

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Service Tax Appeal No. 85458 of 2020

(Arising out of Order-in-Appeal No. AJV/01/RGD APP/2019-20 dated 16.12.2019 passed by the Commissioner of Central Tax (Appeals), Raigad)

Capita India Pvt. Ltd.
Plant no. 6, Gate No. 2,
Godrej & Boyce Complex,
LBS Marg, Vikhroli (W)
Mumbai

.....Appellant

VERSUS

**Commissioner of Central Tax, Navi
Mumbai**
5th Floor, CGO Complex,
CBD Belapur, Navi Mumbai

.....Respondent

APPEARANCE:

Shri Sanjeev Nair, Advocate for the appellant
Shri S.B. P. Sinha, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86170 / 2022

DATE OF HEARING : 09.11.2022

DATE OF DECISION : 12.12.2022

Per: AJAY SHARMA

This appeal has been preferred against the impugned order dated 16.12.2019 passed by the Commissioner of Central Tax (Appeals), Raigad by which the learned Commissioner rejected the appeal filed by the appellant and held that the appellant shall

not be eligible for interest on delay in sanction of refund, filed under Rule 5 of Cenvat Credit Rules, 2004.

2. The issue involved herein is whether the appellant is eligible for interest on the delayed sanction of refund claim filed by them under Rule 5 of Cenvat Credit Rules, 2004?

3. The facts leading to filing of instant appeal are stated in brief as follows. The appellant is engaged in the provision of business support service to its customer located outside India which qualifies as "export" under the Service Tax Rules, 1994. The appellant exported the service without payment of any Service Tax. In terms of Rule 5 ibid read with notification 27/2012-CE(NT) dated 18.06.2012 the appellant claimed refund of Cenvat Credit accumulated on account of the export of services for the period April, 2013 to September, 2015. The aforesaid refund claims were partly allowed by the Adjudicating Authority and thereafter some of them by the Appellate Authority and this Tribunal vide order dated 07.06.2018 granted remaining part of the refund which has been rejected by the Appellate Authority. On a letter/application being filed by the appellant with the Adjudicating Authority, requesting for the refund that was allowed by the Tribunal, the amount was sanctioned by the said authority. However, the said authority failed to pay any interest on the delayed sanction of refund under section 11BB of Central Excise Act, 1944 despite the refunds being sanctioned beyond the period of three months from the date of filing of refund application/letter. Aggrieved the

appellant filed appeal before the learned Commissioner and the learned Commissioner vide impugned order dated 16.12.2009 rejected the appeal by observing that the refund involved herein is not in the nature of any duty/tax paid by the appellant which was found refundable under section 11B *ibid* and also relied upon the decision of the Tribunal in the matter of *M/s. Gionee India Pvt. Ltd. Vs. Asst. Commissioner (GST East); 2019 (12) TMI-CESTAT-NEW DELHI.*

4. Learned Counsel for the appellant submitted that the decision of the Tribunal as relied upon by the learned Commissioner while rejecting the appeal is *per in curium* since it has ignored various decisions on identical issue and in support of his submission learned counsel placed reliance on the following decisions:

- (i) *Hero Motors Ltd. Vs. CCE, Ghaziabad 2014 (307) ELT 138(Tri-Del)*
- (ii) *Commissioner of Central Excise vs. Reliance Industries Ltd. 2010 (259) ELT 356(Guj) and approved by Hon'ble Supreme Court in 2011 (274) ELT A110 (SC)*
- (iii) *Commissioner of Central Tax, Bengaluru vs. Netapp India Pvt. Ltd. 2020 (32) GSTL 176 (Kar)*

Per contra learned Authorised Representative reiterates the findings included in the impugned order and prays for dismissal of the instant appeal.

5. I have heard the learned Counsel for the Appellant and learned Authorised Representative for Revenue and perused the case records and the written submission/synopsis filed by the learned Counsel along with case laws. Before the learned Commissioner, the counsel for the appellant placed reliance on

the decision of the Hon'ble Supreme Court in the matter of *M/s. Ranbaxy Laboratories Ltd. Vs. UOI; 2011 (273) ELT 3 (SC)* which, according to learned Counsel, has laid down that interest on delayed refund is payable under section 11BB ibid on the expiry of period of three months from the date of application. Learned Commissioner tried to distinguish the aforesaid judgement passed by the Hon'ble Supreme Court by observing that in the said judgment the Hon'ble Supreme Court has ordered interest on delayed refund as duty paid therein was found refundable under section 11BB ibid, whereas in the instant case appellant was sanctioned refund of accumulated Cenvat Credit due to export under Rule 5 ibid which is not in the nature of any duty/tax paid by the appellant which was subsequently found refundable under section 11B. Therefore, according to learned Commissioner the judgement of Hon'ble Supreme Court shall not be applicable in the instant case. I am afraid the learned Commissioner is not correct in his view and he lost sight of the position of law that refund under Rule 5 also being a refund under section 11B would squarely fall within the ambit of Section 11BB and interest is payable in case of delay in sanctioning the refund under Rule 5 and in support of my aforesaid view reliance is placed on the decision of the Hon'ble High Court of Gujarat at Ahmedabad in the matter of *Commissioner of Central Excise vs. Reliance Industries Ltd. 2010 (259) ELT 356 (Guj)* which has been maintained by the Hon'ble Supreme Court in 2011 (274) ELT A110 (SC). In the aforesaid decision the Hon'ble Gujarat High Court has held that when there

is delay in sanctioning the refund under Rule 5 and Notification dated 18.06.2012, the provisions of Section 11BB would be clearly attracted. Similar view has been taken by the Hon'ble High Court of Madras in the matter of *Commissioner vs. Rajalakshmi Textile Processors Ltd.*; 2008 (221) ELT 38 (Mad.) and recently Hon'ble Karnataka High Court in the matter of *Commissioner of Central Tax, Bengaluru vs. Netapp India Pvt. Ltd.* 2020 (32) GSTL 176 (Kar) has also decided this issue in favour of assessee and against the Revenue by dismissing department's appeal. The decisions cited by the learned Counsel are also on the same lines. Accordingly, I am of the view that the learned Commissioner ought to have followed the law laid down by the Hon'ble Supreme Court in the matter of *Ranbaxy Laboratories* (supra) rather than distinguishing it.

6. Learned Commissioner seems to be not aware of the *Principle of Judicial Discipline* and in particular Article 141 of the Constitution of India, which provides that the decisions of the Hon'ble Supreme Court are binding on all the Courts in India and "all Courts" includes quasi-judicial authorities also, therefore he ought to have followed the law laid by the Hon'ble Supreme Court in *Ranbaxy Laboratories Ltd.* (supra). So far as the decision of the Tribunal in the matter of *M/s Gionee India Pvt. Ltd.* (supra) is concerned, I have gone through the same and find that in the said matter no assistance was provided to the Tribunal by assessee therein, nor any materials/decisions were placed on record as no one was present on behalf of the assessee therein and the matter was decided ex-parte. There

was no occasion for the Tribunal in that matter to deal with the aforesaid decisions of the Hon'ble Supreme Court and Hon'ble High Courts on identical issue by which this issue has already been settled. The Revenue in that matter ought to have brought the aforesaid decisions (*whichever were pronounced by that date*) on this issue before the Tribunal and had they brought it on record therein, then the result would have been something else. When series of decisions of Constitutional Courts are available then the Principle of judicial discipline cast a duty on me to follow those and nothing else.

7. Therefore, following the decisions as aforesaid, the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 12.12.2022)

(Ajay Sharma)
Member (Judicial)

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