IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1775 OF 2020

Qualcomm India Private Limited … Petitioner
Vs.
Union of India and others … Respondents

Mr. Prakash Shah a/w. Mr. Arun Jain and Mr. Jas Sanghvi i/b. PDS Legal for Petitioner.
Mr. Sham Walve a/w. Mr. Ram Ochani for Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

Reserved on : JANUARY 12, 2021
Pronounced on: MAY 21, 2021

Judgment and Order : (*Per Ujjal Bhuyan, J.*)

By filing this petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to forthwith grant and sanction interest on the refund amount after expiry of three months from the respective dates of application till the date of actual refund under section 11BB of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994.

2. We have heard Mr. Prakash Shah, learned counsel for the petitioner and Mr. Sham Walve along with Mr. Ram Ochani, learned counsel for the respondents.

3. Petitioner is a company incorporated under the Companies Act, 1956 having its registered office at Bandra Kurla Complex, Mumbai. Petitioner is engaged in the business of providing support services primarily to its foreign affiliates within the meaning of Chapter V of the Finance Act, 1994.

4. In order to provide such services, petitioner receives various input services and avails credit for service tax paid thereon under rule 3 of the CENVAT Credit Rules, 2004 ("CENVAT Credit Rules" hereinafter). It is stated that services provided by the petitioner qualified as export of service under the erstwhile Export of Service Rules, 2006 as well as under rule 6A of the Service Tax Rules, 1994 read with rule 3 of the Place of Provision of Services Rules, 2012.

5. Hence, petitioner did not pay any service tax on the output services so exported. This resulted into accumulation of CENVAT credit of service tax paid on input services. In terms of rule 5 of the CENVAT Credit Rules, petitioner as provider of output services that are exported is entitled to claim refund of the credit of the service tax paid on the input services that remained unutilized.

6. Accordingly for the period from June, 2008 to December, 2014, petitioner filed 19 refund applications claiming refund of untilized CENVAT credit under rule 5 of the CENVAT Credit Rules along with supporting documents. Details of the applications have been furnished in the form of a statement by the petitioner in paragraph 10 of the writ petition which for the sake of convenience is extracted hereunder:-

Sr. No.	Date of application	Period	Amount (Rs.)
1	29 June 2009 ("Refund Claim 1")	June 2008 to September 2008	52,42,806.00
2	24 March 2010 ("Refund Claim 2")	April 2009 to June 2009	84,06,204.00
3	29 June 2010 ("Refund Claim 3")	July 2009 to September 2009	23,70,432.00
4	29 December 2010 ("Refund Claim 4")	January 2010 to March 2010	62,37,040.00
5	29 March 2011 ("Refund Claim 5")	April 2010 to September 2010	1,05,73,228.00
6	29 September 2011 ("Refund Claim 6")	October 2010 to March 2011	88,71,458.00

Sr. No.	Date of application	Period	Amount (Rs.)
7	13 March 2012 ("Refund Claim 7")	April 2011 to September 2011	48,90,921.00
8	26 September 2012 ("Refund Claim 8")	October 2011 to March 2012	99,60,173.00
9	28 March 2013 ("Refund Claim 9")	April 2012 to June 2012	29,73,319.00
10	26 June 2013 ("Refund Claim 10")	July 2012 to September 2012	30,67,499.00
11	24 December 2013 ("Refund Claim 11")	October 2012 to December 2012	59,23,717.00
12	24 December 2013 ("Refund Claim 12")	January 2013 to March 2013	1,02,45,606.00
13	28 March 2014 ("Refund Claim 13")	April 2013 to June 2013	29,14,376.00
14	26 June 2014 ("Refund Claim 14")	July 2013 to September 2013	50,49,493.00
15	26 September 2014 ("Refund Claim 15")	October 2013 to December 2013	51,61,091.00
16	24 December 2014 ("Refund Claim 16")	January 2014 to March 2014	1,69,48,954.00
17	30 March 2015 ("Refund Claim 17")	April 2014 to June 2014	36,31,309.00
18	29 June 2015 ("Refund Claim 18")	July 2014 to September 2014	55,63,427.00
19	28 September 2015 ("Refund Claim 19")	October 2014 to December 2014	66,98,046.00
	Total		**12,47,29,078.00**

7. After the petitioner submitted the applications as above, several show cause notices were issued to the petitioner by the Assistant Commissioner i.e., respondent No.3 to show cause as to why the refund claims of the petitioner should not be rejected primarily on the ground that the input services did not have any nexus with the output services and thus were not eligible for refund. Responding to such show cause notices, petitioner submitted detailed replies enclosing therewith the requisite documents.

8. Refund sanctioning authority passed orders in original in respect of the refund claims made by the petitioner partially sanctioning the refund amount and partially rejecting the refund amount. Against the orders partially rejecting the refund claim, petitioner preferred appeals before the appellate authority. In those cases, appellate authority passed order in appeal allowing the refund claim of the petitioner whereafter orders in original were passed by the refund sanctioning authority. Details of the orders in original in respect of the refund claimed and refund sanctioned are extracted as under:-

Refund Claim	**Period**	**Refund claimed (Rs.)**	**Order-in-Original No. and Date**	**Refund amount sanctioned (Rs.)**
Refund Claim 1	June 2008 to September 2008	52,42,806.00	Refund/ES/58/10 dt.04.02.2010	52,42,806.00
Refund Claim 2	April 2009 to June 2009	84,06,204.00	SJ/03/11 dt.19.01.2011	78,80,906.00
			34/Refund-I/DK/ 2016-17 dt.28.04.2016	5,25,298.00
Refund Claim 3	July 2009 to September 2009	23,70,432.00	SJ/03/11 dt.19.01.2011	16,47,092.00
			34/Refund-I/DK/ 2016-17 dt.28.04.2016	7,23,070.00
Refund Claim 4	January 2010 to March 2010	62,37,040.00	Refund/SS/ 147/2012 dt.26.09.2012	49,71,487.00
Refund Claim 5	April 2010 to September 2010	1,05,73,228.00	Refund/SS/ 147/2012 dt.26.09.2012	91,32,294.00
Refund Claim 6	October 2010 to March 2011	88,71,458.00	Refund/VP/ 210/2012 dt. 24.01.2013	41,04,279.00
			430/Refund-I/DK/ 2015-16 dt.01.02.2016	42,27,069.00
			Refund-ST/RSC/ 40/2018-19 dt.17.10.2018	3,63,952.00

Refund Claim	Period	Refund claimed (Rs.)	Order-in-Original No. and Date	Refund amount sanctioned (Rs.)
Refund Claim 7	April 2011 to September 2011	48,90,921.00	Refund/SSS/249/ 2012 dt.25.06.2013	40,86,543.00
			Refund-ST/RSC/ 40/2018-19 dt.17.10.2018	3,39,385.00
Refund Claim 8	October 2011 to March 2012	99,60,173.00	Refund/SSS/143/ 2012 dt.12.07.2013	71,11,300.00
			430/Refund-I/DK/ 2015-16 dt.01.02.2016	2,27,579.00
Refund Claim 9	April 2012 to June 2012	29,73,319.00	Refund-I/DK/07/ 2015-16 dt.24.04.2015	27,44,594.00
			Refund-ST/RY/34/ 2018-19 dt.12.09.2018	1,66,448.00
Refund Claim 10	July 2012 to September 2012	30,67,499.00	Refund-I/DK/08/ 2015-16 dt.24.04.2015	25,60,977.00
Refund Claim 11	October 2012 to March 2013	1,61,69,323.00	Refund-I/DK/08/ 2015-16 dt.24.04.2015	1,26,30,632.00
Refund Claim 12			Refund-ST/RSC/ 41/2018-19 dt.17.10.2018	31,47,669.00
Refund Claim 13	April 2013 to June 2013	29,14,376.00	Refund-I/DK/09/ 2015-16 dt.24.04.2015	26,72,813.00
Refund Claim 14	July 2013 to September 2013	50,49,493.00	Refund-I/DK/09/ 2015-16 dt.24.04.2015	44,54,937.00
			Refund-ST/RY/35/ 2018-19 dt.07.09.2018	4,89,747.00
Refund Claim 15	October 2013 to December 2013	51,61,091.00	Refund-I/LSY/218/ 2015 dt.02.11.2015	25,58,859.00
			Refund-ST/RSC/ 42/2018-19 dt.17.10.2018	22,27,103.00
Refund Claim 16	January 2014 to March 2014	1,69,48,954.00	Refund-I/LSY/219/ 2015 dt.02.11.2015	1,59,29,126.00
			Refund-ST/RY/38/ 2018-19 dt.07.09.2018	1,77,430.00

Refund Claim	Period	Refund claimed (Rs.)	Order-in-Original No. and Date	Refund amount sanctioned (Rs.)
Refund Claim 17	April 2014 to September 2014	36,31,309.00	Refund-I/LSY/220/2015 dt.29.10.2015	40,98,077.00
Refund Claim 18		55,63,427.00	Refund-ST/AC/RSC/44/2018-19 dt.17.10.2018	46,10,335.00
Refund Claim 19	October 2014 to December 2014	66,98,046.00	465/Refund-I/DK/2015-16 dt.18.02.2016	40,68,559.00
			Refund-ST/RSC/43/2018-19 dt.17.10.2018	23,07,921.00
Total		**12,47,29,078.00**		**11,54,28,287.00**

9. Subsequently petitioner received the refund amounts as sanctioned. However the refund amounts were sanctioned beyond three months from the date of filing of refund applications. Therefore, petitioner claimed that it was entitled to interest on delayed payment of refund under section 11BB of the Central Excise Act, 1944 made applicable to service tax *vide* section 83 of the Finance Act, 1994. In such circumstances, petitioner submitted letter dated 15.05.2017 requesting respondent No.3 to grant interest @ 6% p.a. on delayed refund for the period after expiry of three months from the date of application till the date of actual refund. However, there was no response to the said letter dated 15.05.2017. Petitioner again requested respondent No.3 *vide* letter dated 02.05.2019 to grant interest on the refund amount sanctioned belatedly for the period from June, 2008 to December, 2014. Along with the said letter, petitioner submitted a copy of order dated 09.06.2017 passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT), Hyderabad in its own case granting interest on the refund amount sanctioned belatedly.

10. Respondent No.3 *vide* letter dated 21.06.2019 informed the petitioner that no other document evidencing that refund was sanctioned late had been submitted. Hence, he stated that claim for interest could

not be processed on the basis of the letter dated 02.05.2019. However, in the said letter respondent No.3 completely ignored the previous letter of the petitioner dated 15.05.2017 and that the letter dated 02.05.2019 was only a sequitur to the earlier letter dated 15.05.2017.

10.1. Notwithstanding the above, petitioner again renewed the prayer for grant of interest on delayed refund *vide* letter dated 20.08.2019 followed by reminder dated 10.09.2019. However, petitioner has not received any communication from the office of respondent No.3.

11. Aggrieved, present writ petition has been filed seeking the relief as indicated above.

12. Respondent Nos.2 and 3 have filed a common reply affidavit through Shri. Milind Gawai, Principal Commissioner of Central Goods and Services Tax (CGST) and Central Excise, Mumbai East Commissionerate. At the outset an objection has been raised that petitioner has an alternative remedy of filing appeal before the Commissioner (Appeals) against the orders in original declining interest. Since petitioner has not availed the alternative remedy, petitioner may be relegated to the appellate forum for the reliefs sought for.

12.1. On merit it is stated that petitioner had filed refund applications and after scrutiny of the applications, the refund sanctioning authority had issued various show cause notices to the petitioner as to why the refund claims made by the petitioner should not be rejected *inter alia* on the ground that the input services did not have any nexus with the output services exported and were thus not eligible for refund. Petitioner was also required to produce all the evidences upon which it intended to rely on in support of its claim. Personal hearing was also granted to the petitioner.

12.2. Refund sanctioning authority passed various orders in original

partially sanctioning the refund amount and partially rejecting the refund amount. In some of the cases, the refund claim was partially rejected on the ground that the input services did not have any nexus with the output services exported and thus were not eligible to refund. In the remaining cases, refund claims were sanctioned by the sanctioning authority after scrutinizing entire relevant documents submitted by the petitioner. Further, refund amount of partially rejected claims were also sanctioned after receiving orders of the appellate authority i.e., Commissioner (Appeals) on appeals filed by the petitioner. With the implementation of goods and services tax (GST) with effect from 01.07.2017, the departmental set up was required to be re-organized. This exercise of re-organization caused certain delay in processing of appeals and in issuing further orders sanctioning refund as per the order in appeals. However, there was no intentional delay by the refund sanctioning authority.

12.3. It is stated that refund claims were sanctioned / granted under section 11B of the Central Excise Act, 1944 as made applicable to service tax *vide* section 83 of the Finance Act, 1994. Refund claims were sanctioned after personal hearing and after scrutinizing the entire relevant documents of the petitioner. There was no intentional delay in sanctioning of refund by the refund sanctioning authority.

13. Learned counsel for the parties have made submissions based on the pleadings. Mr. Shah, learned counsel for the petitioner has asserted that payment of interest under section 11BB of the Central Excise Act, 1944 is mandatory in all the 19 refund applications filed by the petitioner as the refund claims were allowed much after three months of receipt of the applications. Therefore, under section 11BB of the Central Excise Act, 1944 as made applicable to service tax *vide* section 83 of the Finance Act, 1994, petitioner is entitled to interest as a matter of right for such delayed payment of refund. There is no question as to whether the delay caused in refund is intentional or not intentional. Besides referring to sections 11B and 11BB of the Central Excise Act,

1944 and circular dated 01.10.2002 of the Central Board of Excise and Customs, Mr. Shah has placed reliance on a number of decisions which he has furnished by way of a compilation.

14. On the other hand, Mr. Walve, learned counsel for the respondents has reiterated the averments made in the reply affidavit filed on behalf of respondent Nos.2 and 3 and asserts that there was no intentional delay in granting the refund to the petitioner. Therefore, question of payment of interest would not arise. As such, the writ petition should be dismissed.

15. Submissions made by learned counsel for the parties have received the due consideration of the Court. Also perused the judgments cited at the Bar.

16. Section 11B of the Central Excise Act, 1944 deals with claim for refund of duty and interest, if any, paid on such duty. Relevant portion of section 11B reads as under:-

> "**Section 11B**. *Claim for refund of duty and interest, if any, paid on such duty*--
>
> (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :
>
> Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate

> Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2)."

16.1. Thus, sub-section (1) of section 11B says that any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and in such manner as may be prescribed. The application shall be accompanied by documentary and other evidence in support of the claim. Sub-section (2) of section 11B provides that upon receipt of any such application if the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty by the applicant is refundable, he may make an order accordingly whereafter the amount is to be refunded.

17. Section 11BB deals with interest on delayed refunds. Since this provision is relevant, the same is extracted hereunder:-

> "**Section 11-BB**. *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."

17.1. From a reading of section 11BB as extracted above, it is evident that 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 section 11B, there shall be paid to that applicant interest at such rate which is not below 5% and not above 30% per annum as may be fixed by the central government, by notification in the Official Gazette. The interest will be calculated for the period commencing from the date immediately after expiry of three months from the date of receipt of such application till the date of refund of such duty.

18. We may also mention that section 83 of the Finance Act, 1994 makes it clear that provisions of those sections of the Central Excise Act mentioned therein shall apply as far as may be in relation to service tax as they apply in relation to a duty of excise. Sections 11B and 11BB of the Central Excise Act are included and accordingly the said sections shall be applicable in relation to service tax.

19. Central Board of Excise and Customs, New Delhi had issued a circular dated 01.10.2002 regarding non-payment of interest in refund / rebate cases which were sanctioned beyond three months of filing of application. Referring to section 11BB of the Central Excise Act and representations received from claimants expressing grievance that interest due to them on sanction of refund / rebate claims beyond the period of three months had not been granted by the central excise

formations, the Central Board stressed that provisions of section 11BB of the Central Excise Act are attracted automatically for any refund sanctioned beyond the period of three months. The jurisdictional central excise officers were impressed upon not to wait for instructions from any superior officer for grant of interest. It was emphasized that all necessary actions should be taken to ensure that no interest liability is attracted but should the liability arise, the legal provision for payment of interest should be scrupulously followed. The aforesaid circular dated 01.10.2002 is quoted hereunder:-

> “ Circular No.670/61/2002-CX, dated 1-10-2002
> F.No.268/51/2002-CX.8
>
> Government of India
> Ministry of Finance (Department of Revenue)
> Central Board of Excise & Customs, New Delhi
>
> Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing – regarding
>
> I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.
>
> 2. In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No.398/31/98-CX, dated 2-6-98 [1998 (100) E.L.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional

> Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed."

20. In *Ranbaxy Laboratories Limited Vs. Union of India*, **(2011) 10 SCC 292**, Supreme Court held that section 11BB comes into play only after an order for refund has been made under section 11B but interest under section 11BB becomes payable if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of section 11BB that can be arrived at is that interest under the said section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of section 11B of the Central Excise Act. It was pointed out that it is a well settled proposition of law that a fiscal legislation has to be construed strictly; one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. On the basis of the above provisions, Supreme Court clarified that the liability of the revenue to pay interest under section 11BB of the Central Excise Act commences from the date of expiry of three months from the date of receipt of application for refund under section 11B(1) and not on the expiry of three months from the date on which order of refund is made.

21. *Shroff United Chemicals Limited Vs. Union of India*, **2011 (24) STR 17** is a case where a Division Bench of the Bombay High Court examined the above two provisions and held that entitlement of the applicant to interest on delayed refund once the requisite conditions have been fulfilled follows as a matter of law and is a mandate of the statute.

22. A Division Bench of the Gauhati High Court in *Amalgamated Plantations (P) Limited Vs. Union of India*, **2013 (296) ELT 13**

examined the question as to entitlement of the petitioners to interest under section 11BB of the Central Excise Act on delayed excise duty refund by the department to the petitioners. From a conjoint reading of sections 11B and 11BB of the Central Excise Act it was held that if any refund of excise duty is ordered under section 11B(2), the same has to be refunded within three months from the date of receipt of application under sub-section (1) of section 11B failing which interest would have to be paid. Language of section 11B is very clear and unambiguous. It speaks of claiming refund of any duty of excise. No exception is provided. It does not distinguish or differentiate between any kind of excise duty refund, whether duty paid in excess or duty paid which are exempted. Reference was made to the decision of the Supreme Court in **Ranbaxy Laboratories Limited** (*supra*).

23. In a later judgment of the Supreme Court in *Union of India Vs. Hamdard (Waqf) Laboratories*, **2016 (333) ELT 193**, the decision in **Ranbaxy Laboratories Limited** *(supra)* was referred to and was concurred with. In the facts of that case it was held that it is obligatory on the part of the revenue to intimate the assessee to remove deficiency in the application if there are deficiencies within two weeks, and in any event if there are still deficiencies it can proceed with the adjudication and reject the application for refund; but the adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months, failing which the statutory consequences mandated by section 11BB would come into play.

24. Thus what can be culled out from the above is that if an application for refund is made, the same is required to be adjudicated within three months of receipt of the application. But if the refund is granted after three months of receipt of the application, then the applicant would be entitled to interest on such delayed refund as a matter of right. The interest would cover the period from the date immediately after expiry of the period of three months from the date of receipt of the

application till the date of payment of the refund.

25. Adverting to the facts of the present case, we have already extracted the two statements furnished by the petitioner in the writ petition. In the first statement, the dates of refund applications are mentioned. In the second statement, the dates of orders granting refund are mentioned. These statements are not disputed by the respondents. From a comparison of the two statements, it is evident that the orders granting refund were passed after expiry of three months from the date of receipt of the refund applications. Taking up one such refund order dated 04.02.2010 pertaining to refund claim for the period from June, 2008 to September, 2008, we find that Assistant Commissioner of Service Tax, Division III, Mumbai had sanctioned refund claim of Rs.52,42,806.00 under section 11B of the Central Excise Act. The refund claim (application) was received in the office on 29.06.2009 but the refund order was passed on 04.02.2010. Obviously, there is delay and the refund was granted much after expiry of three months from the date of receipt of the application. In fact respondents have not disputed that the refund orders were passed beyond the period of three months from the date of receipt of the refund applications. Only defence put up is that there was no intentional delay by the respondents. We have already analyzed section 11BB of the Central Excise Act and the interpretation given thereto by the Supreme Court in **Ranbaxy Laboratories Limited** (*supra*). Section 11BB does not speak about or exempts any delay which is not intentional. The section does not distinguish delay which is intentional and delay which is unintentional. Once there is delay in payment of refund within three months from the date of receipt of application, rigour of section 11BB sets in and payment of interest on the delayed refund becomes obligatory. It follows automatically; as a matter of law being a mandate of the statute. Non-granting of interest in such a case would amount to failure to discharge statutory duty / obligation by the refund sanctioning authority for which the aggrieved claimant can seek a writ of mandamus from the Writ Court under Article

226 of the Constitution of India.

26. Thus in the light of the discussions made above, the writ petition succeeds. Petitioner would be entitled to interest under section 11BB of the Central Excise Act, 1944 on the amounts refunded to it. Respondent Nos.2 and 3 shall work out the interest amount payable to the petitioner in respect of the refund claims for the relevant periods which shall be paid to the petitioner within three months from the date of receipt of a copy of this judgment and order.

27. Writ petition is accordingly allowed. However, looking into the facts and circumstances of the case, there shall be no order as to cost.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

Minal Parab