IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.764 OF 2015

Standard Charted Bank .... Petitioner
Vs.
The Joint Director of Enforcement
(FEMA & PMLA) & Anr. .... Respondents

Mr. Vishwa Patil with Mr. Vikramsinh Yadav and
Mr. Ashwin Hawelikar i/by Mr. Hiren Mehta for the
Petitioner.
Mr. Pradeep S. Jetly with Mr. M.S. Bhardwaj for the
Respondent.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : JULY 11, 2016

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents and particularly to the Joint Director of Enforcement functional under the Foreign Exchange Management Act, 1999 (FEMA) and the Prevention of Money Laundering Act, 2002, so also the Union of India, to refund a sum of Rs.16,00,000/- with interest

from 21-12-2010 till 21-3-2014. The petitioner is claiming interest @ 18% (higher interest) from March, 2014.

2. The refund sought is of a sum of Rs.16,00,000/- stated to have been deposited by the petitioner-Bank by a cheque dated 16-8-1996. The deposited amount is evidenced by the several receipts which have been issued. Now a claim is laid in this petition for refund of that sum along with interest at 18% per annum from 21-12-2010 till 21-3-2014, and further interest at 18% per annum from 21-3-2014 till realisation.

3. The petitioner states that the predecessor in-title of the present petitioner M/s. ANZ Grindlays Bank had been aggrieved and dissatisfied with an order of 28-6-1996 of the Special Director of Enforcement. That was stated to be an order passed against M/s. ANZ Grindlays Bank and three officers. They were directed to pay a sum of Rs.10,00,000/- and Rs.2,00,000/-, respectively.

4. Annexure-B is a copy of this order.

5. Aggrieved and dissatisfied therewith, the predecessor in-title of the petitioner preferred an appeal being Appeal No.220 of 1996 and the Appellate Tribunal for Foreign Exchange disposed of the same on 21-12-2010. It has set aside the penalty imposed on the petitioner and the three officers by this final order.

6. After the final order, the Department was called upon to refund the said amount. That having not been refunded, the present petition.

7. An affidavit in reply has been filed, of which paras 3 and 4 read thus:

> *"3. I say that pursuant to investigation, a Show Cause Notice dated 04.04.1995 was issued against the Petitioner, its three employees and others for contravention of various provisions of FERA, 1973. The Show Cause Notice was adjudicated by the Adjudicating Authority under section 50 of FERA, 1973 vide its order dated 28.06.1996, a penalty of Rs.10,00,000/- was imposed on the petitioner. Further, penalties of Rs.2,00,000/- each was imposed on its three employees viz. S/Sh. Ravi Sehekhar, R.B. Dhage & R. Madhav Rao also. The petitioner bank and its three officials complied with the said order and paid the amount of penalties imposed on them to the*

Directorate.

4. Thereafter, the Petitioner bank filed Appeal No.220/96 before the Appellate Tribunal for Foreign Exchange (ATFE) against the said Adjudication Order dated 28.06.1996. The ATFE vide order dated 29.12.2010 allowed the said appeal and ordered as under:

> *"14. Now comes the role of appellant in Appeal No.220/96 i.e. M/s. ANZ Grindlays Bank, the role of this bank is that an NRE Account was opened in the bank where the cheques issued by M/s Thomas Cook (I) Ltd. were deposited. It is alleged that the bank should have taken proper care and it was their responsibility to look into all these legalities committed in the NRE Account. Merely because the bank has failed to discharge their responsibilities by itself is not sufficient to hold the bank liable. Hence, Appeal No.220/96 stands allowed and the penalty against the bank is set aside......""*

8. It is the specific case of the Director of Enforcement that the Adjudicating Authority imposed a penalty of Rs.10,00,000/- on the petitioner's predecessor. The penalties of Rs.2,00,000/- each were imposed on the three employees.

9. The predecessor complied with the order and equally the three officers and paid the sums.

10. Thereafter, the Appellate Tribunal allowed the Appeal and set aside the penalty as against the predecessor-Bank. But there is nothing therein with regard to the penalties imposed on the three employees.

11. Now the petitioner tenders an affidavit, styled as rejoinder/additional affidavit, in which it is stated that the Appeal was filed by the predecessor-Bank as also the employees. The amount of Rs.16,00,000/- was deposited under a covering letter and that covered the sum of penalties imposed on the three employees.

12. An attempt is made to show from the photocopy of the Appeal Memo filed before the Appellate Tribunal that it was a joint Appeal.

13. After having heard the counsel appearing for the petitioner at some length and perusing with his assistance the writ petition and the annexures thereto, we are of the opinion that the sum of Rs.10,00,000/- has been refunded to the petitioner during the pendency of this writ petition. The order

passed by the Appellate Tribunal clearly records at para 14 that no penalty could have been imposed on the Bank. The penalty imposed on the Bank has been set aside. Once that penalty has been set aside, then, if no further proceedings were initiated by the respondents, the amount paid by the petitioner's predecessor should have been refunded to the petitioner within a reasonable time.

14. That was not refunded, forcing the petitioner to file a writ petition. Even if we do not agree with Mr. Patil that the employees were parties to the Bank's Appeal and therefore the direction of the Appellate Tribunal must enure to the benefit of these officers, still, we find that the Union of India took considerable time to refund the amount of Rs.10,00,000/-. That should have been done within a reasonable time.

15. To that extent, there is merit in the submission of Mr. Patil that if that amount was not refundable at all and on the grounds now urged, namely, unjust enrichment, then, there was no occasion for the respondents to have honoured the

Tribunal's order after such a considerable delay. The fact that Rs.10,00,000/- have been refunded and in terms of the submissions made in para 7 of the affidavit in reply, then, the defence of unjust enrichment and the principle in that behalf is not applicable, nor the same has been invoked by the respondents. The steps to refund the amount of Rs.10,00,000/- in pursuance of the Tribunal's order passed as early as on 21-12-2010 having been taken belatedly and lawful and legitimate sum or demand was held back, that we are of the opinion that principles of equity, fairness and justice would be served if we direct the respondents to pay interest on this sum of Rs.10,00,000/- at the rate of 8% per annum from 1-3-2015 till actual payment/realisation. The amount of interest at such rate be computed and the same be released in favour of the petitioner as expeditiously as possible and within a period of six weeks from the date of receipt of a copy of this order.

16. In the view that we have taken, it is not necessary to consider the ambit and scope of this Court's power under Article 226 of the Constitution of India to grant interest on broad and

equitable principles. That is why we do not refer to the Judgment of the Division Bench of the Madras High Court in the case of ***Union of India Vs. Coromandel Prodorite Ltd.***, reported in 1991 (52) E.L.T. 165 (Mad), in further detail. The writ petition is disposed of with the above directions.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C. DHARMADHIKARI, J.)