IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2911 OF 2024

Qualcomm India Private Limited ….Petitioner

V/s.

The Union of India and Ors. …Respondents

Mr. Prasad Paranjape a/w Mr. Sanjeev Nair and Mr. Wazim Karukapadath i/b Lumiere Law Partners for Petitioner.
Mr. Karan Adik a/w Ms. Sangeeta Yadav for Respondents.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 9th SEPTEMBER 2024

P.C. :

1. Petitioner has approached this court aggrieved by a letter dated 19th January 2024 by which petitioner requests for grant of interest has been rejected with an advise that petitioner may file an appeal against the order in original dated 15th December 2020.

2. By the order in original dated 15th December 2020 petitioner has been granted refund of Rs.1,06,49,110/- under Section 11B of the Central Excise Act, 1944 (the Act) as made applicable to Service Tax vide Section 83 of the Finance Act, 1994. As no interest has been granted under Section 11BB of the Act, petitioner made various representations asking for interest. Hence, since the order in original was already passed, petitioner has been advised to file an appeal by the impugned communication dated 19th January 2024.

3. Mr. Paranjape submitted that Section 11BB of the Act provides for interest on delayed refunds and the same reads as under :

> *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.*

4. Mr. Paranjape submitted that even the Central Board of Excise and Customs, New Delhi (the Board) has issued a Circular No.670/61/2002-CX dated 1-10-2002 that provisions of Section 11BB of the Act are attracted automatically for any refund sanctioned beyond a period of three months. Therefore, in the impugned order dated 15th December 2020, the officer should have automatically granted interest. Mr. Paranjape submitted that by the impugned communication dated 19th January 2024, the officer only wants to increase the number of appeals pending in the department then acting on the circular and acting as per the provisions of Section 11BB of the Act.

5. Mr. Paranjape also submitted, relying upon judgment of the coordinate bench of this court in petitioner's own case, i.e., ***Qualcomm India Pvt. Ltd. vs. Union of India***[1] that petitioner would be entitled to interest under Section 11BB of the Act on the amount refunded to it.

6. Mr. Adik submitted that if only petitioner had made this submissions to the officer before the impugned order dated 15th December 2020 was passed, he might have consider and allowed interest.

7. We do not agree with Mr. Adik in as much as the officer should be aware of what the law is and the law was as confirmed by the circular issued by the Board that Section 11BB of the Act is attracted automatically for any refund sanctioned beyond a period of three months.

8. Therefore, in view of the provisions of law, instead of quashing and setting aside the order dated 15th December 2020 and adding to the burden of the officers, we direct Respondent No.3 or 4 or the appropriate officer to work out the interest payable at the notified rate and that would mean the rate notified on 15th December 2020 as provided under Section 11BB of the Act and pay the amount within four weeks from the date this order is uploaded. The excuse of petitioner applying again for interest or filing a copy of the order shall not be entertained. Failure to pay the interest would be viewed as a willful disobedience of the order passed by this court.

1 2021 (50) G.S.T. L. 269 (Bom)

9. Petition disposed.

10. Advocate for respondent shall give necessary information to the officer concerned.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**