

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1375 OF 2019

Capgemini Technology Services	}	
India Limited	}	Petitioner
versus		
The Union of India and Ors.	}	Respondents

Mr.Prakash Shah with Mr.Arun Jain and
Mr.Prasad Paranjape I/b.M/s.PDS Legal
for the petitioner.

Mr.Pradeep S. Jetly with Mr.Ram Ochani
and Mr.Sham Walve for the respondents.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- MARCH 1, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioner has claimed the following relief:-

“(a) this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents by themselves and/or their officers and/or subordinates to forthwith grant and sanction interest in respect of refund claim sanctioned and granted after the expiry of three months from the respective date of application till the date of actual refund under Section 11BB of the Central Excise Act, 1944 read with section 83 of the Act with interest thereon.”

2. It is common ground that the petitioner before us is engaged in the services of Information Technology Software. These

services are exported. They filed seven refund applications under Rule 5 of the CENVAT Credit Rules for the period July, 2012 to June, 2015. The CENVAT Credit can be availed of on the inputs/raw materials which are imported in the form of goods so as to then utilise them in the manufacture of the finished goods or in the input services and which input services are utilised so as to ultimately render the output service. In the event this service is exported, that earns for the country foreign exchange and therefore, incentives are given to the exporters. One of the incentives is to avail of the credit on the input service.

3. It is in these circumstances that this credit and to the account of the petitioner was availed of and since excess amount was paid, a refund was claimed. The refund was not automatic for there was an adjudication. In the sense, a show cause notice was issued by the Revenue seeking to deny this refund. The petitioner replied to this and eventually, the Revenue sanctioned this refund. The refund was sanctioned on account of the circular issued by the revenue bearing No.195/05/2016-STV dated 15th June, 2016. 80% of the first refund claim was sanctioned and later on, there was an order-in-original. In fact, there were seven orders of this nature. The refund claim was thus sanctioned, but what the petitioner claims by two communications of 8th January,

2019 and 21st January, 2019 is the interest on delayed refund. Copies of these communications are at page 186 onwards of the paper book, in which, the petitioner has computed the entitlement in terms of interest and enclosed the chart along with these applications. Finding no response, a reminder was sent, copy of which is at page 189 of the paper book. Finding no response thereto, the present writ petition is filed.

4. On such a petition, we have heard the learned counsel appearing for the petitioner Mr.Prakash Shah as also Mr.Pradeep Jetly appearing for the respondents.

5. Mr.Shah has tendered a compilation containing relevant statutory provisions, including the rules. It is pointed out by Mr.Shah that this court has repeatedly dealt with such a controversy. In fact, it has delivered detailed judgments in the following cases:-

- (i) Tien Yuan India Pvt. Ltd. vs. Union of India, 2016(336) ELT 52 (Bom.)
- (ii) National Leather Cloth Mfg. Co. vs. Union of India, 2015(319) ELT 71 (Bom.)
- (iii) Garden Silk Mills Ltd. vs. Union of India, 2016 (338) ELT 670 (Bom.)
- (iv) Tahnee Heights Co-op. Housing Society Ltd. vs. Union of India, 2016 (339) ELT 356 (Bom.)

6. Mr.Jetly does not dispute that the point is covered by the above judgments, but submits that in no judgment this court has said that the amount of interest should not be computed and the version of the petitioner, the figures or the chart forwarded, as in this case, should be taken as a gospel truth. That requires no scrutiny by the Revenue is not the ratio of these judgments.

7. After hearing both sides and perusing the writ petition and the annexures thereto so also the decisions rendered by this court, we are of the opinion that the petitioner is entitled to the interest as claimed. The writ petition is allowed in terms of prayer clause (a). The amount of interest in terms of the legal provisions and as per the prayer be released as expeditiously as possible and in any event by 30th April, 2019. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)