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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 03.08.2023*

+ W.P.(C) 9364/2023

BLACKBERRY INDIA PVT LTD Petitioner
Through: Ms. Priyanka Rathi &
Ashwani Chandrasekharan
Adv.

versus

THE ASSISTANT COMMISSIONER, CENTRAL
EXCISE AND CGST DIVISION, MALAVIYA NAGAR,
NEW DELHI Respondent
Through: Akshay Amritanshu, SSC
with Mr. Ashutosh Jain &
Mr. Samyak Jain,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner (Blackberry India Pvt. Ltd.) has filed the present petition impugning an order dated 04.05.2023 (hereafter '**the impugned order**') passed by the Adjudicating Authority to the extent that it denies the petitioner's claim for interest under Section 11BB of the Central Excise Act, 1944 (hereafter '**the Excise Act**') read with Section 83 of the Finance Act, 1994 (hereafter '**the Finance Act**'), on the amount of refund sanctioned.

2. In terms of the impugned order, the Adjudicating



Authority has sanctioned the refund of unutilised Cenvat Credit as claimed by the petitioner, but has denied the interest on the said amount, on the ground that the refund has been sanctioned within a period of three months, as contemplated under Section 11BB of the Excise Act read with Section 83 of the Finance Act. The impugned order indicates that the Adjudicating Authority had considered the date of application for refund as 07.02.2023, instead of the dates on which the applications were first made.

3. At the material time, the petitioner was, *inter alia*, engaged in providing services to Blackberry Singapore Pte. Ltd., an overseas entity. The petitioner claimed that the services provided by it to Blackberry Singapore Pte. Ltd. constituted export of services in terms of the Service Tax Rules, 1994 and therefore, was entitled to refund of unutilised Cenvat Credit.

4. The petitioner made three separate applications for refund of unutilised credit for different tax periods. A tabular statement setting out the claims for refund of unutilised Cenvat Credit is set out below:

Sl. No.	Period/Quarter	Refund amount	Date of filing (Offline) refunds
1.	April - June, 2012	3,18,11,287	28.03.2013
2.	April - June, 2013	2,89,94,208	31.03.2014
3.	July – September, 2013	2,47,28,850	30.06.2014
	Total	8,55,34,345	

5. The above tabular statement was also noted by the Adjudicating Authority in the impugned order.



6. The aforesaid claims were not processed and the Adjudicating Authority issued a Show Cause Notice dated 22.01.2020, proposing to reject the petitioner's claim for refund on the ground that the place of provision of services was in India. According to the Adjudicating Authority, the petitioner had rendered the services in question as an intermediary. Thus, notwithstanding that the recipient of the services was located outside India, the place of service was in India. Thereafter, the Adjudicating Authority passed an Order-in-Original dated 31.08.2020 rejecting the petitioner's claim for refund on the aforesaid ground.

7. The petitioner appealed the Order-in-Original dated 31.08.2020 before the Appellate Authority [Commissioner (Appeals)]. The Appellate Authority dismissed the appeal by an Order-in-Appeal dated 19.08.2021, and upheld the Order-in-Original dated 31.08.2020.

8. Aggrieved by the said Order-in-Appeal, the petitioner preferred an appeal before the learned Custom, Excise and Service Tax Appellate Tribunal (hereafter '**the CESTAT**'), which was allowed by a final order No. 51150/2022 dated 07.12.2022.

9. Notwithstanding that the petitioner had succeeded before the CESTAT, the petitioner's claim for refund was not processed immediately. The petitioner once again sent a letter dated 07.02.2023, seeking refund of the amount of ₹8,55,34,345/- along with the interest under Section 11BB of the Excise Act.



10. In the meanwhile, the Revenue filed an appeal against the Order dated 07.12.2022 passed by the CESTAT before this Court (*SERTA 7/2023* captioned *Principal Commissioner, Central Excise and CGST-Delhi South v. Blackberry India Private Limited*). The said appeal was dismissed by an order dated 12.07.2023.

11. However, prior to that, the Adjudicating Authority processed the petitioner's claim for refund and granted the same in terms of the impugned order.

12. The controversy, essentially relates to the petitioner's claim for interest on the amount of refund. The Adjudicating Authority has rejected the same on the ground that the petitioner's claim was processed within a period of three months from the receipt of its letter dated 07.02.2023. The said letter has been treated as an application for refund under Section 11BB of the Excise Act read with Section 83 of the Finance Act.

13. 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*. Although it was suggested by the learned Counsel for the Revenue that the refund should be calculated from the date after the expiry of three months from the date of the CESTAT Order, that is, three months



from the order dated 07.12.2022. The said contention is unmerited and as stated above, the said issue stands authoritatively settled by the Supreme Court in ***Ranbaxy Laboratories Ltd.*** (*supra*).

14. The above question does not arise in the present case as the Adjudicating Authority has correctly proceeded on the basis that the interest under Section 11BB of the Excise Act would be payable from the date immediately after the expiry of three months from the date of application for refund, if the same is not processed within the said period of three months. He has, however, erred in holding that the petitioner's letter dated 07.02.2023, requesting for processing its claims for refund is to be considered as its application for refund.

15. 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 as reproduced hereinbefore, clearly stating the dates on which the petitioner had made its claim for refund. There is no cavil that the petitioner would be entitled to the interest in terms of Section 11BB of the Excise Act from the date immediately after the expiry of three months from the date of receipt of an application for refund. However, 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.

16. In view of the above, the Adjudicating Authority is directed to forthwith process the petitioner's claim of interest under Section 11BB of the Excise Act read with Section 83 of the Finance Act.

17. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 3, 2023
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