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

\+ **W.P. (C) 6904/2017& C.M. No. 28673/2017 (stay)**

C.J. INTERNATIONAL HOTELS LTD. ..... Petitioner

Through: Mr. J. K. Mittal and Mr. Rajveer Singh, Advocates.

versus

ASSISTANT COMMISSIONER OF SERVICE TAX, DELHI & ORS. ..... Respondents

Through: Mr. Sanjeev Narula, Senior Standing Counsel and Mr. Abhishek Ghai, Advocate for Revenue.

Ms. Divya Kapoor, Advocate for R-3/UOI.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 17.08.2017

1. This is the third round of litigation involving the Petitioner's claim of refund of service tax which, according to the Petitioner, is not payable at all by it in the first place. The Petitioner has been pursuing the claim for refund for the last eight years.

2. Earlier, the matter travelled up to this Court by way of the Petitioner's Appeal No. CEAC 100/2014 in which this Court passed the order dated 18th November 2014, permitting the Petitioner to again file an application for refund before the Authorities for early disposal in accordance with law. This triggered a fresh round which resulted in rejection of the Petitioner's prayer of refund by order dated 28th November 2016 by the Assistant Commissioner of Service Tax ('ACST'), rejecting the refund claim under

Section 11B of the Central Excise Act, 1944 ('CE Act') on the ground that the refund claim was not filed within the prescribed time period.

3. The further appeal of the Petitioner was dismissed by the Commissioner (Appeals-I) by an order dated 9th June 2017 holding *inter alia* that "the appellant has not been able to produce any convincing evidence or additional ground in their support so as to deserve any fresh re-look of the circumstances relating to the case."

4. Mr. J.K. Mittal, learned counsel for the Petitioner, states that the Petitioner has approached this Court directly thereafter since, according to the Petitioner, neither the ACST in the order dated 28th November 2016, nor the Commissioner (Appeals-I) in the order dated 9th June 2017, has actually dealt with in the points urged by the Petitioner, including the case law cited by it. Therefore he contends that both the said orders are violative of the principles of natural justice.

5. Mr. Mittal further contends that the Petitioner cannot be made to go through repeated rounds of litigation. His apprehension is that if in the appeal he is made to file against the impugned orders, the Customs Excise and Service Tax Appellate Tribunal (CESTAT) agrees with him on the point of limitation, it will remand the matter to the ACST again for a determination of the claim for refund on merits. This, he says, will involve more rounds of litigation and considerably delay the resolution of the dispute regarding refund. He draws attention to the Circulars dated 11th December 2013 and Instructions dated 26th June 2014 issued by the

Central Board of Excise and Customs (‘CBEC’) emphasising that refund applications are to be decided in one go and not piece-meal.

6. The Court finds that all the above grounds concerning the rejection of the Petitioner’s claim for refund by the ACST and Commissioner (Appeals) can well be urged before the CESTAT. At the same time, the apprehension expressed by learned counsel for the Petitioner as noted hereinbefore cannot be stated to be wholly unfounded.

7. Accordingly this Court, while declining the present writ petition challenging the order dated 28th November 2016, passed by ACST, and the order dated 9th June 2017, passed by the Commissioner (Appeals-I), directs that the appeal filed against the said orders by the Petitioner before the CESTAT should be considered by the CESTAT both on the aspect of limitation and on merits. In other words both issues will be decided by the CESTAT itself without remanding the matter to the ACST or the Commissioner (Appeals). Further, considering that there have already been two rounds of litigation, the request of the Petitioner for expeditious disposal of its appeal will be considered favourably by the CESTAT.

8. The writ petition and the pending application are dismissed in the above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 17, 2017/*dk*