IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

Writ Appeal No.2400 of 2013

Dollar Co P Ltd.,
Rep. By its Managing Director,
Having its Regd office
No.1, D Silva Road,
Mylapore, Chennai – 600 004. .. Appellant

Vs.

1. The Deputy Commissioner of Central Excise,
(Divison) "C", Chennai – 1,
Commissionarate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, West Extn.,
Chennai – 600 101.

2. The Commissioner of Central Excise (Appeals),
No.131 M.G. Road,
Chennai – 600 034. .. Respondents

Prayer :- Writ Appeal has been filed against the order passed by the Hon'ble Mr.Justice Vinod K.Sharma dated 22.03.2013 passed in W.P.No.1359 of 2008.

W.P.No.1359 of 2008:-

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of the nature of certiorari, calling for the records of the 2nd respondent relating to order in Appel Nos 14 & 16/2007 (M-1) dated 23-1-2007 and quash the ame and consequently direct the respondnets to refund a sum of Rs.60,108.72/- with interest tot he petitioner.

For Appellant : Mr.T.Ravi Kumar

For Respondents : Mr.K.S.Ramasamy

JUDGMENT

(Judgement of the Court was delivered by M.Sathyanarayanan.J)

The writ petitioner/appellant had filed the said writ petition praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the order of the second respondent dated 23.01.2007 in Appeal Nos.14 & 15/2007, to quash the same, with the consequential direction directing the respondents to refund a sum of Rs.60,108.72/- with interest and also to pass such further orders as deem fit and appropriate by this Court.

2.The writ petition was entertained and during the pendency of the writ petition, a principal sum of Rs.59,374/- was paid to the writ petitioner/appellant by the respondents/revenue.

3.A learned Single Judge of this Court, after taking note of the submissions and the materials placed, observed that though the writ petitioner/appellant made a challenge to the order of the Central Excise in Appeal Nos.14 & 15/2007 (M-1) dated 23.01.2007, had brought to the knowledge of this Court through the counter affidavit filed by the revenue, the impugned order which is the subject matter in the writ petition had already been stands set aside in the appeal and despite the said order, the writ petitioner did not chose to challenge the order in, non granting interest to the belated payment.

4.The learned Single Judge further observed that, it is true that the writ petitioner/appellant had disclosed in the writ petition about the challenge made before the CESTAT, and therefore, found that the writ petition as framed is not maintainable, and the appeal before the CESTAT also not disclosed at the time of hearing. The learned Judge has also found that even on merits, the plea put forth by the appellant for grant of interim stay is not sustainable in law, in the light of the judgment rendered by the Apex Court in Union of India v. Shreeji Colour Chem Industries (2008 (230) E.L.T.199 (S.C.)) and in Union of India vs. E.Merck (India) 1998(97) ELT 219 (SC). The writ petitioner/appellant aggrieved by the dismissal of the writ petition, had filed the present Writ Appeal.

5.The facts leading to the present litigation have been narrated in detail in the impugned order which is the subject matter of the Writ Appeal and therefore, it is not necessary to re-produce the facts once again except to cull out the relevant facts for the disposal of this Writ Appeal.

6.It is not in dispute that the appellant herein had already filed a Writ Appeal in W.A.No.370 of 1980 challenging the dismissal of W.P.No.4472 of 1976 dated 21.01.1976, and the Writ Appeal was partly allowed by granting liberty to the Department authorities to determine the exact amount of excise duty payable on the footing that 25% discount has to be deducted out of the price shown in the price list.

7.The writ petitioner/appellant has also filed a Writ Petition in W.P.No.13775 of 1988 praying for the issuance of a certiorarified mandamus to call for the records of the respondent in his proceedings in C.No.V/14 E/18/30/86 RC dated 07.10.1988 and to quash the same and also direct the respondent to refund a sum of Rs.68,048.28/- as per the refund claims dated 21.10.1986.

8.The said Writ Petition was allowed with a direction to the respondent therein to calculate the correct amount payable to the petitioner and refund the same, within 12 weeks from the date of receipt of a copy of that order.

9.The respondent/revenue aggrieved by the allowing of the said Writ Petition had filed an appeal in W.A.No.647 of 1999. Vide judgment dated 15.11.2004, the Writ Appeal was dismissed by a Division Bench of this Court, by giving a finding that no error has been found in the order in allowing the Writ Petition.

10.It is brought to the knowledge of this Court that the judgments passed in both the Writ Appeals had reached finality, as no further challenge has been made.

11.The appellant herein, prayed for refund of claim for a sum of Rs.68,048.28/- and the Assistant Collector of Central Excise Madras IV Division, Madras vide order dated 07.10.1988 and rejected the same and it is already stated the said order has been set aside, vide order dated 21.04.1988 in W.P.No.13775 of 1988 which was confirmed in the judgment dated 05.11.2004 in W.A.No.647 of 1999.

12.The learned counsel for the appellant has drawn the attention of this Court to the inner page No.3 of the said order and would submit that the written demand as to the interest @17% has also been extracted in the said order therefore, it is not open to the respondent/revenue to contend that there was no written demand for payment of the interest on the refund of claim.

13.It is the further submissions of the learned counsel appearing for the appellant/writ petitioner, in the light of the judgements passed in both Writ Appeals which had reached finality that, it is not open to the respondents/revenue to claim that the writ petitioner/appellant is not entitled to any interest. Admittedly the pendency of the Writ Petition in W.P.No.13775 of 2018, the Revenue has refunded a sum of Rs.59,374/- and in the light of the provisions of the Interest Act, the writ petitioner/appellant is entitled to a reasonable interest for the period from 06.08.1985 to 26.08.1995 and under Section 11BB of the Central Excise Act, the writ petitioner/appellant is also entitled for reasonable interest from 26.08.1995 to 07.09.2009.

14.The learned counsel for the appellant has also drawn the attention of this Court to the typed set of papers and would submit that the order in Original in 19/2006 was put to challenge by them before the Commissioner of Central Excise Chennai in Appeal Nos.14 & 15/2007 and both the appeals were dismissed on 23.01.2007 and it was put to challenge before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Branch, Chennai in Appeal No.E/315/2007 and vide final order dated 13.02.2008, the said Appellate Tribunal formulated a question, 'Whether the refund of duty of Rs.47,056/- is barred by unjust and enrichment ?' and had allowed the appeal except in respect of refund claim of duty paid for the period from 01.04.1966 to 08.10.1966.

15.The learned counsel for the appellant has also further invited the attention of this Court to the order in Original No.54 (C./R)/2009 dated 17.09.2009 passed by the Deputy Commissioner of Central Excise and would submit that as per the said order, refund of Rs.47,056/- for the period October 1974 to September 1982 under Section 11B of the Central Excise Act,1944 and a further sum of Rs.12,318/- for the period from April 1966 to September 1974 under the said provision was ordered and that apart, there was an order of payment of interest of Rs.1,844.60/- relating to both the above sanctioned amounts under Section 11BB of the Central Excise Act, 1944 was also awarded but however, the period was restricted to 6 months and the said order was put to challenge before the Commissioner of Central Excise (Appeals), Chennai in Appeal No.59/2012 (M0I) dated 31.10.2012.

16.While modifying the said order, the Commissioner of Central Excise (Appeals) has observed that the interest clause would start after expiry of three months from 26.05.1995 i.e., from 26.08.1995. Thus, the Commissioner hold that the appellants therein are eligible to claim interest on the delayed refunds under Section 11BB of the Central Excise Act, 1944 at prescribed rate for period commencing from the date of expiry of three months from 26.05.1995, till the date the amount is issued to the appellants.

17.In so far as the above finding made by the Commissioner of Central Excise (Appeals) is concerned, the learned Single Judge of this Court in W.P.No.1359 of 2008, despite very same challenge being made, has held that writ petition is not maintainable and in paragraph No.27 of the order, the learned Judge has held that the petitioner had disclosed the said fact in the writ petition and also entitled to take note of the subsequent developments.

18.The learned counsel for the appellant has invited the attention of this Court to the judgments reported in Commr. Of C.Ex., Mumbai v. BOC (I) Ltd., (2008 (226) E.L.T.323 (S.C)) and in Union of India v. Shreeji Colour Chem Industries (2008 (230) E.L.T.199 (S.C.)) and would submit that as per the propositions laid down in the said judgments, interest is not a penalty or punishment at all but it is a nominal accretion of facts, but, a written demand is required and admittedly, it has been observed in the order in original passed by the Assistant Collector of Central Excise, Madras IV Division, dated 07.10.1988 that, such a demand was made by the petitioner and prayed for refund of the interest under the Interest Act, for the period from 06.08.1985 to 26.08.1995 and from 26.08.1995 to 07.09.2009 under Section 11BB of the Central Excise Act.

19.The learned Standing Counsel appearing for the respondents/revenue would submit that there is no question of unjust and enrichment arises, in this case, and he would further submit that dehors the challenge made to the impugned order in the form of appeal, the writ petitioner/appellant has chosen to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and the learned Single Judge of this Court having found that such a claim of plea is not maintainable had dismissed the writ petition and on merits also, found in paragraph No.29 of the order that the claim made by the writ petitioner/appellant for interest, is not sustainable in law.

20.It is the further submission of the learned counsel for the respondents that the interest of refund cannot be termed as 'debt'. On that ground also, the appellant is not entitled to interest and prays for dismissal of this Writ Appeal.

21.This Court has considered the rival submissions and also perused the materials placed.

22.It is not in dispute that in the light of the above cited order in Original No.54 dated 07.09.2009, passed by the Deputy Commissioner of Central Excise, Chennai, C-Division, Chennai, the said Authority had recorded the finding that the appellants therein are liable to claim interest on the delayed payment under Section 11BB of the Central Excise Act and prescribed for the period from 06.08.1985 to 26.08.1995. But however, according to the learned counsel for the appellant, the said order has not been complied with by the respondents/revenue. It is also very pertinent to point out at this juncture that, as per the order dated 21.04.1998, in W.P.No.13775 of 1988, the learned Single Judge of this Court while allowing the said writ petition filed by the appellant herein, has directed the respondents/revenue to calculate the correct amount payable to the writ petitioner/appellant and refund the same, within 12 weeks from the date of receipt of a copy of that order. As against the said order, the respondents/revenue filed an appeal in W.A.No.647 of 1999 before a Division Bench of this Court. On 05.1.2004, the Division Bench of this Court has dismissed the writ appeal. But however, the respondents/revenue did not chose to refund the amount to the writ petitioner/appellant but, only during the pendency of the writ petition in W.P.No.1359 of 2008, on 07.09.2009, the respondent/revenue has paid the principal amount of Rs.59,374/-.

23.The submission made by the learned standing counsel for the respondents/revenue that the definition of 'debt' as defined under Section 2(c) of the Interest Act would not cover the belated payment of interest and the considered opinion of this Court is unsustainable for the reason that the judgments of the Apex Court in Commr. Of C.Ex., Mumbai v. BOC (I) Ltd., (cited supra) and in Union of India v. Shreeji Colour Chem Industries (cited supra) would say that interest not a penalty or punishment and it is only a normal accretion of fact. A specific request for interest has also been made by the appellant and the said fact has been recorded in the order in original of the Assistant Collector dated 07.10.1988 which has been set aside by the learned Single Judge of this Court in W.P.No.13775 of 1988, dated 21.04.1998 and the said order was confirmed in W.A.No.647 of 1999.

24.In the considered opinion of this Court, the definition of 'debt' under Section 2(c) of the Interest Act, is only a expanded definition and it covers any liability for an ascertained sum of money and includes a debt payable in kind, but does not include a judgment debt. It is not in dispute that the refund claim is already ascertained and paid by the Department of Revenue to the writ petitioner/appellant on 07.09.2009.

25.The appellant has disclosed the filing of the appeal even in the writ petition and the said fact has also been recorded by the learned Single Judge of this Court in paragraph No.27 of the order in W.P.No.1359 of 2008 dated 22.03.2013. Though the learned Single Judge in paragraph No.29, found that the grant of interest is not sustainable in law and placed reliance upon two cited judgments, it dealt with only statutory interest and in the cited said judgments reliance was placed upon 2008 (230) ELT 199 (SC) in Union of India vs. Shreeji Colour Chem Industries and in Modi Industries Ltd., Modinagar & amp; others v. Commissioner of Income Tax, Delhi & others (1995(6) SCC 396) wherein, in paragraph No.59, it has been held that as per Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent proceeding.

26.In Clariant International Ltd., v. Securities and Exchange Board of India (2004 (8) SCC 524), the Hon'ble Supreme Court has held as follows:-

> "Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.
>
> In absence of any agreement or statutory provision or a merchantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. [See Municipal Corporation of Delhi vs. Sushila Devi (Smt.) and Others (1999) 4 SCC 317 Para 16]"

27.Similarly, in Union of India vs. E.Merck (India) 1998(97) ELT 219 (SC), it was held that in the absence of any statutory provisions of law, claim for interest is not maintainable. In the considered opinion of this Court, the said judgments have no application to the case on hand, for the reason that the concerned authorities, as extracted in the earlier paragraphs, had ordered refund of principal amount as well as interest also for a particular period and the respondents/revenue being a party to the same proceedings have not chosen to make to challenge the said order and therefore, the said order has become final and the respondents/revenue is bound to pay the interest to the writ petitioner/appellant.

28.Admittedly, the respondents/revenue have refunded a sum of Rs.59,374/- only on 07.09.2009, despite the order passed by the Commissioner (Appeals) not to chosen to pay the interest, this Court has also observed that the definition of 'debt' under the Interest Act, covered the present event also.

29.In the light of the above factual discussions in the legal position, this Court is of the considered view that, the writ petitioner/appellant is entitled to interest on the belated refund. The reasons assigned by the learned Single Judge, in the considered opinion of this Court are not unsustainable and there is an error apparent on the face of the record.

30.In the result, the Writ Appeal is allowed and the impugned order dated 22.03.2013 in W.P.No.1359 of 2008 is set aside and the writ petitioner/appellant is entitled to interest @ 6% per annum under the Interest Act, for the period from 06.08.1985 to 26.08.1995 and under Section 11BB of the Central Excise Act from 26.08.1995 to 07.09.2009. The respondents/revenue are directed to pay the interest to the writ petitioner/appellant, within a period of eight weeks from the date of receipt of a copy of this judgment. However, considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Deputy Commissioner of Central Excise,
(Divison) "C", Chennai - 1,Commissionarate,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, West Extn., Chennai - 600 101.

2. The Commissioner of Central Excise (Appeals),
No.131 M.G. Road, Chennai - 600 034.

+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No.72946

SS(CO)
CS/07/12/2018