IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 3985 OF 2018

Apar Industries Limited .. Petitioner.
v/s.
Union of India & Others .. Respondents.

Mr. Prakash D. Shah with Mr. Mihir Mehta and Ms. Shilpi Jain i/b. PDS Legal, for the Petitioner.
Mr. Pradeep S. Jetly with Mr. Ram Ochani, for the Respondents.

CORAM: M.S.SANKLECHA, &
RIYAZ I. CHAGLA,JJ.
DATE : 24th OCTOBER, 2018.

P.C:-

This Petition under Article 226 of the Constitution of India, originally seeks a refund of Rs.52.97 Crores along with interest thereon under Section 56 of the Central Goods & Service Tax Act (the Act). Besides, seeking an interest on delayed refund of Rs.1.90 Crores which was already granted to the Petitioner. These refunds arose on account of tax paid in respect of exported goods under Section 16 of the Integrated Goods & Service Tax Act, 2017 (IGST Act). During the pendency of this Petition, an amount of Rs.52.52 Crores has already been refunded under the Act read with IGST Act.

2 Thus, the Petitioner's grievance now is limited to non-payment of interest on the amount of Rs.52.52 Crores of refund already

granted to it as well as the refund of the balance amount of Rs.2.35 Crores together with interest thereon. It is the Petitioner's case that they are not only entitled to refund of tax paid but also interest thereon as provided under Section 56 of the Act, from the expiry of 60 days of filing of the shipping bills, in whch the refund is claimed.

3 As against the above, it is the Respondents' case, as indicated in affidavit in reply dated 15th October, 2018 of Mr. Balmukund Agarwal, the Asstt. Commissioner of Customs that, there is a invoice mis-match/ error in this case. This has resulted in delay in refunding of the amount of Rs.52.52 Crores. Thus, no interest in the present facts, is payable by the Revenue for the delay in granting the refund as the same is on account of the Petitioner.

4 Mr. Shah, learned Counsel appearing for the Petitioner, disputes the fact that there is any invoice mis-match. Our attention is invited to the Frequently Asked Questions (FAQ) issued by the Madras Commissionerate dated 23rd February, 2018 - wherein an error in respect of Invoice mis-match I.e. SB005, was a subject matter of consideration. Our attention was also invited to the Circular issued by the Central Board of Indirect Taxes and Customs dated 23rd February, 2018 wherein again, non-grant of refund, because of mis-match of Invoices, was a subject matter of consideration. In both the cases, it was directed that refund be granted. Therefore, it submitted that in terms of the above the interest as sought should be granted.

5 We find that on oath, the Respondents state that there is an Invoices mis-match in respect of the refund sought. Thus, leading to delay

in passing the refund. This is disputed by the Petitioner. Besides, the aforesaid Circulars and FAQ, *inter alia*, deal with grant of refund in spite of Invoices mis-match/ error, as indicated by SB005. The above Circular/ FAQ does not deal with grant of interest even for the period when there Invoice mis-matched/ error. Thus, the Circular/FAQ does not decide the issue, but would require deeper consideration.

6 In these circumstances, we are of the view that, the issue of grant of interest for delaying refund does requires factual determination as to the type of Invoices mis-match, who was responsible for the same and who, if any, and how, was the same corrected. This exercise would be best done by the adjudicating authorities under the Act after hearing the parties.

7 Therefore, we do not entertain this Petition. However, we direct the Petitioner to file a representation to the Adjudicating Authority, who would consider the same and after hearing the Petitioner, pass a speaking order, dealing with the Petitioner's contention.

8 Normally, this representation would have been made to the deponent of the affidavit in reply i.e. Mr. Balmukund Agarwal, Asstt. Commissioner of Customs, Nhava Sheva, Navi Mumbai. However, in the affidavit in reply, he has already taken a stand, that no interest can be granted in these facts to the Petitioner. Therefore, the apprehension of the Petitioner that it may not get justice at the hands of Mr. Balmukund Agarwal, seems justified. Justice must not only be done but also appear to be done. Therefore, in these circumstances, it would be appropriate that some other Assistant Commissioner of Customs be alloted to deal with the

Petitioner's pending application for refund of tax as well as interest on the refunds already granted.

9 Mr. Jetly, learned Counsel appearing for the Revenue, on instructions, states that the representation could be filed with Mr. Jaiswal, Assistant Commissioner of Customs, Drawback, Navhasheva, Navi Mumbai. The above Officer who would adjudicate the Petitioner's claim for interest on the refund granted and the pending refund application, as expeditiously as possible and preferably within a period of twelve weeks from receipt of the Petitioner's representation. This adjudication, needless to state, will be after following the principle of natural justice.

10 Mr. Jaiswal, Assistant Commissioner, Nhava Sheva, who would be dealing with Petitioner's claim for interest on the delayed refund and the pending refund claim would independently apply his mind to the facts and the law, as applicable to this case This, without in any manner, being influenced by the affidavit in reply dated 15th October, 2018 filed by Mr. Balmukund Agarwal, Assistant Commissioner, Nhava Sheva to this Petition. This after taking into account the Petitioner's primary contention that there has been no mistake on the part of the Petitioner which would warrant denial of the interest for the delayed grant of refund.

11 **Petition disposed of** in the above terms. No order as to costs.

(RIYAZ I. CHAGLA,J.) **(M.S.SANKLECHA,J.)**