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

\+ W.P.(C) 12311/2024

M/S RJ INTERIORS .....Petitioner

Through: Mr. Parmeet Singh and Ms. Tanya, Advs.

versus

THE ASSISTANT COMMISSIONER CGST, DELHI SOUTH .....Respondent

Through: Mr. Aditya Singla, SSC-CBIC with Mr. Umang Misra, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **16.12.2024**

1. Despite time having been granted on earlier occasions, the respondents have failed to file a reply.

2. We bear in consideration the solitary relief which is claimed in the writ petition and which pertains to the refund of pre-deposit alongwith interest. For the purposes of disposal of the instant writ petition, we take in consideration the following facts which stand disclosed.

3. The petitioner, aggrieved by an Order-in-Original dated 02 March 2009, is stated to have preferred an appeal under the provisions of the **Central Goods and Services Tax Act, 2017**[1]. In order to pursue that appeal, it also made a pre-deposit of 19 March 2010. Further, pre-deposits are also stated to have been made on 19 April 2010, 17 May 2010, 19 June 2010, 20 July 2010, 18 August 2010, 18 September 2010, 18 October 2010, 18 November 2010 and 17

December 2010. Those deposits were admittedly made in compliance of the orders passed by the Tribunal.

4. The appeal itself ultimately came to be allowed on 07 January 2016 with the Tribunal directing the Adjudicating Authority to re-assess the service tax demand for the period 01 June 2007 to 30 September 2007.

5. We bear in mind the undisputed position in law of a pre-deposit not being tax which could have possibly been retained by the respondents. Although this position cannot possibly be contested, we deem it apposite to extract the following passages from our decision in **Flipkart India Private Limited v. Value Added Tax Officer, Ward 300 and others**[2] and in which we had ultimately come to hold as follows:-

> "**38.** The failure of the respondents to refund the amount of pre-deposit and even adjusting the sum of Rs. 1,00,00,000 deposited in that respect on November 16, 2015 is also clearly arbitrary and untenable. Our court has consistently taken the position that a pre-deposit does not partake the character of a tax or duty. Those are sums which are deposited by an assessee solely for the purposes of pursuing its remedy of appeal. The consistent line as struck in this respect was duly recognized by the court in its recent decision in Otis Elevators. We are thus of the firm opinion that the respondents were neither entitled in law to retain the pre-deposit amount of Rs. 1,00,00,000 nor could it have been utilized for adjustment purposes."

6. Insofar as the principles pertaining to the payment of interest is concerned, we had in **Telecare Network (India) Pvt. Ltd. v. Union of India and Others**[3] observed as follows:-

> "**23.** A more lucid explanation of the liability to pay interest is found in the decision of the Supreme Court in *Union of India v. Tata Chemicals Ltd*. Highlighting the compensatory element of such interest being provided by courts, the Supreme Court had held

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[1] CGST Act
[2] 2023 SCC OnLine Del 5201
[3] 2024 SCC OnLine Del 6150

as follows:—

"37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorised by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the

right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course."

24. What flows from the aforesaid precedents is of the State being under a positive obligation to refund monies paid under a mistake or absent a liability lawfully imposed. Taking a position contrary to the above would clearly be in breach of the constitutional ethos underlying Article 265 of the Constitution itself. It would be wholly unjust and arbitrary for the State to retain such moneys especially where there be no dispute with respect to the assessee otherwise being under no statutory obligation to pay the tax or duty.

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26. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and hold the respondents liable to pay interest from the date of the moving of the original application on 24 June 2016. The said interest would flow up to 29 November 2018 when refunds were ultimately effected.

27. Bearing in mind the facts which emerge from the record, mainly of the writ petitioner having been compelled to litigate and the stand of the respondents being thoroughly unfair and unjust, we also impose costs of INR 1 lakh on the respondents."

7. Accordingly and for all the aforesaid reasons, we find ourselves unable to find any justification for the respondents to continue to retain the pre-deposit made by the writ petitioner.

8. The writ petition is allowed. The respondents are hereby directed to pass appropriate orders and ensure that the pre-deposit as made, subject to due verification, is refunded forthwith along with interest @ 6% p.a. from the date when the appeal was allowed and till the date when the amount is actually remitted to the petitioner.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 16, 2024

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