

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 13.05.2010

+ **W.P.(C) 8753/2009**

**M/S NAV BHARAT IMPEX THROUG.
ITS PARTNER ARUN KUMAR**

..... Petitioner

- versus -

UOI & ORS

..... Respondent

Advocates who appeared in this case:-

For the Petitioner	: Mr Arjun Bhandari with Mr Sidharth Joshi
For the Respondent	: Mr Mukesh Anand with Mr Shilesh Tiwari and Mr R. C. S. Bhadoria

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This is a case which shows as to how the Central Excise Department can harass a manufacturer in the payment of rebate and thereafter in the payment of statutory interest on the delayed payment of rebate.

2. The petitioner seeks the quashing of the order-in-original bearing No. R-250/REF/08-09 dated 30.03.2009 to the extent the said order rejects the claim of interest on delayed sanction of rebate to the petitioner on the ground that the same is illegal and contrary to the order in appeal No. 80 to 144/CE/DLH/2008 passed by the Commissioner (Appeals), Central Excise, Delhi-I on 24.06.2008. The petitioner also seeks a writ of mandamus or any

other appropriate writ or direction directing the respondent No. 4 (Assistant Commissioner, Central Excise) to comply with the said order in appeal dated 24.06.2008 and to grant the statutory interest under Section 11BB of the Central Excise Act, 1944 on the delayed payment of rebate claims amounting to Rs 97,02,895/-. The petitioner has also prayed for costs.

3. We need not go into the intricacies of the issues involved on merits since we are only concerned with the question of the interest claim of Rs 97,02,895/- which has been rejected by the Assistant Commissioner by virtue of the impugned order-in-original. The relevant facts for this purpose are that by an order dated 24.06.2008, the Commissioner (Appeals), Central Excise, Delhi-I had allowed the appeals of the petitioner and directed the adjudicating authority to sanction the rebate and interest on the total amount of rebate at the applicable rate prevailing during the relevant period from the date immediately following the expiry of three months from the date of receipt of the application for rebate till the date of actual refund of duty paid on the goods exported.

4. The said direction for granting interest was in terms of the provisions of Section 11BB of the Central Excise Act, 1944 which pertains to “interest on delayed refunds”. The said provision clearly stipulates that if any duty, which is ordered to be refunded under sub-Section 11B(2) to any applicant, is not refunded within three months from the date of receipt of the application under Section 11B(1), there shall be paid to the applicant, interest at such rate as 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 an application till the date of refund of such duty.

5. Despite the clear provisions of Section 11BB and the clear directions given by the Commissioner (Appeals), the delayed refunds were paid to the petitioner without any element of interest. We should also note that the order dated 24.06.2008 passed by the Commissioner (Appeals) attained finality inasmuch as the Department did not carry the matter any further. It is, therefore, clear that the Assistant Commissioner had merely to comply with the directions given by the Commissioner (Appeals) in the appellate order dated 24.06.2008 and he was to merely carry out a ministerial function of computing the interest and making payment thereof. However, the Assistant Commissioner took it upon himself to examine the case as per his own understanding and, to our minds, has gone to the extent of overreaching the orders of his superior authority, that is, the Commissioner (Appeals). Once the Commissioner (Appeals) had clearly directed the grant of refund along with the statutory interest thereon, the Assistant Commissioner was left with no power to go behind that order. However, the Assistant Commissioner placed reliance on an earlier letter dated 07.08.2007 which had been written by the petitioner to the Commissioner of Central Excise, Delhi-I, New Delhi. The subject of the said letter was the then pending export rebate claims against the export of menthol powder. Since the Assistant Commissioner has placed great reliance on this letter, it would be appropriate to reproduce it in its entirety.

“To,

The Commissioner of Central Excise,
Delhi-I, C. R. Building,
New Delhi.

Subject: Regarding our pending export rebate claims
against export of Menthol Powder.

Dear Sir,

This is with reference to our discussion on the above cited matter with you in your office on 3rd August, 2007.

As you are aware that our export Rebate Claims pertaining to export of menthol powder amounting to more than Rs 6.49 crores are lying pending with the Assistant Commissioner, Divn-IV, Delhi-I since year 2004-05 and despite order No. 1109/2006 dated 27.12.2006 of Govt. of India (JS-RA) in our favour, the said claims are not being settled. Even the show cause notices issued for denial of aforesaid rebate claims have been dropped, yet the rebate claims are pending.

We would like to submit that due to non-sanction of due rebate claims on time, we have faced lots of financial difficulties because of which our business and export have seriously suffered. We understand that we are entitled to statutory interest since the grant of refund has been delayed by more than three months from the date of filing of the rebate claim. However, keeping in view the cordial discussion held in your office on 03.08.2007 and on the assurance given by you and that further delay in grant of rebate will keep on adversely affecting our business, we as a token of good gesture hereby undertake to forego the interest involved in respect of the above referred rebate claims if:-

- (1) All the sixty one export rebate claims pertaining to export of menthol powder are sanctioned and released on or before August, 17, 2007;
- (2) All future export rebate claims for export of menthol powder, menthol crystals and peppermint oil will be sanctioned and released within statutory period provided under law.

Thanking you

Yours truly,
For and on behalf of
Nav Bharat Impex
Shishir Chaturvedi
Partner”

(underlining added)

6. According to the Assistant Commissioner, this letter shows *ex facie* that the petitioner was conscious of its right to claim interest. But once it had chosen to relinquish the claim of interest, the petitioner had to take all the consequences. He was also of the view that the Commissioner (Appeals) was not made aware of this letter by the petitioner. It is for this purported reason that the Assistant Commissioner, *inter alia*, rejected the interest claim of Rs 97,02,895/- in respect of 61 rebate claims.

7. On examining the said letter dated 07.08.2007, we get an impression that the petitioner was not being given the rebate which it was entitled to. There was great delay in the sanctioning of the rebate claims which were due to the petitioner and as a result of which the petitioner was suffering great financial difficulties. Faced with such a situation, the petitioner was compelled to issue the said letter dated 07.08.2007 where it had submitted that, as a token of good gesture, they would undertake to forego the interest involved in respect of the said rebate claims if:-

- (1) All the sixty one export rebate claims pertaining to export of menthol powder are sanctioned and released on or before August, 17, 2007;
- (2) All future export rebate claims for export of menthol powder, menthol crystals and peppermint oil will be sanctioned and released within statutory period provided under law.

8. From the above, it is clear that the undertaking to forego interest was not unconditional but was subject to the aforesaid two conditions. It is an admitted position that all the 61 export rebate claims were not sanctioned and released on or before 17.08.2007. We find from the order that 16 out of the 61 claims were sanctioned to the party on 16.08.2007 and the remaining were sanctioned on 24.08.2007. However, in respect of each and every of the 61 claims, the amounts were released after 17.08.2007. It is abundantly clear, in the backdrop of the aforesaid facts, that the conditions, on which the undertaking was predicated, have not been met by the revenue. Therefore, the revenue authorities could not hold the petitioner to the said undertaking.

9. In any event, we find that the undertaking was given on 07.08.2007, which is prior to the order of the Commissioner (Appeals) dated 24.06.2008. There is no material on record to indicate that the Commissioner (Appeals) had not considered the said letter dated 07.08.2007. Furthermore, we are of the view that the Assistant Commissioner was not entitled to go behind the order passed by the Commissioner of Central Excise (Appeals) and he was duty bound to follow the said order and carry out the directions given therein. We would like to point out the observations of the Supreme Court in the case of **Union of India v. Kamlakshi Finance Corporation Ltd: 1991 (55) E.L.T 433 (SC)** to the following effect:-

“The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The

mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

The above observations of the Supreme Court clearly show that in the present case the healthy rule that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities has been given a go-by by the Assistant Commissioner in rejecting the interest claim of Rs 97,02,895/- by virtue of the impugned order dated 30.03.2009.

10. Consequently, for all the reasons indicated above, the impugned order to the extent it rejects the interest claim of Rs 97,02,895/-, is set aside. The Assistant Commissioner is directed to comply with the orders passed by the Commissioner (Appeals) within two weeks from today. This writ petition is allowed to the aforesaid extent with costs, which we quantify at Rs 10,000/-, to be paid to the petitioner by the respondent Nos. 2-4 within two weeks from today.

BADAR DURREZ AHMED, J

V.K. JAIN, J

**MAY 13, 2010
SR**