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

\+ SERTA 6/2016 & CM No. 10745/2016

PRINCIPAL COMMISSIONER OF SERVICE TAX, DELHI-I

..... Appellant

Through: Mr. Harpreet Singh, Sr. Standing Counsel.

versus

M/S I-PROCESS SERVICES (INDIA) PVT. LTD ..... Respondent

Through: Mr. Srinivas Kotni, Advocate along with Mr. Sridhar Potarajy, Mr. Goichangpou Gangmei, Advocate.
Mr. Arjun Singh and Ms. Sindoora VNL, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **14.09.2016**

The question of law sought to be urged by the appellant /revenue is that:- “Whether the CESTAT fell into error in directing payment of interest upon the delayed refund as required under Section 11B of the Central Excise Act ?”

The brief facts are that the respondent/assessee had claimed refund on service tax amounts deposited by it; that the assessee was entitled to the amount was not in dispute, equally it is not in dispute that the assessee had filed the refund application within time stipulated. That application was rejected by the concerned competent officer on the ground that refund could not be claimed. Order was however set aside and the matter remitted. In the second round, refund was granted to a limited extent which led the assessee to appeal. Eventually, the CESTAT allowed the appeal, held as follows:-

> *"7. In this case the Ld. Commissioner (A) hold that the refund claim has been sanctioned within three months from the date of filing of the documents by the appellant. Therefore, refund is paid to the appellant within time and no interest is payable. I also find that it is an admitted position that appellant filed the refund claim on the entire amount on 31.07.2009. Initially, the refund claim was rejected on the ground that refund claim is not within time and hit by bar of unjust enrichment and appellant has not refunded the entire amount of advance received and after retaining the amount of Rs 4,24,78,264/- the said amount has been returned by the appellant only on 26.05.2011. The issue raised by the Ld. AR that firstly the point of taxation is to be decided in this matter. As it has been held by the authorities below that refund claim filed by the appellant is within time and same has been accepted by the Committee of Commissioners. Therefore, issue is point of taxation has already been decided and same is not subject matter before me. Therefore, contention of the Ld. AR that matter is to be transferred to the division bench is not acceptable. Now, I come to the issue whether appellant is entitled for interest for delayed refund. Now the factual matrix of the case it is an admitted position that while rejecting their refund claim by the Adjudicating Authority the appellant was retaining the amount of Rs.4,24, 78,2641- with them and table incorporated in the order-in-original showing the date of payment by the appellant to the service recipient of the advance received by them. As per the table, the appellant has returned the amount of Rs.6,11,41,066/- before filing the refund claim and a sum of Rs.4,37,66,6701-*

were returned on 28.09.2010 and a sum of Rs.4,24,78,264/- were returned on 26.05.2011. These facts are admitted by both the sides. It is admitted fact that refund claim was sanctioned to the appellant only on 28.10.2013. Therefore, relying on the decision of Ranbaxy Laboratories Ltd. (Supra) *the appellant is entitled for claim of interest on delayed refund of Rs. 6,11,41,066/- after three months from 31.07.2009 till 28.10.2013. For the amount of Rs.4,37,66,670/- the appellant is entitled for interest for the period 28.09.2010 to 28.10.2013. On the amount 4,24, 78,2641- the appellant is entitled to claim of interest for the period 26.05.2011 to 28.10.2013."*

It is urged by the revenue that the interest for the entire period claimed by the assessee could not have been remitted. Regarding this, learned counsel stresses that Section 11B mandates that the application be lodged within one year and should be complete in respect of matters prescribed under the rules. It is pointed that the assessee was aware of this requirement and it completed the application by furnishing all documents in the first instance on 30.11.2009 and thereafter on different dates in 2011 and 2012.

Learned counsel relied upon the recent judgment of the Supreme Court reported *as* ***Union of India vs. Hamdard Laboratories, (****2016) 6 SCC 621.*

This court has considered the submissions. As noticed earlier, it is not disputed that the basic application was filed within one year stipulated period. The documents placed on the record shows that contrary to departmental instructions deficient memo eliciting pointed responses were given on 22.10.2009 to which a reply was given on 30.11.2009. The competent officer did not deem it appropriate to consider these but rather rejected the entire applications as not maintainable. Eventually, the application was remitted for further consideration. In the interregnum, further developments took place in the form of return of amounts claimed as Service Tax Inputs. All these have been considered by the Tribunal which we notice had directed refund in a nuance manner for different periods. In these circumstances, the court is of the opinion that the law declared in ***Ranbaxy Laboratories Limited vs. Union of India,*** *2011 (10) SCC 292* which was followed by the CESTAT as appropriate and was properly applied. The appeal does not raise any question of law and is consequently dismissed.

It was argued by the counsel for revenue that the full particulars were furnished only in 2013 as held by the adjudicating officer.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 14, 2016
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