IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.02.2020
Pronounced On	06.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.38155 of 2016

M/s. Sunchan Trading Co.,
Represented by its Proprietor,
Mr.Sushil Kumar Sarda,
Amar Sudha Building, 3rd Floor,
No.5A/1A, Lord Sinha Road,
Kolkata - 700 071. ... Petitioner

Vs.

1.The Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner of Customs (Refunds),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the second respondent herein to pay appropriate compensation to the petitioner firm as deemed fit by this Court in the facts and circumstances of the case for retention of money to the tune of Rs.10,72,624/-.

For Petitioner : M/s.Vinu Priya Muthuramalingam
for Mr.S.Murugappan

For Respondents : Mr.A.P.Srinivas
Standing Counsel.

ORDER

The petitioner has filed the present Writ Petition, praying for a direction to the 2nd respondent to pay interest on the sale proceeds of the auction conducted on 19.06.1998, 24.06.1998, 15.07.2008 and 20.07.1998 which has been directed to be paid back to the petitioner by the Customs Excise Service Tax Appellate Tribunal vide its Final Order No.40071/2016 dated 13.01.2016. The operative portion of the said order reads as under:-

> i. When the report has been called from the Commissionerate as per the direction of the bench on 16.04.2015, the Commissioner has replied by the letter dated 11.06.2015 stated categorically that proportionate sale price of the consignment attributable to the appellant is Rs.14,21,384/- and that was realised by Revenue. Deducting the duty element, appellant is entitled to get an amount of Rs.10,72,624/-. The manner the Commissioner has made a working, that shows that he has carried out the direction of the Tribunal in letter and spirit and applied his mind. When the worksheet of the Commissioner is making very clear entitling the appellant to the proportionate sale price of the goods and duty payable on the goods is deductible without keeping the matter pending, it is directed that the appellant shall be paid Rs.10,72,624/- within one week of receipt of this order, identifying the claimant in accordance with law.
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> ii. With the aforesaid direction appeal is allowed. In the meantime, if any money has been paid to the appellant on the disputed sale that shall be deducted while making the final payment as directed above.

2. The petitioner firm is an exporter of goods from Hong Kong. The goods were abandoned by the importer and therefore they were auctioned. The petitioner being the exporter from the Hong Kong initiated proceedings before the respondents which ultimately culminated in the above Final Order No.40071/2016 dated 13.01.2016 of Customs Excise Service Tax Appellate Tribunal.

3. The petitioner has filed the present Writ Petition for interest on the ground that the petitioner is entitled to interest. Opposing the prayer for such relief, the learned counsel for the respondents submits that the petitioner has no locus standi to file the present Writ Petition under Section 226 of the Constitution of India. He submits that it is open for the petitioner to file a suit to recover the interest in a civil suit.

4. The learned counsel for the respondents also submits that the amount which was directed to be refunded is not a duty within the meaning of Section 27 of the Customs Act, 1962 and therefore, there is no basis on which the petitioner can claim the interest on belated payment.

5. On the other hand, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in Fargo Marine Co. Ltd. Vs. Commissioner of Customs (Sea Port), Chennai, 2014 (304) E.L.T.642 (S.C).

6. The learned counsel for the respondents on the other hand has relied on the following two decisions:-

i. Cosmo Tours & Travels & Ors. Vs. Union of India & Ors., 2010 (4) AD (Delhi) 565.;

ii. Hongkong & Shanghai Banking Corporation Limited Vs. Union of India, order dated 02.05.2011 passed by the Calcutta High Court in W.P.No.388 of 2003.

7. In these two decisions, the Delhi High Court and the Calcutta High have taken a view that a foreigner has not locus standi to invoke the jurisdiction of the High Court to enforce the fundamental rights under Part III of the Constitution of India.

8. I have considered the submissions of the learned Counsel for the petitioner.

9. The petitioner became entitled to the amount finally pursuant to the direction of the Tribunal. Section 150 of the Customs Act, 1962 provides a procedure for sale of imported goods and application of sale proceeds thereof. The said section reads:—

a.Section 150:PROCEDURE FOR SALE OF IMPORTED GOODS AND APPLICATION OF SALE PROCEEDS THEREOF.-

> "(1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.
>
> (2) The proceeds of any such sale shall be applied—
>
> (a) firstly to the payment of the expenses of the sale,
>
> (b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,
>
> (c) next to the payment of the duty, if any, on the goods sold,
>
> (d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,
>
> (e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods."
>
> Provided that where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of the sale of such goods or such further period as the Principal Commissioner of Customs Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

10. The above Section prescribes on the manner in which the proceeds of the sale of the confiscated goods has to be appropriated and adjusted. After adjustment of the proceeds, balance if any, has to be paid back to the owner of the goods. Since there was delay in paying the amount to the owner. Section

150 of the Customs Act, 1962 was amended and the above proviso was inserted vide Section 52 of the Finance Act, 2011 with effect from 08.04.2011.

11. In the present case, imports were made during the month of April 1998. The importer apparently abandoned the goods. Under these circumstances, the petitioner sent repeated representations to the respondents to permit the petitioner to either take back the goods to Hong Kong or to sell the goods to any other buyer in India in accordance with the provisions of the EXIM Policy as in force at the relevant point of time. However, that was not allowed.

12. The petitioner had therefore filed a writ petition before this Court in W.P.No.8867 of 1998. By an order dated 4.8.1998, liberty was given to the petitioner to approach the Tribunal.

13. The Tribunal by its order dated 27.7.1999 remanded the case back to the 1st respondent to consider the issue afresh as the respondents had already auctioned the imported goods. Instead of refunding the balance amount after due adjustment and appropriation the respondents have dragged on the proceedings for over a period of two decades. Therefore, the question is whether the petitioner should now be relegated to work out his remedy in a civil court as was submitted by the learned counsel for the respondents or whether the court can award interest to the petitioner and if so at what rate?

14. The necessity for filing a suit under Section 9 of the Civil Procedure Code would arise only where there are disputed questions of fact that needs to be established after trial. Such exercise would result in waste of time. The department will also have to be spare its official to appear in Court. Therefore, there is no point in relegating the petitioner to approach a civil Court for getting interest on such delayed payment and deny the relief. As there are no disputes in the facts and circumstances of the present case I am inclined to take up the case and pass order.

15. Bonafide importers and persons who are entitled to relief under the provisions of the Customs Act, 1962 suffer if the officer fails to act fairly who shield themselves under Section 155 of the Customs Act, 1962 for such inaction.

16. In this connection, it may be apt to refer to the following passage from the decision of the Hon'ble Supreme Court in Unichem Laboratories Ltd. v. CCE, (2002) 7 SCC 145 at page 150.

> 12.For the aforementioned reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, to protect the interest of the Revenue by levying and collecting the duty in accordance with law – no less and also no more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly.

17. Though in a different context, the Hon'ble Supreme Court in Prestige Lights Ltd. v. State Bank of India, (2007) 8 SCC 449, held that in exercising power under Article 226 of the Constitution of India the High Court is not just a Court of law, but is also a Court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution of India is duty-bound to place all the facts before the Court without any reservation.

18. Plain and simple fact of the case is that respondents have refused to pay the balance amount of the sale proceeds from the auction after due adjustment and appropriation even after Section 150 of the Customs Act, 1962 was amended in 2011. They have made the petitioner run from pillar to post. In the process, the petitioner has been put in a tiresome litigation for over a period of two decades to recover the amounts which has been wrongly withheld by the respondents.

19. Since the respondents failed to act fairly, I am inclined to award the interest to the petitioner on account of the delay. By paying just interest to the petitioner, the respondents would not be paying any amount out of their pocket. Indeed they would be paying interest on the amount, which was wrongly retained in their accounts and earned bank interest which would have legitimately accrued to the petitioner. If the

amount was paid to the petitioner then and there, the petitioner would have either earned interest on the amount or utilised the amount for his business. There has to be restitution of interest, which the petitioner would have earned if there was timely payment. The petitioner deserves to be compensated.

20. The balance of the sale proceeds which has been withheld by the respondent without the authority of law, is not a duty and therefore, the provisions of Section 27 and 27 A of the Customs Act, 1962 cannot be straight away applied for awarding interest. The Central Government has rationalised the rate of interest over a period of the considering various factors for the aforesaid purpose. As such payment of interest at such rationalised would not result in any loss to the Government as it has always been below the bank interest payable for fixed deposit. Since the petitioner is entitled for compensation, I am inclined to order payment of interest on the same principle by applying the rate of interest prescribed under notification issued under Section 27A of the Customs Act, 1962 prescribed for the purpose of refund of customs duty under Section 27 of the said Act.

21. The 2nd respondent is therefore directed to calculate the interest at the varying rate of interest that was notified and in force for the purpose of refund Section 27H of the Customs Act and determine the interest payable to the petitioner on the delayed payment of Rs.10.72,624/- calculated at the expiry of six months from the date of sale of the imported goods. The 2nd respondent shall calculate the aforesaid amount within a period of three months from the date of receipt of copy of this order.

22. The writ petition stands out with the above observation. No cost.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Customs,
Chennai IV Commissionerate,
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

2.The Assistant Commissioner
of Customs (Refunds),
Custom House, No.60,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.S.Murugappan, Advocate, SR.No.9652.
+1cc to Mr.A.P.Srinivas, Advocate, SR.No.9387.

Order
in
W.P.No.38155 of 2016

MR(CO)
CSR: 17.03.2020