CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH, MUMBAI

SERVICE TAX APPEAL NO. 85800 OF 2021

(Arising out of Order-in- Appeal No. AJV/194/RGD APP/2020-21 dated 04.12.2020 passed by the Commissioner of Central Tax, CE & ST (Appeals), Raigad.)

M/s. LESTER INFOSERVICES PVT LTD ....Appellant
C-64 TTC INDUSTRIAL AREA
TURBHE, NAVI MUMBAI-400 705

VERSUS

COMMISSIONER OF CENTRAL TAX-BELAPUR. ....Respondent
CGO COMPLEX, 10 CBD BELAPUR,
NAVI MUMBAI-400614.

WITH

SERVICE TAX APPEAL NO. 85806 OF 2021

(Arising out of Order-in- Appeal No. AJV/282/RGD APP/2020-21 dated 26.03.2021 passed by the Commissioner of Central Tax, CE & ST (Appeals), Raigad.)

M/s. LESTER INFOSERVICES PVT LTD ....Appellant
C-64 TTC INDUSTRIAL AREA
TURBHE, NAVI MUMBAI-400 705

VERSUS

COMMISSIONER OF CENTRAL TAX-NAVI MUMBAI. ....Respondent
5TH FLOOR, CGO COMPLEX, 10 CBD BELAPUR,
NAVI MUMBAI-400614.

APPERANCE:

Shri Kevin Gogri, Advocate with Ms. Dhruvi Shah, Advocate for the Appellant

Shri A.K. Shrivastava, A.C., Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85789-85790/2024

Date of Hearing: 03.07.2024
Date of Decision: 22.08.2024

Denial of interest claimed u/s. 11BB of the Central Excise Act, equally applicable to Service Tax matters, on delayed refunds sanctioned under Rule-

5 of the Cenvat Credit Rules, 2004 by the Commissioner (Appeals) is assailed by the Assessee Appellant in this appeal.

2. Fact of the case, in a nutshell, is that Appellant has been providing back-office support services and Information Technology enabled services to M/s. Lester inc, USA. The said service being classified as export of services under Rule-6A of the Service Tax Rules, 1994, appellant sought for refund of un-utilised accumulated cenvat credit as per Rule-5 of the cenvat credit Rules read with notification No. 27/2012-CE(NT) dated 18.06.2012 for the period from January 2013 to June 2013 for two quarters (dealt in subject appeal No. ST/85800/2021) and from January 2014 to March 2015 for four quarters (dealt in Appeal No. ST/85806/2021). The said refund claims travelled through a chequered path and during second round of litigation before the Commissioner (Appeals), Appellant ultimately succeeded in getting a favourable decision on its refund claim but Learned Commissioner (Appeals) in his said order dated 4-12-2020 and order dated 26.03.2021 respectively for both the appeals, denied to sanction interest under relevant section 11BB of the Central Excise Act for delay in sanctioning claim of refund under Rule-5 of the Cenvat Credit Rules. Legality of the said denial of interest is questioned here.

3. Learned counsel for the Appellant Mr. Kevin Gogri, in citing several decisions including the one passed in the case of the Commissioner OF Central Excise V/s. Reliance Industries Ltd. by Hon'ble Gujarat High Court, as reported *in [2010 in 259/ELT/356 (Guj)* that was affirmed by Hon'ble Supreme Court in *[2011(274) E.L.T. A 110 (S.C),* and subsequent decision including the one recently passed in *Capita India Pvt Ltd V/s. Commissioner of Central Tax, Navi Mumbai* reported in *[2022/12 TMI 563 Tribunal Mumbai* argued that the issue is no more *res integra,* in view of constant findings of this Tribunal and the

appellate Courts that refund claim filed under Rule-5 of the cenvat credit Rules would also be governed by the provisions of section 11BB of the Central Excise Act as Cenvat Credit is also Excise Duty /Service Tax and Cenvat Credit Rule 5 expressly referred to it in clause C of the provisio to sub-section 2 of section 11BB of the Act and Learned Commissioner by applying *ratio* of the judgment passed in the absence of Appellant by this Tribunal *in the case of Gionee Industrial Pvt Ltd V/s. the Assistant Commissioner (GST East) [2019 (12) TMI 339 Tri-Delhi]* had given an erroneous finding that interest is not payable for refund granted under Rule-5 of CENVAT Credit Rules, 2004. He further submitted that this Tribunal has observed in the case of Capita India Ltd, *cited supra* that the Bench was not assisted and appraised by the Departmental representative, in the absence of Appellant, about the findings of Hon'ble Supreme Court favouring payment of interest on delayed refund of accumulated cenvat credit, for which no consideration can be attached to the said finding made in Gionee India Limited Judgment, *cited supra* that had not taken into consideration the judicial precedent set by the Constitutional Courts of this country.

4. Learned Authorised Representative Mr. A.K. Shrivasta, objected to the grounds of appeal and supported the reasoning and rationing of the order passed by this Tribunal.

5. I have gone through the relevant provisions of law, relied upon case laws and the material available in the appeal case record. Consistent decisions are available on the issue of payment of interest on delayed refund of unutilized credit since provision of the Law, supported by judgments of Hon'ble Gujarat High Court in Reliance Industries Ltd, *cited supra* was pronounced favouring such interest payment except the one passed in Gionee India Pvt. Ltd. case, in which its inadmissibility is distinguishable and could

never be taken as binding precedent for not having considered the settled position of law in this case, apart from the fact that provision under Rule 11B covers refund of accumulated cenvat credit that is payable on export under Rule-5 of Cenvat Credit Rules, which is put in the category of refund of duty and section 11BB grants interest to such refund sanctioned three months beyond receipt of the refund application, which we have consistently held to be counted from the date of filing of first refund application. Further, the very content of section 11BB that starts with a directive that ",…, there shall be paid to the applicant interest at such rate…." makes it mandatory for the refund sanctioning authority to pay interest wherever refund could not be sanctioned within three months of receipt of the application for refund. It would also be worthwhile to reproduce para 8, 9 and 10 of the order passed by Hon'ble Gujarat High Court in Reliance Industries (Respondent), *cited supra* that has attained finality in view of approval of the same by the Hon'ble Supreme Court of India. It reads;

> *8. The provision of claiming refund of duty under the principal statute, viz., the Central Excise Act, 1944 is under section 11-B of the Act. Under sub-section (2) thereof, if the officer concerned, on receipt of any application for refund, is satisfied that the whole or any; part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he is required to make an order accordingly and the amount so determined is required to be credited to the fund. However, the proviso to <u>sub-section (2) of Section 11-B provides for the categories of cases where instead of being credited to the fund, the amount is to be paid to the applicant. One of the categories provided thereunder as specified under clause (c) to the proviso, is in case where such amount is relatable to refund or credit of duty paid on excisable goods used as inputs in accordance with rules made, or any notification issued, under the Act.</u>*
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> *9. Section 37 the Act empowered the Central Government to frame rules to carry into effect the purposes of the Act. The Cenvat Credit Rules, 2002/2004 have been framed in exercise of powers under section 37 of the Act and make provision for refund of credit of duty paid on*

excisable goods used as inputs. <u>Thus, under clause (c) of the proviso to sub-section (2) of section 11B of the Act, in case an application is made for refund relatable to refund of credit of duty paid on excisable goods used as inputs in accordance with the Cenvat Credit Rules, 2002/2004, and the concerned officer is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he is required to pay the same to the applicant instead of crediting such amount of Fund. Any refund ordered under Rule 5 of the Rules would therefore, be a refund made under sub-section (2) of Section 11B of the Act.</u>

10. Section 11-BB of the Act makes provision for <u>payment of interest from the date immediately after expiry of three months from the date of receipt of the application</u> under sub-section (1) of that section, till the date of refund of such duty at such rate as may be fixed by the Central Government by notification in the Official Gazette subject to the minimum and maximum limits specified thereunder, if any duty ordered to be refunded under sub-section (2) of section 11-B to any applicant is not refunded within three months from the date of receipt of such application. Thus, section 11BB of the Act would be attracted in case where there is delay in refunding the amount of duty ordered to be refunded under sub-section (2) of section 11B of the Act. <u>Refund under Rule 5 of the Rules also being a refund under sub-section (2) of Section 11B of the Act would therefore, squarely fall within the ambit of section 11BB of the Act and interest would be payable under Section 11BB of the Act in case of delay in sanctioning refund under Rule 5 of the Rules.</u>

(Underlined to emphasise)

6. Order passed by Hon’ble Gujarat High Court in Reliance Industries Limited (Respondent) cited supra that has attained finality in view of its approval by the Hon’ble Supreme Court of India.

7. In view of the above findings, consistent decisions of Tribunal and of the Constitutional Courts and in obedience to binding precedent on the issue, I am of the considered view that Appellant is entitled to get interest on refund sanctioned to it from three months after expiry of the date of filing of its first refund application for respective appeals. Hence the order.

The order

The appeals are allowed and the orders passed by the Commissioner of Central Tax, CE & ST (Appeals), Raigad vide above referred Order-in- Appeal No. AJV/194/RGD APP/2020-21 dated 04.12.2020 and Order-in- Appeal No. AJV/282/RGD APP/2020-21 dated 26.03.2021 are modified to the extent of allowing interest u/s. 11BB of the Central Excise Act on the refunded amount sanctioned in favour of the Appellant, which respondent Department is directed to pay within two months of receipt of this order.

(Order pronounced in the open court on 22.08.2024.)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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