal**

Respondent

35-G. GST Bhawan, Arera Hills,
Jail Road, Bhopal-462011.

Appearance:

Present for the Appellant: Shri Z.U. Alvi, Advocate

Present for the Respondent: Shri Kuldeep Rawat, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing/Decision: 25/06/2025

Final Order No. 50946/2025

Dr. Rachna Gupta:

The present appeal has been filed by the appellant to assail the Order-in-Appeal No. 196/2022-23 dated 23.01.2023 vide which the appellant is denied to be entitled for the interest on the amount as has already been sanctioned to the appellant vide the Order-in-Original No. 10/2020-21 dated 23.02.2021. The facts relevant for the present adjudication, succinctly, are as follows:

1.1 That M/s Bharat Heavy Electricals Ltd.¹, Bhopal (the appellant) had applied a refund claim dated 06.09.2017 for refund in cash of total accumulated Cenvat of Rs. 1,56,27,241/-. On verification of the refund claim, it was observed that there are no provisions for such refund. Accordingly, Assistant Commissioner issued a Show Cause Notice No. 05/AC/CEX/ADJ/BPL-I/2017-18 dated 23.11.2017 to the claimant proposing disallowance of the refund claim. After following the procedure of natural justice, the Assistant Commissioner rejected the refund claim vide Order No. 26/AC/ST/Ref/BPL-I/2017-18 dated 12.07.2018. The Commissioner (Appeals) also dismissed the appeal vide Order-in-Appeal No. 230-18-19 dated 28.09.2018. The appeal against the said order has been allowed vide the Final Order of this Tribunal bearing No. A/51849/2019 dated 26.04.2019. Since the department filed an appeal against the said final order before Hon'ble High Court, Madhya Pradesh that the claim was proposed to be rejected vide Show Cause Notice No. 01/2020-21 dated 04.12.2020 on seven grounds as mentioned in the said show cause notice, as follows:

“(i) The judgment of the Hon'ble Supreme Court in the case of **Eicher Motors** has no applicability to the present case;

(ii) The Learned Tribunal has erred in inferring that as there is no provision in new law to lapse the balance of credit, the same is liable to be refunded in cash;

(iii) The refund claim was not filed by the claimant under the provisions of Rule 5 of the CENVAT Credit Rules, 2004;

(iv) The learned Tribunal has erred in ignoring the judgment of the Hon'ble High Court of Rajasthan in the case of **Banswara Syntex Ltd. Vs. Commissioner of Central Excise – 2019 (365) ELT 773** wherein it was held that the balance of credit of education cesses available as on 1.3.2015 from which these levies were discontinued, was not liable to be refunded in cash;

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(v) The learned Tribunal has wrongly held that the balance of CENVAT credit available at the time of closure of the factory of the assessee or withdrawal of the levy was refundable in cash;

(vi) The order of the learned Tribunal is contradictory to the decision of the Hyderabad Bench of the Tribunal in the case of Claimant's Hyderabad unit;

(vii) The issue has been finally decided in favour of the revenue by the Division Bench of Hon'ble Madras High Court vide its order dated 16.10.2020 in the case of **Commissioner of CGST & Central Excise Vs. Sutherland Global Services Pvt. Ltd."**

1.2 However, the proposal was not accepted and the amount of refund claim was sanctioned as well as disbursed vide the aforesaid order-in-original (dated 23.02.2021). Since the interest in terms of Section 11BB of Central Excise Act was not granted while sanctioning the said refund that the appeal was filed before Commissioner (Appeals) who vide the impugned order has dismissed the appeal due to the pendency of Writ Petition No. 11/2020. Being aggrieved of the said decision, appellant is before this Tribunal.

2. I have heard Shri Z.U. Alvi, learned counsel for the appellant and Shri Kuldeep Rawat, learned Authorized Representative for Revenue.

3. Learned counsel for the appellant has mentioned that the appeal of the department against the final order dated 26.04.2019 before Hon'ble High Court stands already disposed of being 'Dismissed as Withdrawn' vide order dated 23.07.2025. Accordingly, the only basis for the order of Commissioner (Appeals) is no more in existence. The appellant is otherwise entitled for the

interest in terms of Section 11BB of Central Excise Act. Learned counsel has relied upon the decision of Hon'ble High Court Delhi in the case of **Commissioner of Central Excise Vs. Birla Textile Mills²** and has prayed for the appeal to be allowed.

4. Learned Authorized Representative appearing for the department has impressed upon no infirmity in the order passed by Commissioner (Appeals). However, has fairly conceded about provision of interest on the amount of sanctioned refund as per Section 11BB of Central Excise Act. It is simultaneously brought to notice that vide Notification No. 67/2003 dated 12.09.2003 the rate of such interest has been fixed at 6%. Appeal is prayed to be disposed of accordingly.

5. In the light of the submissions of both the parties, it is observed that the refund claim of the appellant as was filed on 06.09.2017 was with respect to refund of unutilized CENVAT. The final order of this Tribunal dated 26.04.2019 has subsequently held appellant eligible for the cash refund of the cesses lying as Cenvat credit balance as on 30.06.2017 in their accounts. Though, the same was proposed to be rejected vide the impugned show cause notice. However, the order in original as passed in this appeal had sanctioned and disbursed the amount of refund claim amounting to Rs. 1,56,27,241/- but without any interest. I further observe that Commissioner (Appeals) has rejected the entitlement of the appellant to have interest on the said sanctioned amount only on the ground that the issue is *subjudiced* before the Hon'ble High Court Madhya Pradesh. It has been brought to notice that the said

2 2015 (325) ELT 651 (Del.)

matter stands already disposed of as being dismissed as withdrawn. It stands clear that the very basis of the order of Commissioner (Appeals) is no more in existence.

6. At this stage, I have perused Section 11BB which reads as under:

"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 ten per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Board, 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."

7. The Notification dated 12.09.2003 has also been perused. As per Section 11BB the statute itself entitles the assessee to have interest on the amount refunded in case the said amount is not sanctioned within three months of the refund claim. In the present case, the refund application was of 06.09.2017 and the order sanctioning the same is dated 23.02.2021 apparently the order of sanction is much beyond the said period of three months. This is

sufficient for me to conclude that the appellant is entitled for interest on the amount of refund claim. However, with effect from the date on which the three months from the date of refund expires till the date of disbursement thereof.

8. Coming to rate of interest of the said amount, it is observed that Section 11BB has given a range of such rate which should not be below 5% and should not be exceeding 30% subject to a notification in the official gazette. The notification dated 12.09.2003 has fixed the said rate at 6%. Resultantly, I hold appellant entitled for the interest for the period as already mentioned above @ 6%. With these findings, the present appeal stands allowed.

(Dictated & pronounced in open Court)

(Dr. Rachna Gupta)
Member (Judicial)

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