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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11421 OF 2014

Messrs. National Leather Cloth Mfg. Co. ..Petitioners
-*Versus*-
The Union of India & Ors. ..Respondents

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Mr.Prakash Shah with Mr. Jas Sanghavi for the Petitioners.
Mr. A. S. Rao with J. B. Mishra for the Respondents.

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CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.

DATE :- 19th JANUARY, 2015.

P.C.:

Heard both sides. Rule. Respondents waive service. By consent of the parties, Rule is made returnable forthwith.

2] The Petitioners are engaged in the manufacture of excisable goods falling under Chapter 39, 56 and 59 of the First Schedule to the Central Excise Tariff Act (for short the 'Tariff Act'). During the period January 1995 to March 1997 they utilized the credit of duty paid under the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 of Rs.41,01,467/- on inputs. These are yarn and grey fabrics for discharging liability of additional duties of excise on the final product, namely, PVC

Leather Cloth under the Additional Duty of Excise (Goods of Special Importance) Act, 1957. The Department/Revenue was of the view that the credit was wrongly utilized. The Petitioners, therefore, deposited the above sum during the month of April and May 1997. A show cause notice dated 6th July, 1998 was issued to the Petitioners which was adjudicated by the Commissioner of Central Excise, Mumbai V, who passed an order on 6th January, 2000. He confirmed the demand of Rs.41,01,467/- and imposed equal penalty. The Tribunal quashed and set aside this order on 12th March, 2004 essentially on the ground of limitation. It also set aside the penalty. However, on 31st August, 2004, the Deputy Commissioner of Central Excise rejected the application for refund made by the Petitioners pursuant to the Tribunal's order as premature. The Commissioner of Central Excise made an order on 26th May, 2005 rejecting an Appeal of the Petitioners challenging this order of the Deputy Commissioner. The matter was carried by the Petitioners to the Tribunal. On 14th November, 2013, the Tribunal passed an order and set aside the Commissioner's (Appeals) order dated 26th May, 2005 and directed the authority to implement the order of the Tribunal within 90 days of receipt. The Petitioner was, then, required to appear before the Assistant Commissioner of Central Excise. He directed that the refund amount can be sanctioned and accordingly sanctioned it to the extent of

Rs.41,01,467/-.

3] The Assistant Commissioner of Central Excise, Malad Division, Mumbai V, did not grant any interest on the amount of refund and, therefore, the Petitioners approached the Appellate Authority, namely, the Commissioner of Central Excise (Appeals-I), Mumbai. He has passed an order dated 12th August, 2014 under which he directed the interest at the rate of 6% to be paid to the Petitioners from 4th May, 2004 till the actual date of payment of amount of refund(Rs.41,01,467/-).

4] The Petitioners are aggrieved and dissatisfied with the fact that despite such order, the interest amount has not been paid by the Respondents.

5] On the earlier occasion, we issued notice and called for a reply affidavit. In the reply affidavit, the Petitioners main contentions have not been disputed. However, what has been brought to the notice of this Court is that against the Tribunal's order dated 14th November, 2013 the Revenue preferred Central Excise Appeal (Lodging) No.148 of 2014 in this Court. This Court on 8th May, 2014 has admitted it as the same involves substantial questions of law. It is, therefore, submitted that the order passed by the Tribunal sanctioning the refund is now at large before this

Court. Secondly, against the order of the Commissioner (Appeals) dated 12th August, 2014 as well, the Tribunal has been approached by the Revenue and the Revenue's Appeal is pending. In such circumstances, this Court should not grant any relief is the submission of Mr. Rao based on the contents of this affidavit.

6] Mr. Prakash Shah, learned counsel, appearing for the Petitioners, on the other hand, would urge that throughout, namely, before this Court or before the Tribunal there are no prohibitory or preventive orders. The Respondents have not been able to obtain any interim relief under which the Petitioners are restrained from recovering the amount of interest. The Petitioners have legitimately pursued the course and remedy provided by law. The law enables grant of such interest and on delayed payment of the refunded sum. If the refunded sum has not been remitted and within the time stipulated, then, it carries interest. Hence, the main proceedings are pending, is no ground to deny the relief.

7] After hearing both sides and perusing the Writ Petition with all annexures, in the light of the undisputed facts, we are of the view that there is much substance in the contention of Mr. Shah. The statutory prescription that the claim for refund, if sanctioned, carries the obligation to pay interest, in the event, it is not remitted in a particular time, is undisputed. The only justification for withholding the sum is that the Revenue has approached the Higher Court and the Appeal of the Revenue is pending. We are of the view that mere pendency of these proceedings and in the given facts and circumstances, would not enable the Revenue to resist the claim as eventually, the principal amount was due and recoverable. That sum has been already remitted. In other words, the Petitioners have received a sum of Rs.41,01,467/-. The balance claim that remains is of interest on this sum. If the statute provides that in the event, amount is not paid within a specified time, then, the Revenue will have to pay interest, unless and until, the Revenue was able to obtain any preventive or prohibitory order and direction. It cannot refuse to release the sum in favour of the Petitioners. The Revenue could have released the sum without prejudice to its rights and contentions and subject to the pending proceedings in this Court and equally the Tribunal.

8] In the light of the above position emerging from the record, we are of the opinion that the rights and equities can be balanced with the following order and direction;

(a) The Rule is made absolute in terms of prayer clause (a) with the direction to the Respondents to pay the sum of interest as quantified in terms of the earlier orders and direction and the provisions of law;

(b) The amount as computed and quantified shall be released and paid to the Petitioners within a period of 12 weeks from today.

9] However, this order and direction is without prejudice to the rights and contentions specially of the Revenue in the pending proceedings. In the event, the Revenue succeeds the Petitioners can be appropriately called upon to remit the sums which have been paid or remitted.

10] Our order and direction shall not mean that the Petitioners were entitled to the amount as claimed by them. Our order and direction shall not prevent this Court from passing any appropriate orders and issuing appropriate direction in the Revenue's Appeal. Equally, this order shall not prevent the Tribunal from adjudicating the pending Appeal and passing an appropriate order thereon in accordance with law. We clarify that the contentions of both sides with regard to the pending proceedings are kept open and shall remain unaffected by this order. There will be no orders as to costs.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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