IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 2793 OF 2016

SHELF DRILLING INTERNATIONAL, INC.
(FORMERLY KNOWN AS SEDCO FOREX
INTERNATIONAL DRILLING INC.) ...Petitioner

Versus

1.THE UNION OF INDIA AND ORS. ...Respondents

Mr.Prakash Shah with Mr.Anil Balani, for the Petitioner.

Mr.Pradeep S.Jetly, for the Respondents.

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CORAM : S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.

DATED : 4th APRIL,2016

P.C.:

1. We have heard both sides. By this petition under Article 226 of the Constitution of India all that the Petitioner seeks is a writ of mandamus or any other writ or direction, directing the Respondents to forthwith implement the Order-in-Appeal dated 27th October,2015 of the Commissioner of Income Tax (Appeals), and grant and sanction interest in respect of the refund claim.

2. The legal right based on which the Writ Petition is filed is that a refund is already sanctioned and granted. However, the dispute is as to what amount of interest should this refund carry. In that regard our attention is invited by Mr.Shah, learned Counsel appearing on behalf of the Petitioner, first to the Order-in-Original and the operative portion thereof at page 74 of the paper book. This order-in-original has been passed by the Commissioner of Customs (Import) on 23rd June,2014 sanctioning refund in the sum of Rs.1,89,15,549/- in the name of predecessor-in-title of the present Petitioner.

3. The Petitioner, then, approached the Appellate Authority and the Appellate Authority passed order dated 27th/28th October,2015.

4. The refund claim of the Assessee, according to the Petitioner -Assessee, was to be awarded alongwith interest. It, therefore, raised the issue of interest and the Appellate Authority noted the arguments of the Petitioner's predecessor that it is eligible for interest on delayed refund, but there is no discussion in the Order-in-Original about the interest. The refund sanctioning Authority should have examined the issue of interest on refund.

5. After a lengthy discussion, what the Appellate Authority felt is that the calculation of interest is not possible at the level of the Appellate Authority and, therefore, the matter needs to be remanded.

6. The apprehension of the Petitioner is that the order passed by the Appellate Authority has not been given effect to and there is an apprehension that the entire matter will be reopened. Meaning thereby, whether the refund was capable of being sanctioned at all, is now being examined. In that regard, Mr.Shah, learned Counsel appearing for the Petitioner invited our attention to paragraph (11) of the affidavit in reply filed in this Writ Petition. Mr.Shah would submit that the apprehension of the Petitioner is based on this paragraph and the contents thereof which would enable this Court to conclude that the intention of the Authorities/Respondents is now to reopen the claim for refund and in the garb of examining limited request of the Petitioner.

7. It is with regard to this grievance that we have considered the rival contentions and perused paragraph (11) of the affidavit. To our mind, though at the personal hearing the Petitioner was called upon to produce the relevant documents, what we find is that by reading of this paragraph alone, it will not be possible to agree with Mr.Shah. The

affidavit should be read in its entirety, and so read it is apparent that the Respondents have clarified that once the Order-in-Original has been implemented and the refund amount has been paid to the Petitioner within the stipulated period as prescribed under the provisions of Section 27 of the Customs Act, then, the question of payment of any interest for delayed refund does not arise. This is the real purpose of filing a lengthy affidavit. Thus, the Authorities are not going to reopen the issue of refund but are only raising plea that the Petitioner is not entitled to any interest on the refund amount for there is no delay in granting refund. It is not that issue which will be examined and we do not permit that to be examined by the Authorities upon remand. Thus, the remand order and this affidavit, if read together, the jurisdiction of the Authorities now is extremely limited. They will hear the Petitioner on the request of quantum of interest on the refund sanctioned and only that issue will be decided. That will be decided by the Authorities unmindful of and irrespective of the stand taken in the affidavit-in-reply. They shall deal with the said issue on its own merits and pass a reasoned order as expeditiously as possible within four weeks from today.

8. We clarify that when we hold as above, we are not permitting the Authorities now to ignore either the order-in-original or the order-in-

appeal or any directions therein. If the interest is payable as held in the order-in-appeal, then, the calculation thereof is the limited issue which the Authority must now examine. The Affidavit-in-reply filed in this Court and particularly paragraph (18) thereof may indicate a contrary stand. But once the statutory provisions are clear and there is delay in grant of refund, then, the interest must follow. It is only the quantum thereof which would be determined by the Authority.

9. The Writ Petition is, accordingly, disposed of.

[G.S. KULKARNI, J.] **[S.C.DHARMADHIKARI, J.]**