IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

APPEAL No.ST/87447/2018

(Arising out of Order-in-Appeal No.PUN-EXCUS-001-APP-545-16-17 dated 30/03/2017 passed by the Commissioner of Service Tax (Appeals), Pune)

KPIT Technologies Ltd., : **Appellant**

VS

CCE & ST, Pune-I : **Respondent**

Appearance

Ms. Padmavati Patil, Advocate for Appellant
Shri. Onil Shivadikar, Asst. Comm. (AR)for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Date of hearing :14/01/2019
Date of decision:14/01/2019

FINAL ORDER NO. A/86805 / 2019

1. This appeal is directed against the impugned order dated 30/03/2017 passedby the Commissioner of Service Tax (Appeals), Pune-I. Rejection of interest claim on delayed sanction of refund of duty is the subject matter of present dispute. The appellant had claimed interestunder Section 11BB of the Central Excise Act, 1944 in respect of the amount of refund of duty of Rs.73,33,282/-sanctioned vide adjudication order dated 14/11/2013.

2. The learned Commissioner (Appeals), in paragraph 12 of the impugned order hasrecorded the following observations:

> "*12. However, I find that there is considerable force in the ground on which the respondent has rejected the claim for interest vide order-in-original No.PI/STD/R-V/305/KIPT/2015-16 dated 28/12/2015. The respondent has held that the Commissioner (Appeal)'s order-in-appeal No.PUN/EXCUS/001-APP-181-14-15 dated 30/01/2015 is silent on the issue of interest. I have gone through the order-in-appeal and find that there is absolutely no discussion or findings on the aspect of interest. Therefore, it is crystal clear that the issue of grant of interest was not agitated before the Commissioner (Appeals) in the appeal proceedings against order-in-original No.PI/STC/Gr.VII/R/110/2013 dated 14/11/2013. Further I also find that the appeal filed by the appellant against order-in-appeal No.PUN/EXCUS/001-181-14-15 dated 30/01/2015 before the Hon'ble Tribunal is only against the rejection of refund amount of Rs.19,20,815/- as stated in para 16 of the facts of the case narrated by the app0ellant in the appeal Memorandum of appeal No.80/ST/Ref/2016. Therefore, the rejection of claim of interest on the refund amount of Rs.73,33,282/- vide order-in-original No.PI/STC/Gr.VII/R/110/2013 dated 14/11/2013 had become final as no appeal was filed against he rejection of the claim of interest by the appellant in this case. However, the interest on thedelayed sanction of refund amount of Rs.1,89,845/- vide order-in-original No.PI/STD/R-V/305/Ref/15-16 dated 28/12/2015 is to be granted to the appellant".*

3. However, on going through the appeal records filed before the office of the Commissioner (Appeals), it is observed that in the ground of appeal at para 21, the appellant had submitted the following facts:

> *"As regards the findings in para 11 of the impugned order wherein the Appellant has been held by the respondent to be not eligible for any interest, it is submitted that the department is duty bound to grant interest in terms of section 11BB of the Central Excise Act, 1944 and also in view of the decision of the Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. UOI – 2011 (273) ELT 3 (SC). It is submitted that the findings in para 11 of the impugned order is contrary to Section 11BB of the Act and is opposed to the decision of the Supreme Court referred to above. Hence, the impugned order is not justified in not granting interest on delayed refund".*

4. On perusal of the impugned order dated 30/03/2017 vis-à-vis the ground of appeal annexed to the appeal memorandum filed before the office of the Commissioner (Appeals), I find that findings recorded in the impugned order is contradicting to the ground of appeal raised by the appellant. Since the grounds urged in para 21 have not been considered in proper prospective and the impugned order was passed, I am of the view that the matter should go back to the Commissioner (Appeals) for appreciating the issue raised by the appellant that it should be entitled for interest claim in respect of delayed refund of principle amount. For re-adjudication of the matter, the learned Commissioner (Appeals) should also examine the circular issued by the CBEC and the authoritativepronouncements of the various judicial forums on the issue concerning grant of interest for delayed sanction of the refund amount.

5. Therefore, by setting aside the impugned order, the appeal is allowed by way of remand to the learned Commissioner (Appeals) for fresh adjudication of the matter, in line with the above observations. Needless to say that personal hearing should be granted to the appellant before deciding the issue afresh.

6. In the result, the appeal is allowed by way of remand.

(Pronounced and dictated incourt)

(S K Mohanty*)*
Member (Judicial)

PJ