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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.03.2024

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W.P.(C) 4029/2024

BLACKBERRY INDIA PVT LTD -EARLIER KNOWN AS
RESEARCH IN MOTION INDIA PVT LTD Petitioner

versus

THE COMMISSIONER CGST DELHI SOUTH
COMMISSIONERATE & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Priyanka Rathi, Mr. Ashwini Chandrasekaran, Mr.
Abhishek Jain and Ms. Shubhangi Gupta, Advocates.

For the Respondents: Mr. Akshay Amritanshu, Senior Standing Counsel with
Mr. Samyak Jain and Mr. Ayush Raj, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns Show Cause Notice dated 19.01.2024, whereby the petitioner has been directed to show cause as to why CENVAT Credit amounting to Rs.8,55,34,345/- erroneously refunded alongwith interest amounting to Rs.4,69,83,731/- erroneously paid towards interest for delayed payment be not recovered and penalty be not imposed for ineligible availment of CENVAT Credit.



2. Issue notice. Notice is accepted by the learned counsel appearing for the respondent. With the consent of the parties, the petition is taken up for final disposal.

3. Counsel for the petitioner submits that petitioner had filed refund applications in 2013 and 2014. A Show Cause Notice was issued to the petitioner on 22.01.2020, as to why the refund be not rejected. Thereafter, an Order-in-Original dated 31.08.2020 was passed whereby the refund for the period April to June 2012, April to June, 2013 and July to September 2013 was rejected.

4. Petitioner thereafter filed an appeal before the Commissioner (Appeals), and by order dated 19.08.2021 Commissioner (Appeals) dismissed the appeal.

5. Petitioner thereafter approached the Custom Excise & Service Tax Appellate [“CESTAT”] Tribunal and by a final order dated 07.12.2022, the Tribunal held that the refund claim of the petitioner could not have been rejected by the Commissioner (Appeals).

6. Thereafter, the respondents filed an appeal before the High Court being SERTA-7/2023, which was dismissed on 12.07.2023 holding that no substantial question of law arises. Thereafter, petitioner filed a Writ Petition before this Court being W.P. (C) No. 9364/2023 seeking grant of interest on the delayed refund. Said petition was allowed by order dated 03.08.2023, directing the



Revenue to process the petitioner's claim for interest under Section 11-BB of the Excise Act read with Section 83 of the Finance Act. Thereafter, the interest on the delayed refund was sanctioned and payment made to the petitioner.

7. It is not in dispute that pursuant to the above-referred proceedings, the amount subject matter of the impugned Show Cause Notice dated 19.01.2024 was paid to the petitioner. Petitioner was refunded an amount of Rs. 8,55,34,345/- towards refund of CENVAT Credit and Rs.4,69,83,731/- towards interest on delayed refund of CENVAT Credit. It is this amount which is sought to be claimed from the petitioner by the respondent and the petitioner has been directed to show cause as to why the said amount be not recovered along with interest and penalty.

8. As noticed hereinabove, said amount of refund and interest was paid to the petitioner pursuant to the order passed by the Tribunal holding the petitioner entitled to refund and the order passed by this Court directing payment of interest on the delayed refund paid to the petitioner.

9. We may also note that when the Revenue sought to impugn the order of Tribunal holding petitioner entitled for refund, this Court dismissed the challenge by the Revenue holding that the challenge was purely factual and no substantial question of law arises.



10. We may further note that the only ground stated in the impugned Show Cause Notice is extracted in paras 13 & 14 of the Show Cause Notice, which reads as under:-

“13. On the basis of above stated contention, Department has filed SLP in the Hon'ble Supreme Court against the Hon'ble High Court Judgment/Order dated 12.07.2023.

14. Whereas, it appears that since the department has preferred SLP against the Hon'ble High Court Judgment dated 12.07.2023, the amount disbursed as interest on delayed payment ammmting to Rs.4,69,83,731/- is also liable to be recovered from the taxpayer along with interest applicable.”

11. Before us, it is stated that the Show Cause Notice erroneously records that a Special Leave Petition has been filed. We are informed that the Revenue has already processed the file for filing a Special Leave Petition. However, Special Leave Petition is still to be filed in the Registry of the Supreme Court.

12. Be that as it may, it is not in dispute that petitioner has been refunded the said amount after the petitioner was found eligible by the Tribunal for refund and further by this Court towards interest for delayed refund of the CENVAT Credit. Accordingly, there is no ground to demand the same from the petitioner.

13. Since the Revenue is approaching the Supreme Court impugning the order of the Tribunal as well as the order in appeal



passed by this Court holding petitioner entitled to refund of the CENVAT Credit, it would be open to the Revenue to seek interim orders of protection from the Supreme Court. The Revenue cannot after being unsuccessful before this Court, on its own, declare the refund of the CENVAT Credit as well as interest on delayed payment to be erroneous refund. Unless the Revenue is successful before the Supreme Court or the Supreme Court so warrants, there is no question of any refund of the CENVAT Credit or refund of the interest paid to the petitioner.

14. In view of the above, the impugned Show Cause Notice cannot be sustained. The same is accordingly quashed. No order as to costs.

SANJEEV SACHDEVA, J

MARCH 18, 2024
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RAVINDER DUDEJA, J