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

\+ **<u>SERTA 12/2018</u>**

HALDOR TOPSOE INDIA PRIVATE LIMITED ..... Petitioner

Through: Mr.Rajiv Tyagi, Advocate

versus

THE ASSISTANT COMMISSIONER
OF GOODS AND SERVICE TAX (EAST) ..... Respondent

Through: Mr.Satyakam, Std.Counsel

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**<u>O R D E R</u>**

% **19.11.2018**

1. This appeal is directed against a judgment and order dated 14.09.2017, passed by the Customs, Excise and Service Tax Appellate Tribunal [hereinafter referred to as "the Tribunal"]. The appellant's grievance is that the Tribunal has not dealt with its claim for interest on refunds of service tax, which have been allowed.

2. The appellant claimed refund for various quarters in respect of service tax paid on taxable input services. The details of the applications made by the appellant are as follows:

| *Sr. No.* | *Date of Refund Application* | *Period of Refund claim* | *Amount (in Rs.)* |
|---|---|---|---|
| *1.* | *27.06.2013* | *July, 2012 to September, 2012* | *30,87,671* |
| *2.* | *29.09.2013* | *October, 2012 to December, 2012* | *29,79,936* |
| *3.* | *31.12.2013* | *January 2013 to March, 2013* | *29,10,574* |
| *4.* | *26.03.2014* | *April, 2013 to June, 2013* | *30,05,408* |
| *5.* | *27.05.2014* | *July, 2013 to September, 2013* | *38,88,360* |
| *6.* | *29.09.2014* | *October, 2013 to December, 2013* | *60,68,850* |
| *7.* | *26.03.2015* | *January, 2014 to March, 2014* | *47,26,231* |
| *8.* | *26.03.2015* | *April, 2014 to June, 2014* | *26,48,524* |
| | | *Total* | *2,93,15,554* |

3. Of the total claim of ₹2,93,15,554/-, the Assistant Commissioner sanctioned the refund of ₹2,84,48,051/-. The appellant approached the Commissioner (Appeals) in respect of the remaining amount, but its appeal was dismissed. The Tribunal has disposed of the appellant's appeal against the Commissioner's order by the impugned order, allowing the appellant's claim to the further extent of ₹7,32,025/-. The appellant had raised a grievance before the Tribunal that the Assistant Commissioner had not granted interest upon the refunds allowed. The appellant contends in this appeal that the Tribunal did not deal with this claim at all.

4. The present appeal was admitted by the order of this Court dated 10.08.2018 and the following question of law was framed:

> *"Is the appellant entitled to interest under Section 11 BB of the Central Excise Act, as claimed"*

5. In our view, the appellant's claim is entirely justified having regard to the statutory regime of Section 11 BB of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Section 83 of the Finance Act

expressly makes various provisions of the Central Excise Act applicable in relation to service tax. These include Section 11 BB, which provides as follows:

> ***"Section 11BB. Interest on delayed refunds ---***
> *If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :*
>
> ***Provided*** *that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.*
>
> ***Explanation**. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."*

6. Section 11 BB has been interpreted by the Supreme Court *inter alia* in *Union of India And Others Vs. Hamdard (Waqf) Laboratories* (2016) 6 SCC 621 & *Ranbaxy Laboratories Limited Vs. Union of India and Others*

(2011) 10 SCC 292. The Supreme Court has held that the liability of the Revenue to pay interest under the said provision commences from the expiry of three months from the date of receipt of the application for refund.

7. Consequently, the question of law is answered in the affirmative, i.e. in favour of the assessee and against the Revenue.

8. For the above stated reasons, the appeal is allowed. The Assessing Authority/empowered GST Officer is hereby directed to work out the amount of interest under Section 11 BB of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and ensure that the amounts are remitted to the appellant's account within three months.

**S. RAVINDRA BHAT, J.**

**PRATEEK JALAN, J.**

**NOVEMBER 19, 2018**

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