Blackberry India Pvt. Ltd. vs. The Assistant Commissioner,

Whether interest under Section 11BB of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 on refund of unutilised CENVAT Credit is to be calculated from the date immediately after expiry of three months from the original refund app

Date of Order: August 3, 2023
Case Law No: GIB-DHC-2023-09
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background & Relevant Facts

The petitioner, Blackberry India Pvt. Ltd., was engaged in providing marketing, administration and support services to Blackberry Singapore Pte. Ltd., an overseas entity. The petitioner claimed these services constituted export of services under the Service Tax Rules, 1994 and accordingly filed three separate applications for refund of unutilised CENVAT Credit for the following periods:

- April–June 2012: Rs. 3,18,11,287/- filed on 28.03.2013
- April–June 2013: Rs. 2,89,94,208/- filed on 31.03.2014
- July–September 2013: Rs. 2,47,28,850/- filed on 30.06.2014
- Total: Rs. 8,55,34,345/-

The refund applications were not processed for years. The Adjudicating Authority issued a Show Cause Notice dated 22.01.2020, proposing to reject the refund on the ground that the petitioner was an "intermediary" and hence the place of provision of services was India, not outside India. By Order-in-Original dated 31.08.2020, the refund claims were rejected. The Commissioner (Appeals) upheld this rejection on 19.08.2021.

The petitioner appealed to CESTAT, which by Final Order No. 51150/2022 dated 07.12.2022 allowed the appeal and held the services to be export of services — entitling the petitioner to refund. Even after CESTAT's order, the refund was not processed. The petitioner sent a letter dated 07.02.2023 requesting processing of the refund. The Revenue also filed an appeal against the CESTAT order before the Delhi High Court (SERTA 7/2023), which was dismissed on 12.07.2023.

The Adjudicating Authority then processed the refund by the impugned order dated 04.05.2023 —

sanctioning the principal amount of Rs. 8,55,34,345/- but denying interest under Section 11BB, treating the petitioner's letter dated 07.02.2023 as the date of refund application and holding that since refund was granted within three months thereof, no interest was payable. The petitioner challenged only the denial of interest in the present writ petition.

Court Observations (Verbatim)

"*In a case where Revenue denies the claim for refund and the assessee succeeds before the Appellate Authorities, the interest is required to be calculated from the date immediately after the expiry of three months from the date of application for the refund and not from the date of the appellate orders. This issue was settled by the Supreme Court in Ranbaxy Laboratories Ltd. v. Union of India: (2011) 10 SCC 292.*"

"*The said contention [that interest should be calculated from three months from the CESTAT order dated 07.12.2022] is unmerited and as stated above, the said issue stands authoritatively settled by the Supreme Court in Ranbaxy Laboratories Ltd. (supra).*"

"*The impugned order is, ex facie, erroneous to the extent it rejects the petitioner's claim for interest. The impugned order sets out a tabular statement...clearly stating the dates on which the petitioner had made its claim for refund.*"

"*The Adjudicating Authority has failed to consider that the petitioner had filed its applications of refund on 28.03.2013, 31.03.2014 and 30.06.2014 for the tax periods April-June 2012, April-June 2013, and July-September 2013 respectively. And the interest payable to the petitioner is required to be calculated from the date immediately after expiry of three months from the dates on which those applications were made.*"

Final Verdict

Writ petition allowed. The Adjudicating Authority directed to forthwith process the petitioner's claim for interest under Section 11BB of the Central Excise Act read with Section 83 of the Finance Act, computed from the date immediately after expiry of three months from the original application dates (28.03.2013, 31.03.2014 and 30.06.2014 respectively) — not from the letter dated 07.02.2023. In favour of Assessee.

ADDITIONAL FOOTNOTES

Cases Referred & Citations

S.No	Case	Forum	Citation
1	Ranbaxy Laboratories Ltd. vs. Union of India	Supreme Court	(2011) 10 SCC 292

S.No	Case	Forum	Citation
2	Principal Commissioner, Central Excise & CGST-Delhi South vs. Blackberry India Pvt. Ltd.	Delhi HC	SERTA 7/2023, decided 12.07.2023

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