IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 11.12.2020

C O R A M

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.20637 of 2010
and
M.P.No.1 of 2009

Smt.Sulaihar
Rep. by power Agent
Mr.K.K.Shaik Dawood,
No.8/78, Sowrimuthu Street,
Mannadi, Chennai – 600 001. ... Petitioner

Vs

1.The Deputy Director,
Enforcement Directorate,
Shastri Bhavan,
Chennai – 600 006.

2.The Union of India,
rep. by its Secretary to Ministry of Finance,
Department of Revenue,
New Delhi. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the Respondents to pay 15% interest towards the value of UK Pounds 1800 of Rs.32,371/- from

16.08.1974 till the date of actual return to the Petitioner or in the alternative to direct the Respondents to pay Rs.94,259/- being the differential amount after adjusting the sum of Rs.32,371/- paid on 16.03.2000 from and out of the value of UK Pounds 1800 as on 26.11.1999 along with interest at the rate of 15% per month from 16.03.2000.

For Petitioner : Mr.K.M.Abdul Nazeer

For Respondents : Mr.N.Ramesh
Spl. P.P. for R1

O R D E R

A sum of Rs.32,371/- was paid to the Petitioner on 16.03.2000 as the rupee equivalent of UK Pounds 1800, which was seized from the Petitioner's house on 16.08.1974. The present writ petition is filed for a direction to the Respondents to pay interest on Rs.32,371/- at 15% per annum from the date of seizure (16.08.1974) till the date of payment of the rupee value thereof (16.03.2000) or, in the alternative, to pay a sum of Rs.94,259/-, which is the rupee equivalent of UK Pounds 1800 as on 16.03.2000 after setting-off the sum of Rs.32,371/- which was paid on 16.03.2000.

2. On 16.08.1974, the officers of the Enforcement Directorate seized travellers cheques for UK Pounds 2000 from the Petitioner. The Petitioner and his wife gave a statement to the effect that they had returned from Penang, Malaysia on 10.06.1974 and had brought travellers cheque for UK Pounds 2000 which had been duly declared to the Customs Authority of arrival. They also stated that the original travellers cheques were lost and subsequently replaced by the foreign exchange dealer, Thomas Cook, by issuing travellers cheques in lieu. Pursuant to the said seizure, a show cause notice was issued and the adjudication order dated 05.05.1997 was pronounced imposing a penalty of Rs.3000/- in addition to the confiscation. The Petitioner carried the matter in appeal before the Foreign Exchange Regulation Appellate Board (the Appellate Board). By order dated 14.02.1980, in Appeal No.863 of 1977, the Appellate Board confirmed the order of confiscation of UK Pounds 2000 but reduced the penalty to Rs.1000/-.

3.The order of the Appellate Board was challenged in C.M.A.No.82 of 1992 before this Court. By order dated 26.11.1999, this Court upheld the confiscation of UK Pounds 200 but set aside the order of the Appellate Board as regards the confiscation of UK Pounds 1800 on the ground that the substitute travellers cheques were issued to the Petitioner on 23.07.1974 and, consequently, she had time till 23.08.1974 (30 days), as per the provisions of the Foreign Exchange Regulation Act, 1973(FERA) to make the requisite declaration. Consequently, the seizure on 16.08.1974 was held to be contrary to the provisions of FERA. On that basis, the Enforcement Directorate was directed to refund the value of 1800 pounds. The said sum was refunded on 16.03.2000. However, no interest was paid on the sum of Rs.32,371/-, which represents the principal value of UK Pounds 1800 as on the date of seizure. The present writ petition was filed in the said facts and circumstances for the relief mentioned *supra*.

4. I heard Mr.K.M.Abdul Nazeer, the learned counsel for the Petitioner and Mr.N.Ramesh, the learned standing counsel for the Enforcement Directorate.

5. Mr.Abdul Nazeer submitted that this Court by order dated 26.11.1999 in C.M.A.No.82 of 1992 directed the Enforcement Directorate to refund the value of UK Pounds 1800. The said order was not carried in

appeal by the Enforcement Directorate and, therefore, attained finality. Section 42(3) of the FERA provided for the payment of interest at the rate of 6% per annum in all cases other than cases of confiscation either under Section 63 of FERA or under the Customs Act, 1962. According to Mr.Abdul Nazeer, the confiscation was set aside by this Court and, therefore, the statutory interest liability under Section 42(3) of FERA is triggered *ipso facto*. Even otherwise, he submits that a party that makes payment belatedly is liable to pay interest thereon. In support of his contentions, he referred to and relied upon the following judgments, which are set out along with context and principle:

(i) **Life Insurance Corporation of India and another v. Gangadhar Vishwanath Ranade(Dead) by LRs. AIR 1990 SC 185,** wherein a writ petition was filed on account of the refusal of the LIC to pay interest on the principal amount in spite of the inordinate delay in payment. The Hon'ble Supreme Court held that the writ petition is maintainable and affirmed the order of the High Court granting interest at 15% per annum.

(ii) **Northern Plastics Ltd v. Collector of Customs & Central Excise, (2000) 1 SCC 545,** wherein the Hon'ble Supreme Court examined whether a person is entitled to the value of goods which were wrongfully confiscated and sold along with interest thereon. In that fact situation, the Hon'ble Supreme Court concluded that the owner of the goods would have been entitled to the use of the said goods but for the wrongful confiscation thereof. As such, the person responsible for such confiscation is liable to pay the monetary value of the said goods with interest thereon at 12 % per annum from the date of confiscation till the date of payment.

(iii) **Satinder Singh and others v. Umrao Sing and others, AIR 1961 SC 908,** wherein, in the context of land acquisition, it was held that the person whose land was acquired is entitled to interest at 4% per annum on the compensation amount from the date when possession of the land was taken to the date on which the compensation amount was deposited or paid.

(iv) **Union of India vs. Tata Chemicals (2014) 6 SCC 335,** wherein, in the context of wrongful deduction of tax by a resident on payments due to a non-resident, the Supreme Court concluded that interest was payable on the refunded sum.

6. On the contrary, Mr.Ramesh, the learned counsel for the Enforcement Directorate, submitted that the writ petition is not maintainable. In order to substantiate this contention, he pointed out that

the Petitioner is a Malaysian citizen; as such, she is not entitled to maintain this writ petition. His second contention is that the order of confiscation was challenged before the Appellate Board and, thereafter, before this Court in C.M.A.No.82 of 1992. Although the Petitioner succeeded partly in C.M.A.No.82 of 1992, this Court, by order dated 26.11.1999, directed the Enforcement Directorate to refund the value of UK Pounds 1800 but did not direct the payment of interest thereon. Consequently, the Petitioner should have requested for a modification of the said order or carried the matter in appeal if the Petitioner intended to claim interest on the rupee equivalent of UK Pounds 1800. To put it differently, the contention of the learned counsel is that the proceedings relating to the confiscation attained finality with the order dated 26.11.1999. Accordingly, a separate writ petition for payment of interest is not maintainable.

7. He further submitted that the confiscation was set aside by order dated 26.11.1999 on a technicality, namely, that the statutory time limit of 30 days for declaring that the Petitioner is in the possession of foreign currency had not expired as on 16.08.1974 (i.e. the date of confiscation). Therefore, he submitted that the Petitioner is not entitled to

interest. In support of his contentions, the learned counsel for the Enforcement Directorate relied upon the following judgments, which are set out along with context and principle :

(a) **C.Arasakumar alias C.A.Kumar v. Union of India, CDJ 1991 MHC 218 (Arasakumar).** In the said case, a specific sum of money was seized from the Petitioner therein on the ground of violation of the provisions of FERA. The order of adjudication was challenged before the Foreign Exchange Regulation Appellate Board and, thereafter, by way of a civil miscellaneous appeal before this Court. The said civil miscellaneous appeal was allowed and the Enforcement Directorate was directed to refund the amount seized. Pursuant thereto, the amount seized was refunded without interest. A writ petition was filed in those facts and circumstances but the writ petition came to be rejected on the ground that Section 42(3) of FERA does not provide for payment of interest on confiscated currency notes. In addition, the Court concluded that the Petitioner therein was not entitled to interest for the reason that the judgment of the Court in the civil miscellaneous appeal did not direct that the amount be refunded with interest.

(b) **M/s.Dejero Logix Pvt. Ltd. v. Commissioner of Customs (Imports) Air Cargo, New Customs House near IGI Airport, New Delhi,** wherein a Division Bench of the Delhi High Court concluded that the customs authorities are liable to pay the value of goods at the time of seizure and not the value at the time of subsequent sale of said goods.

(c) **M/s.Kalpana Glass Fibre Pvt Ltd. v. State of Orissa & others, CDJ 2012 Orissa HC 411,** wherein the Division Bench of the Orissa High Court referred to and relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Suganmal v. State of Madhya Pradesh & others (1965) 16 STC 2398** and concluded that a writ petition would not be maintainable for the refund of money which was unlawfully collected as tax and that a civil suit should be filed in respect thereof.

8. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

9. The facts are largely undisputed in the present case. Both parties agree that travellers cheques for a total of UK pounds 2000 were

seized from the Petitioner's house by the officers of the Enforcement Directorate on 16.08.1974. The confiscation was upheld in the adjudication proceedings of the Enforcement Directorate dated 05.05.1977 and the proceedings of the Appellate Board dated 14.02.1980. Thereafter, the confiscation of UK pounds 1800 was set aside by order dated 26.11.1999 in C.M.A.No.82 of 1992 on the ground that the Petitioner was entitled to make a declaration that she was in possession of the said UK Pounds 1800 on or before 23.08.1974 and, therefore, the foreign currency should not have been seized on 16.08.1974. The Enforcement Directorate was directed to refund the value of UK Pounds 1800 on the aforesaid grounds. Both parties also agree that the said order dated 26.11.1999 attained finality.

10. Pursuant thereto, the Enforcement Directorate enclosed a refund bill for Rs.32,371/- on 11.02.2000. Upon receipt of the said bill, by reply dated 18.02.2000, the Petitioner signed the claim bill for Rs.32,371/- without prejudice to the right to claim interest at 15% per annum on the said amount from the date of confiscation till the date of receipt of the rupee value thereof. Thereafter, the said amount was received by the Petitioner under demand draft dated 10.03.2000 on 16.03.2000.

11. The main ground on which the Petitioner claims interest is that Section 42(3) of FERA stipulates that interest is payable at 6% per annum in all cases other than cases relating to confiscation either under Section 63 of FERA or under the Customs Act, 1962. According to Mr.Abdul Nazeer, the present case is one of unlawful confiscation and, therefore, Section 42(3) would apply and the Enforcement Directorate is under a statutory liability to pay interest at 6% per annum. On this issue, Mr.Ramesh relied upon the judgment of this Court in **Arasakumar** wherein, in very similar facts, this Court concluded that the expression "such proceeds" in Section 42(3) refers to proceeds realized in terms of Section 42(1) of FERA, which are required to be kept in a separate account in terms of Section 42(2). This Court also concluded therein that the order in the civil miscellaneous appeal did not direct the payment of interest and, therefore, the petitioner therein was not entitled to claim interest by filing a separate writ petition. I see no reason to differ with the conclusion in **Arasakumar** that the expression "such proceeds" in Section 42(3) of FERA pertains to proceeds realized pursuant to a direction under Section 42(1), which are deposited in a separate account in terms of sub-section 2 thereof. The inference from the above conclusion would be that interest cannot be claimed under Section 42(3) of FERA but

the legitimacy of the interest claim *de hors* Section 42(3) is a distinct matter and it should be examined whether the Petitioner's claim is otherwise sustainable.

12.Mr.Abdul Nazeer contended that the Petitioner could not claim interest in C.M.A.No.82 of 1992 because the said appeal challenged the order of the Appellate Board dated 14.02.1980 and, therefore, the Petitioner could only pray for setting aside the order of the Appellate Board. Nonetheless, upon receipt of the order dated 26.11.1999 whereby the order of confiscation of UK Pounds 1800 was set aside, the Petitioner could have requested for a modification of the said order so as to direct the payment of interest on the rupee equivalent of UK Pounds 1800. In the alternative, the Petitioner could have impugned the said order in so far as interest liability is concerned. Indeed, it is clear from the letter dated 18.02.2000 that the Petitioner signed the claim bill for Rs.32,371/- without prejudice to her right to claim interest at 15% per annum. Therefore, even at that juncture, the Petitioner was fully cognizant of the fact that she could claim interest.

13. This leads to a significant aspect of the case. The Petitioner received a sum of Rs.32,371/- from the Enforcement Directorate on 16.03.2000. Prior to that, by letter dated 18.02.2000, the Petitioner put the Enforcement Directorate on notice that she is receiving the said sum without prejudice to her right to claim interest. Thereafter, the present writ petition claiming interest was filed on or about 28.08.2009. Thus, it is clear that the writ petition was filed more than 9 years after receiving the rupee equivalent of UK Pounds 1800. Upon perusal of the affidavit, I find that the Petitioner stated that she and her counsel visited the office of the 1st Respondent to request for the payment of interest and that she was constrained to file the writ petition on account of non-payment thereof. Apart from this statement, no explanation is offered for the delay and no written reminders are on record. If the Petitioner had filed a suit to recover interest, such suit would have been rejected *in limine* on the ground of limitation. On the applicability of laches to proceedings under Article 226, it is sufficient to refer to **State of Maharashtra v. Digambar, (1995) 4 SCC 683,** where it was held as under:

> "**21.** Whether the above doctrine of laches which disentitled grant of relief to a party by equity court of England,

could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd.* v. *M.R. Meher, President, Industrial Court*[AIR 1967 SC 1450 : (1967) 2 LLJ 34], it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution.

22. A three-Judge Bench of this Court in *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329] reiterated the said principle of laches or undue delay as that which applied in exercise of power by the High Court under Article 226 of the Constitution.

23. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

Thus, a public law remedy is discretionary and, in the overall facts and circumstances, including the complete failure to provide a reasonable explanation for the delay, I am not inclined to exercise discretion in favour of the Petitioner who has approached the Court rather belatedly. Thus, I am of the view that the writ petition is liable to be rejected solely on the ground of laches. In addition, as stated earlier, the Petitioner did not seek a modification of or challenge the order in C.M.A. No.82 of 1999 so as to claim interest.

14. In the result, the writ petition fails and is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

11.12.2020

Index :Yes
Internet :Yes
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To

1.The Deputy Director,
Enforcement Directorate,
Shastri Bhavan,
Chennai – 600 006.

2.The Union of India,
rep. by its Secretary to Ministry of Finance,
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SENTHILKUMAR RAMAMOORTHY J.,

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Order in
W.P.No.20637 of 2009

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