



(for short the "said Notification") the Central Government inter alia exempted goods required in connection with petroleum operations undertaken under petroleum exploration licenses. It is not in dispute before us that the spares and consumables imported by the Petitioner are covered under the said Notification, subject to the conditions set out therein. Condition No. 29 of the said Notification required the Petitioner, as a sub-contractor of ONGC, to produce an "Essentiality Certificate" from the Directorate of Hydrocarbons (for short the "DGH"), which would be issued only on the recommendation of ONGC.

4. It is then stated that the Petitioner could not avail of the exemption under the said Notification at the time of import, for want of the Essentiality Certificate from the DGH as ONGC did not issue any recommendation letters for issuance of the same. Accordingly, for import of the said spares and consumables, the Petitioner filed Bill of Entry No. 1744, dated 27th September, 2002 without claiming any benefit under the said Notification and paid the applicable duty of Rs. 1,89,15,549/- on 14th October, 2002 and took clearance of the said goods.

5. Due to the persistent refusal on the part of ONGC to issue the recommendatory letters required for issuance of the Essentiality Certificate by the DGH, the Petitioner approached the Delhi High Court by filing Writ Petition No. 7019 of 2002 inter alia praying for directions (i) against ONGC to issue the recommendatory letters and (ii) against the DGH to issue the Essentiality Certificate. Be that as it may, pending disposal of this Writ Petition before the Delhi High Court, on the recommendation of ONGC, the DGH issued the Essentiality Certificate Bearing No. DGH/EC/ONGC/659/2003, dated 13th March, 2003. The said Certificate was issued to the Deputy Commissioner of Customs. Hence nothing survived in the Writ Petition and the same was disposed of by the Delhi High Court.

6. Thereafter, the Petitioner filed a refund application on 4th April, 2003. It is the case of the Petitioner that notwithstanding the fact that the Essentiality Certificate was issued by the DGH, the Asst. Commissioner of Customs, vide his letter dated 6th May, 2003 returned the refund application/claim as premature for want of the Essentiality Certificate.

7. Thereafter, many years later, by their letter 20th June, 2011 (Exh. "G" to the Petition), the Petitioner brought to the notice of the Revenue the order of the Delhi High Court passed in Writ Petition 7019 of 2002 as well as the refund application filed by them on 4th April, 2003. The Petitioner also enclosed a copy of the Bill of Entry No. 1744, dated 27th September, 2002 and a copy of the Essentiality Certificate dated 13th March, 2003. The Petitioner submitted that instead of granting the refund in compliance of the Delhi High Court order, the Asst. Commissioner of Customs, vide his order dated 6th May, 2003 has wrongly returned the refund application as being premature for want of the Essentiality Certificate. The Petitioner stated that the Essentiality Certificate was enclosed with the said refund application (filed on 4th April, 2003) but for the sake of easy reference, was

again enclosing the same and requested the authorities to sanction the refund due to them.

8. In reply thereto, the Department wrote a letter dated 21st July, 2011, requesting the Petitioner to submit certain documents, a list of which is set out in the impugned order (at Page 210 of the paper book). These documents were forwarded by the Petitioner to the Department under cover of their letter dated 2nd August, 2011. It transpires that thereafter the Refunding Authority passed its order dated 13th December, 2011 (Page 67 of the paper book) rejecting the refund claim of the Petitioner. The operative part of this order reads as under :-

"14(d) : On receipt of the aforesaid Essentiality Certificate dated 13-3-2003, I now proceed to process the refund claim dated 4-4-2003 in respect of the goods cleared on payment of duty for which the Importer has filed the present refund claim application under Part-A including various documents such as Original Bill of Entry, Import Invoices, Original Essentiality Certificate stating that the goods cleared on payment of customs duty are covered by a Essentiality Certificate issued by DGH by virtue of which the goods cleared on payment of duty were liable to be refunded. I find that the Importer has fulfilled the conditions of Notification 21/2002, dated 1-3-2002, Sr. No. 214 of Table, List 12, Condition 29, by submitting the Essentiality Certificate. I, however, find the Essentiality Certificate was issued subject to the condition that the left over items are subject it Re-export by 30-4-2004. Examining the records, I find that some of the goods were exported vide Shipping Bill No. 1000003625, dated 7-12-2004 i.e. beyond the stipulated date of 30-4-2004. Importer in response to specific query on this count have replied vide their letter dated 28-11-2011 clarifying that left over items were exported on 7-12-2004 and have not given any further evidence as to :

(i) re-export before 30-4-2004.

(ii) relaxation of the conditions of re-export by 30-4-2004.

(iii) List of left over items by 30-4-2004 and permission from Customs to relax the conditions for export by stipulated time.

The above position clearly bring out the fact that the importer has not complied with the conditions of Essentiality Certificate. In view of the same, the Essentiality Certificate cannot be taken to be the basis of refund.

Accordingly, I pass the following order :

ORDER

I reject the refund application dated 4-4-2003 for an amount of Rs. 1,89,15,549/- filed by M/s. Sedco Forex International Drilling INC, Transocean House, Lake Boulevard Road, Hiranandani Business Park, Powai, Mumbai 400 076."

(emphasis supplied)

9. Aggrieved by the said order, the Petitioner preferred an appeal before the Commissioner (Appeals), who by his order dated 10th January, 2013, set aside the order dated 13th December, 2011 and remanded back the case to the Refunding Authority stating that the Refunding Authority is directed to examine the proof of export and process the same after verification of the original documents. Subsequently, the Refunding Authority, after going through the documents submitted by the Petitioner, once again rejected the refund claim vide its order dated 22nd January, 2014.

10. Aggrieved by the order dated 22nd January, 2014, the Appellant directly approached this Court, who by its order dated 5th February, 2014 [2014 (306) E.L.T. 607 (Bom.)], set aside the order dated 22nd January, 2014 and remanded the case back to the Refunding Authority to decide the matter afresh after granting a hearing to the Petitioner. In pursuance of the order of the High Court dated 5th February, 2014, and after taking into consideration the documents submitted by the Petitioner, an order was passed by the Refunding Authority on 23rd June, 2014, sanctioning the refund of Rs. 1,89,15,549/- Pursuant to the aforesaid order of refund, the Petitioner also received Cheque No. 026271, dated 11th July, 2014 for an amount of Rs. 1,89,15,549/- issued by the Government of India, Ministry of Finance, Central Board of Customs and Excise.

11. However, as the Petitioner was not granted any interest against this refund amount, the Petitioner filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), after considering the statutory provisions and more particularly Section 27A, as well as the case law relied upon by the Petitioner, opined that as per the aforesaid section, the Petitioner was eligible for interest on delayed refund. However, the Refunding Authority had nowhere in the entire order discussed the issue of interest which, according to the Commissioner (Appeals), ought to have been examined by it. The Commissioner (Appeals) further held that the decisions relied upon by the Petitioners were squarely applicable to the facts of the present case and hence concluded that since the calculation of interest was not possible at his level, the matter needed to be remanded. Accordingly, the Petitioner was directed to cooperate and furnish all submissions before the Refunding Authority and the Refunding Authority was to decide this issue within six week's time. It is pursuant to this direction that the Refunding Authority has passed the impugned order dated 29th April, 2016, under which it held that the refund application filed by the Petitioner was complete in all respects for sanction of refund, only after the Petitioner submitted all the essential documents during the personal hearing held on 12th May, 2014. The refund claim was processed and refund was granted to the Petitioner on 23rd June, 2014 which was well within three months as stipulated in Section 27A of the Customs Act, 1962. Hence, the Petitioner was not entitled to any interest. It is aggrieved by this order that the Petitioner is before us.

12. In this factual backdrop, Mr. Prakash Shah, learned Counsel appearing on behalf of the Petitioner, submitted that the impugned order is wholly perverse and directly contrary to the provisions of Section 27A of the Customs Act, 1962. He laid great emphasis on Section 27A which deals with interest on delayed refunds which inter alia stipulates that if any duty ordered to be refunded under sub-section (2) of Section 27, is not refunded within three months from the date of receipt of the refund application under sub-section (1) of Section 27, then, the Applicant would be entitled to such rate of interest (as notified), 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. He submitted that in the facts of the present case, the original refund application was filed on 4th April, 2003. Even though the same was wrongly returned to the Petitioner on the ground that the same was not accompanied with the Essentiality Certificate, the Petitioner, vide their letter dated 20th June, 2011, once again enclosed all the documents including a copy the refund application filed on 4th April, 2003 and a copy of the Essentiality Certificate dated 13th March, 2003. He submitted that even though the Petitioner would be entitled to interest from the expiry of 3 months from 4th April, 2003, the Petitioner is restricting its claim for interest from the expiry of 3 months from 20th June, 2011 till 11th July, 2014 (i.e., the date when the payment of refund was made to the Petitioner). Mr. Shah submitted that the finding of the Refunding Authority that the refund claim was complete in all respects for sanctioning the refund only after the Petitioner had submitted all essential documents at the personal hearing held on 12th May, 2014, is wholly perverse and does not find any support even from the provisions of Section 27A. He submitted that the Refunding Authority by its order dated 13th December, 2011 (Page 67 of the paper book) rejected the refund application of the Petitioner on merits and not on the ground that the same was incomplete. He submitted that this is ex-facie apparent from the operative part of the order (and which is reproduced by us earlier). For all the aforesaid reasons, Mr. Shah submitted that the impugned order is liable to be quashed and set aside and the Refunding Authority ought to be directed to calculate the interest payable on the refund granted to the Petitioner.

13. On the other hand, Mr. Jetly, learned Counsel appearing on behalf of the Respondents, submitted that the interest free period of three months for processing the claim would start from the date of receipt of a complete refund application. In this regard, he placed reliance on Circular No. 59 of 1995, dated 5th June, 1995, issued by the Government of India, Ministry of Finance, (Department of Revenue), Central Board of Excise and Customs, New Delhi. He placed reliance on Paragraph 3 of this Circular which reads as under :-

"3. The new regulations provide for the form and manner in which an application of refund is to be made. As may be seen, the regulations also provide for the scrutiny of an application and its return of the applicant within a period of 10 working days, if it is found incomplete in any manner or detail. If however, the application is found to be complete in all respects for the purpose of processing the refund claim the

same is to be acknowledged within the period of 10 working days. The interest free period of 3 months for processing the claim while be deemed to start the date of receipt of the complete refund application."

(emphasis supplied)

14. Mr. Jetly submitted that in the facts of the present case, the impugned order correctly states that the refund claim was complete in all respects for sanctioning the refund only after the Petitioner submitted all essential documents at the personal hearing held on 12th May, 2014 and the refund was processed and granted to the Petitioner on 23rd June, 2014. This was well within three months as stipulated under Section 27A. He, therefore, submitted that no fault can be found with the impugned order and the Writ Petition ought to be dismissed.

15. We have heard the learned Counsel at length and perused the papers and proceedings in the Writ Petition as well as the annexures thereto. Before we deal with the present controversy, it would be appropriate to set out certain provisions of the Customs Act, 1962. Section 27 deals with a claim for refund of dues and inter alia stipulates that any person claiming refund of any duty or interest paid by him or borne by him, may make an application in such form and manner as may be prescribed for such refund, to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest. This section further stipulates that the application shall be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him, and the incidence of such duty or interest, has not been passed on by him to any other person. Thereafter, Section 27A deals with interest on delayed refunds. This section was brought on the Statute Book with effect from 26 May, 1995 and reads as under :-

"27A. Interest on delayed refunds. - If any duty ordered to be refunded under sub-section (2) of Section 27 to an 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 27 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 Customs under sub-section (2) of Section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section."

16. This section clearly stipulates, if any duty ordered to be refunded under sub-section (2) of Section 27 to the applicant and the same is not refunded within three months from the date of receipt of the refund application, then the applicant would be paid interest at such rate as more particularly stipulated in the said section. This interest would be payable immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty. For the purposes of the present controversy, the proviso and the explanation to said section are not really germane to the present dispute. In a nutshell, what this section stipulates is that, once an application for refund has been made and the same is granted within a period of three months from the date of receipt of the application, then there would be no liability to pay interest to the applicant. However, if the refund is granted beyond the period of three months from the date of receipt of the application, then, on the amount of refund granted, interest would also be payable from the date immediately after expiry of three months from the date of receipt of such application, till the date of refund.

17. We must note here that almost identical and pari materia provisions under the Central Excise Act, 1944 came up for consideration before the Supreme Court in the case of **Ranbaxy Laboratories Ltd. v. Union of India, (2011) 10 SCC 292 : 2011 (273) E.L.T. 3 (S.C.) : 2012 (27) S.T.R. 193 (S.C.)**. The Supreme Court, after noting the provisions of Section 11B and 11BB of the Central Excise Act, 1944 (and which are almost identical and pari materia to Sections 27 and 27A of the Customs Act, 1962) [in the SCC Report], held as under :-

"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 the 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 the 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.

13. Manifestly, interest under Section 11BB of the Act becomes payable, if on 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 11-BB of the Act becomes payable.

14. 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 v. IRC [(1921) 1 KB 64]** and **Ajmera Housing Corpn. v. CIT [(2010) 8 SCC 739].**)

15. At this juncture, it would be apposite to extract a Circular dated 1-10-2002, issued by the Central Board of Excise and Customs, New Delhi, wherein referring to its earlier Circular dated 2-6-1998, 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 11-BB of the Act. Significantly, the Board has stressed that the provisions of Section 11-BB 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 and 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 11-BB of the 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. The Board has been receiving a large number of representations from the 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, the Board would like to stress that the provisions of Section 11-BB of the 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 the higher appellate authority for grant of interest. Simultaneously, the Board would like to draw attention to Circular No. 398/31/98-CX, dated 2-6-1998 [(1998) 100 E.L.T. T-16] wherein the 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, the 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."

(emphasis supplied)

16. Thus, ever since Section 11-BB was inserted in the Act with effect from 26-5-1995, 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 11-B(1) of the Act."

(emphasis supplied)

18. On a harmonious reading of the provisions of Sections 27 and 27A along with the observations of the Supreme Court, what becomes abundantly clear is that once a refund is granted to the applicant and the said refund is not given to the applicant within three months from the date of receipt of the refund application, then the applicant would automatically be entitled to interest on the said refund, from the date immediately after expiry of three months from the date of receipt of such refund application, till the date of the refund of such duty.

19. Applying this law to the facts of the present case, we find that originally, the Petitioner had made an application for refund on 4th April, 2003. However, this application was returned back as premature for want of submission of the Essentiality Certificate with the refund application. Even though this fact (of non-submission of the Essentiality Certificate) is disputed by the Petitioner, we find that admittedly, the Petitioner, by their letter dated 20th June, 2011 enclosed copies of the relevant Bill of entry, the refund application dated 4th April, 2003 and a copy of the Essentiality Certificate.

20. This request for refund (made on 20th June, 2011) was rejected by the Refunding Authority by its order dated 13th December, 2011 (Exh "L" Page 67 of the paper book). What is important to note is that the rejection of refund was not on the ground that it was incomplete or that all the relevant documents were not submitted by the Petitioner. The operative part of the order (and which has been set out earlier), in fact states that the Petitioner had "fulfilled the conditions of Notification 21/2002, dated 1-3-2002, Sr. No. 214 of Table, List 12, Condition 29, by submitting the Essentiality Certificate." The Refunding Authority, however, held that the Essentiality Certificate was issued subject to the condition that the left over items are subject to Re-export by 30th April, 2004. Examining the records, the Refunding Authority came to a finding that some of the goods were exported beyond the expiry date of 30th April, 2004 and in view thereof, the Refunding Authority found that the Petitioner had not complied with the conditions of the Essentiality Certificate. It therefore held that the Essentiality Certificate could not be taken to be the basis of the refund and accordingly rejected the refund application of the Petitioner. This order dated 13th December, 2011 was thereafter subjected to an appeal and as well as further proceedings (as more particularly set out earlier), which finally culminated in a refund being granted to the Petitioner on 23rd June, 2014 in the sum of Rs. 1,89,15,549/- As no interest was granted on this refund, the Petitioner challenged the said order before the Commissioner (Appeals). The Appellate Authority (by its order dated 27th October, 2015), after taking into consideration provisions of Section 27A of the Act opined that the Petitioner was eligible for interest on the delayed refund. It further held that since the calculation of interest was not possible at its level it remanded the matter back to the Refunding Authority for the purpose of calculation of interest. As this order of the Appellate Authority was not being implemented, the Petitioner preferred Writ Petition No. 2793 of 2016 before this Court, who by its order dated 4th April, 2016, (Exh. "B", Page 35 of the paper book) clarified that the authorities were now not permitted to ignore the order dated 27th October, 2015 passed by the Commissioner (Appeals) or any directions contained therein. If the interest was payable as held in the appeal, then the calculation thereof was the limited issue which the Refunding Authority was to examine. This Court also held that the statutory provisions are clear that where there is a delay in the grant of refund, then interest must follow. It is only the calculation thereof which would be determined by the Authority.

21. Looking to all these facts, we are unable to agree with the submission of Mr. Jetly that the refund application was complete in all respects for sanctioning the refund only after the Petitioner had submitted all essential documents at the personal hearing held on 12 May, 2014 and thereafter the refund claim was processed and granted to the Petitioner on 23 June, 2014, which was within the period of 3 months as stipulated in Section 27A of the Act. The facts of this case and the orders passed not only by the Appellate Authority but also by this Court, clearly indicate otherwise.

We must mention here that the Refunding Authority is not powerless. If a refund application filed by a party is incomplete, the Refunding Authority can always return back the refund application saying that it is incomplete in all respects or reject the same on the ground that it is incomplete. As mentioned earlier, initially when the Refund Application was rejected by the Refunding Authority, (by its order dated 13th December, 2011), it was not the case of the Refunding Authority that all the essential documents were not supplied by the Petitioner along with the refund application. The said refund application was rejected on the ground that the Petitioner had not complied with the conditions set out in the Essentiality Certificate. Hence the refund application was rejected on merits. This being the position, we are unable to accept the arguments of Mr. Jetly that the refund application filed by the Petitioner was complete in all respects only in May, 2014.

22. In light of these facts, and having rejected Mr. Jetly's argument, we have no hesitation in setting aside the impugned order dated 29 April, 2016 and holding that the Petitioner would be entitled to interest on the sum of Rs. 1,89,15,549/- from the date immediately after expiry of three months from 20th June, 2011 till 11th July, 2014 (being the date when the refund was actually paid to the Petitioner). For the limited purpose of calculating and paying this interest, the matter is remanded back to the Refunding Authority. It is clarified that the Refunding Authority shall not undertake any other or further exercise, other than to calculate interest on the refund amount and in terms of what is stated earlier. We grant the Authority six weeks time, which shall commence from the date of receipt of a copy of this order, for the above purpose.

23. For all the aforesaid reasons, rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

24. Before parting, we direct that a copy of this order be forwarded to the Secretary, Ministry of Finance (Department of Revenue), Government of India and the Chairman, Central Board of Excise and Customs, New Delhi for necessary action. It is only they who would possibly realise that the object and purpose is to take expeditious action on refund applications so that revenue loss is avoided in payment of statutory interest. The intent is to discourage the tendency of not taking prompt action on these applications, thereby defeating all policies aimed at creating a business friendly atmosphere. They must also realise that litigation in Court on this score results in precious time and money being wasted.