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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 04th September, 2019

\+ W.P.(C) 128/2009

M/S NINO CHAKS (P) LTD. ..... Petitioner

Through: Mr. Rajesh Jain with Mr. Virag Tiwari & Mr. Ramashish, Advs.

versus

THE COMMISSIONER OF CUSTOMS (GENERAL) ..... Respondent

Through: Ms. Sonu Bhatnagar, Sr. Standing Counsel with Mr. Vaibhav Joshi & Ms. Anushree Narain, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, CHIEF JUSTICE *(Oral)*

1. This writ petition has been preferred challenging the orders passed by the CESTAT dated 20.11.2003 whereby the claim of the petitioner in getting the interest upon the amount deposited during investigation was brushed aside.

2. Having heard the counsels for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner had imported nylon/ polyester fabrics with PVC backing. Thereafter, it was found out by the respondents that there was a mis-declaration of the value of the goods in question. The respondents were also of the opinion that there was a duty evasion of Rs.76,75,963/-. Later on, search was also carried out at the premises

of the petitioner. Incriminating documents were seized against several bills of entry. The import was carried out during various periods between April, 1996 to February, 1998. In pursuance of this aspect of the matter, show cause notice was issued and ultimately it was adjudicated upon by the CESTAT in favour of the petitioner.

3. It further appears from the facts of the case that during the course of investigation, the petitioner had deposited the following amounts on the following dates:-

S.No.	*Date*	*Amount deposited by the petitioner with respondents*
1.	*11.03.1998*	*Rs.10,00,000/-*
2.	*12.05.1998*	*Rs.14,76,000/-*
3.	*13.05.1998*	*Rs.4,00,578/-*
	Total	*Rs.28,76,578/-*

4. Thus, it appears that the aforesaid amount was deposited by the petitioner with the respondents. Later on, after issuance of the show cause notice dated 04.04.2001, order in original was passed on 29.04.2002 which was against the petitioner.

5. Being aggrieved and dissatisfied by the order in original, appeal was preferred before the CESTAT, Delhi which decided the appeal in favour of the petitioner vide order dated 20.11.2003. Application for refund was preferred by the petitioner for getting the principal amount and interest upon Rs.28,76,578/- on 05.12.2003.

6. The amount of refund was sanctioned on 08.03.2004 and it was actually paid on 14.05.2004 with interest. It further appears from the facts of the case that the principal amount of Rs.28,76,578/-, was refunded vide cheque dated 14.05.2004.

7. Much has been argued by the counsel for the petitioner that the amount of Rs.28,76,578/- was paid by the petitioner to the respondents involuntarily and under coercion and hence the interest ought to have been granted from the date of deposit of the amount till the amount was refunded. We are not accepting this contention mainly for the following reasons:

(a) The amount at Rs.28,76,578/- was paid on three different dates i.e. on 11.03.1998 (Rs.10,00,000/-), on 12.05.1998 (Rs.14,76,578/-) and on 13.05.1998 (Rs.4,00,000/-). Thus, on three different dates the amount was paid by the petitioner to the respondents. Hence, it cannot be said that it was involuntarily deposited by the petitioner. Coercion cannot be said to have been continued from 11.03.1998 till 13.05.1998. No proof of this coercion or undue influence or compulsion has ever been given by the petitioner.

(b) It also appears from the order of the CESTAT that the amount which was deposited by the petitioner was a voluntary payment.

(c) It is well settled law by plethora of Supreme Court decisions, in ***State of Punjab v. Atul Fasteners Ltd.***, *2007 (211) E.L.T. 519 (S.C.)* and ***Union of India v. Orient Enterprises***, *1998 (99) E.L.T. 193 (S.C.)* that interest on delayed refund cannot be granted on the basis of equity, unless expressly provided by the statute.

8. Much has been argued by the counsel for the payment of the interest from March/May, 1998 upon an amount at Rs.28,76,578/- on the basis of the judgments upon which the reliance is placed by the petitioner.

9. Looking to the facts of the present case that –

(a) The amount of Rs.28,76,578/- was paid on three different dates i.e. on 11.03.1998, on 12.05.1998 and on 13.05.1998 and hence it cannot be said that the said deposition of the amount was involuntary.

(b) First deposition of Rs.10,00,000/- was made on 11.03.1998 and the last deposition of Rs.4,00,000/- on 13.05.1998. If there was any coercion, undue influence or compulsion on the part of the petitioner, then there was no need of repeated payments/depositions to be made by the petitioner.

These facts make the present case different from the facts of the cases upon which the reliance is placed by the counsel for the petitioner as well as the judgments upon which reliance is placed by the petitioner are of no help to the petitioner.

10. Moreover, it appears from the facts of the case that CESTAT order is dated 20.11.2003 and it has been ordered by CESTAT, New Delhi that if the amount is not returned to the petitioner by the respondents within a period of three months the interest shall be payable. The said period comes to an end on 21.02.2003. As the amount at Rs.28,76,578/- was not paid on 21.02.2003 by the respondents, the payment of interest starts till the actual date of payment. The amount was refunded by the respondents on 14.05.2004. Hence, at the

highest, the petitioner is entitled to get interest at a reasonable rate of interest for the period running from 21.02.2003 to 13.05.2004.

11. In fact, the petitioner is in search of payment of interest from March/May, 1998 which cannot be granted because there is no provision for the payment of interest nor the aforesaid amount was deposited under any coercion or compulsion. Moreover, the aforesaid amount was deposited by the petitioner voluntarily and, that too, prior to the issuance of the show cause notice dated 04.04.2001.

12. Thus, we see no reason to entertain this writ petition for grant of interest from March/May, 1998 upon an amount at Rs.28,76,578/-. The principal amount has already been paid by the respondents to the petitioner on 13.05.2004. Thus, after three months period is over from the date of the order of the CESTAT (20.11.2003) till the actual payment of the amount (14.05.2004) i.e. for the period running from 21.11.2003 to 13.05.2004, the respondents are hereby directed to make the payment of interest upon the amount at Rs.28,76,578/- @ 6% p.a.

13. With these observations, this writ petition is disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 04, 2019
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