CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 52743 of 2018-SM

(Arising out of order-in-appeal No.470(CRM)ST/JDR/2018 dated 22.05.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur).

M/s The Udaipur Central Cooperative Bank Limited — **Appellant**
Branch – Deogarh, Rajsamand (Raj.)

Versus

Commissioner, Central Goods & Service Tax, — **Respondent**
142-B, Hiran Magri, Sector-11. Udaipur.

APPEARANCE:

Ms. Rinky Arora, Advocate for the appellant

Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50824/2019

DATE OF HEARING/ DECISION: 28.03.2019

Anil Choudhary:

The issue in this appeal is whether interest under Section 11BB is payable from the date when three months expires from the date of refund application or from the date that when the appellate authority have allowed the rejected refund application.

2. The present appeal arises out of order-in-appeal No. 470(CRM)ST/ JPR/2018 dated 22.05.2018 issued by the Commissioner (Appeals), Jodhpur to M/s The udiapur Central Cooperative Bank Ltd., Branch Deogarh, Distt – Rajsamand (Rajasthan) (hereinafter referred to as the

appellants) confirming the recovery of refund of interest of Rs. 17,241/- granted by adjudicating authority.

3. The brief facts of the case are that the appellant are engaged in providing of 'Banking and other Financial Services' and registered under section 69 of the Finance Act, 1994 having service tax registration No. AAAAT3178 RST004.

4. Respondent filed a refund claim amounting to Rs.1,80,210/- on 27.05.2013 with the "Proper Officer" i.e. Assistant Commissioner in respect of the amount paid by them erroneously, under the head of service tax with the Central Government. Show cause notice dated 22.07.2013 was issued to the appellant proposing rejection of the refund claim amounting to Rs. 1,80,210/- filed on 27.05.2013, on account of time bar and unjust enrichment. The show cause notice was duly replied on 07.08.2013. However, the same did not find favour with the learned Assistant Commissioner, who vide order in original dated 21.08.2013 rejected the refund claim. Appellant filed an appeal before Commissioner (Appeals) against O-I-O and ld. Commissioner (Appeals) passed order in appeal dated 01.01.2015, and appeal was allowed with consequential relief to the appellants.

5. Further, the appellant submitted request letter to learned Assistant Commissioner for consequential relief, subsequent to the order in appeal. In this matter ld. Assistant Commissioner sanctioned refund claim of Rs. 1,80,210/- vide order in original dated 01.04.2015. Further, appellant requested for granting interest on refund sanctioned vide order in original dated 01.04.2015 vide letter dated 13.09.2015. learned Assistant Commissioner passed rectification order No.

15/2016R-ST(Ref.) dated 6.5.2016 and sanctioned of interest Rs.17,241/-. Further, ld. Commissioner passed order in review No. 15/2016 dated 18.07.2016 and subsequently department issued a show cause notice dated 22.08.2016 asking the appellant as to why the refund claim of interest Rs. 17,241/- should not be rejected. Further, department filed appeal before Commissioner (Appeals) against order in review dated 18.07.2016. Appellant filed a defence submissions before the learned Commissioner (Appeals). Learned Commissioner (Appeals) vide present order in appeal dated 22.05.2018 allowed the appeal filed by the department and set aside the impugned order (rectification order) passed by the adjudicating authority.

6. Being aggrieved, the appellant before this Tribunal.

7. Heard the parties.

8. I find that the issue herein is squarely covered by the ruling of Hon'ble Supreme Court in the case of **Ranbaxy Laboratories Ltd. vs. Union of India – 2011 (273) ELT 3 (SC).** The Supreme Court observed as under:

> *"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 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 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. Manifestly, interest under Section 11BB of the Act becomes payable, if on an 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 11BB of the Act becomes payable. [2009 (243) E.L.T. A27 (S.C.) followed, 2008 (230) E.L.T. 199 (S.C.) explained, C.B.E. & C. Circular No. 670/61/2002-CX., dated 1-10-2002 referred, Delhi High Court decision dated 18-12-2009 in Ranbaxy Laboratories Ltd. v. UOI - W.P. (C) No. 13940 of 2009 overruled and 2008 (229) E.L.T. 498 (Bom.) approved]. [paras 9, 10, 14, 15]"

9. Accordingly, the appeal is allowed and the impugned order is set aside.

(Operative part of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant