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

\+ W.P.(C) 11792/2016, CM APPL. 46492/2016

MERA BABA REALTY ASSOCIATE (P.) LTD.

..... Petitioner

Through: Mr. Ruchir Bhatia, Adv.

Versus

COMMISSIONER SERVICE TAX, DELHI-III & ANR.

..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 25.01.2017

1. The petitioner's grievance is that even though the Commissioner (Appeals), Central Excise allowed its refund claim under Section 11B of the Central Excise Act, 1944 no interest was directed to be paid. The Revenue/Customs Authority's position is that since neither the adjudicating authority nor the Commissioner directed payment of interest, the question of paying any amount towards delayed refund does not arise. The Assessee/petitioner has relied upon the judgment in *M/s. Ranbaxy Laboratories Ltd. v. Union of India & Ors.* (2011) 273 ELT (SC). The relevant discussion in *Ranbaxy* (supra) is as follows:

> *"13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in*

U.P. Twiga Fiber Glass Ltd. (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

> *"Heard both the parties.*
>
> *In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33:*
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>> *"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub- section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to*

> *Welfare Fund or to be paid to the applicant needs no interference. The special leave petition is dismissed. No costs."*

> *14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.*

> *15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."*

2. The Court is of the opinion that the clear reference to "date of receipt of such application" in Section 11 BB which mandates payment of interest, precludes the Revenue from arguing the matter which it does today. This conclusion is supported by the view of

the Supreme Court in *Ranbaxy Limited* (supra). Consequently, the respondent's argument that neither the adjudicating authority granted interest nor did petitioner seek it at any stage is of no avail. The petition is therefore allowed. The respondents are directed to ensure that interest is paid to the petitioner in accordance with the provision of Section 11BB of the Act within three months calculated from the date of receipt of such application.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 25, 2017/acm