IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12299 OF 2024

Ramkaran Karwa ...Petitioner
Versus
The Union Of India Thr The
Secretary Ministry Of Finance & Ors ...Respondents

Mr. Prakash Shah a/w Mr. Suyog Bhave i/b PDS Legal for Petitioner.
Mr. Siddharth Chandrashekhar a/w Mr. Abhishek R. Mishra for Respondent Nos.1 to 3.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 3rd SEPTEMBER 2024

P.C. :

1 During the course of investigation, respondent no.3 seized Indian currency of Rs.2,06,33,000/- from the residence of petitioner. Admittedly, on 30th August 2011 office of respondent no.3 deposited the seized currency in Fixed Deposit with Punjab and Sind Bank. We are informed that it was renewed from time to time until the amount was refunded to petitioner some time in July 2024. Mr. Chandrashekhar placed on record a copy of the Fixed Deposit dated 30th August 2011 issued by Punjab and Sind Bank for Rs.2,22,27,000/-. The receipt indicates that the Fixed Deposit was for one year and the interest rate was 9.60% p.a.. The maturity value is shown Rs.2,44,38,845/-. The difference of Rs.15,94,000/-, which means what is invested and what was seized from petitioner, we are informed was seized

from the residence of petitioner's son. Mr. Shah states he is still in the process of receiving instructions to file a petition by son.

2 The show cause notice dated 27th February 2012 was issued proposing absolute confiscation of the seized currency under Section 121 of the Customs Act, 1960. An order in original dated 19th May 2016 was passed by respondent no.3 ordering absolute confiscation of the seized currency. Petitioner filed an appeal before the Commissioner (Appeals), who passed an order dated 31st March 2017, by which petitioner's appeal was allowed and the order of confiscation passed on 19th May 2016 was set aside.

3 Being aggrieved, the department preferred an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT). During the pendency of the appeal, petitioner requested for refund of seized currency with accumulated interest vide letter dated 8th December 2017. Respondent No.4, by a communication dated 21st May 2018 rejected the request. Against the order of rejection, petitioner preferred another appeal before the Commissioner (Appeals), who by an order dated 23rd January 2019 directed respondent nos.2 and 3 to forthwith sanction the refund. Against this order dated 23rd January 2019, the department filed an appeal before the CESTAT. Both the appeals were dismissed by the CESTAT on 18th October 2023 thereby upholding the orders in appeal sanctioning refund. Petitioner made multiple request, requesting the refund of seized amount.

Petitioner was claiming interest @18% p.a. In view of stoic silence maintained by respondents, petitioner filed miscellaneous application before the CESTAT seeking implementation of final order dated 18th October 2023.

4 Respondent no.3 by an order dated 5th July 2024 sanctioned the refund alongwith simple interest @ 6% p.a. It is against this refund order granting interest only @6% p.a., petitioner has approached this court by way of this petition. Subsequently, petitioner has been paid a sum of Rs.2,06,33,000/-+interest of Rs.1,59,83,313/- totaling to Rs.3,66,16,313/-. In view thereof, petitioner withdrew the miscellaneous application pending before the CESTAT and approached this court. It is petitioner's case that petitioner should be paid interest @ 18% p.a. Mr. Shah submitted that even if this court is not inclined to grant 18% p.a., certainly respondents invested the amount in Fixed Deposit with Punjab and Sindh Bank and the deposit receipt, copy whereof was tendered by Mr. Chandrashekhar today on our directions, indicates interest @ 9.60% p.a. Mr. Shah submitted considering the maturity value of Rs.2,44,38,845/- indicated in the Fixed Deposit receipt, certainly interest earned must have been compounded and not simple interest. Mr. Chandrashekhar has also tendered photocopy of another Fixed Deposit receipt dated 26th July 2024 issued by Punjab and Sind Bank for a sum of Rs.78,89,195/- @6.30% p.a. and the maturity value indicated therein is Rs.83,98,080/-. Mr. Shah states the amount of interest

that would have been earned between 30th August 2011 and 25th July 2024 would be far higher than Rs.1,59,83,313/- that petitioner was paid towards interest. Mr. Shah also submitted that even this amount of Rs.78,89,195/- invested in Fixed Deposit with Punjab and Sind Bank vide Fixed Deposit receipt dated 26th July 2024 is petitioner's money, which has been invested by respondents. Mr. Shah, therefore, states even it is not 18% p.a., petitioner should be paid the entire amount of interest that has been earned on the amount seized from petitioner's residence. Mr. Shah therefore, states that the fact that respondents have invested the sum of Rs.78,89,195/-, itself indicates that respondents accepted that the money does not belong to them but to petitioner.

5 Mr. Chandrashekhar submitted that respondent no.3 has relied upon Board Circular No.984/08/2014-CX dated 16th September 2014 which says that assessee shall be entitled to refund of amount recently notified as 6% p.a. from the date of making the deposit to the date of refund in terms of Section 35FF of the Excise Act 1944 or Section 129EE of the Customs Act. Prima facie, we do not agree that this circular would be applicable in as much as it says "………. *he shall be entitled to refund of amount deposited alongwith interest*……….". Here is not a case where petitioner had deposited any amount but here is a case where money was confiscated and as held by the appellate authority without authority of law.

6 Mr. Chandrashekhar states even for a moment the court feels the

circular is not applicable, still the department will be guided by the rate of interest indicated in the circular. But certainly, Mr. Chandrashekhar did not have an answer to this court as to how the department could have retained the excess interest earned on petitioner's money. Mr. Chandrashekhar states he will articulate everything in the affidavit in reply that will be filed.

7 Prima facie, we are also of the view that when the department confiscated such money, which has later been held to be improper and not in accordance with law, effectively the department is holding the money in trust for assessee. Therefore, prima facie Mr. Shah's submissions that atleast the interest earned on this money should be paid over to petitioner, appears reasonable.

8 Mr. Chandrashekhar requests for some time to file affidavit in reply. Reply to be filed and copy served by 9th September 2024. To the affidavit in reply respondents shall annex photocopies of all the Fixed Deposit receipts. In the affidavit, respondents shall also give a chart with details of Fixed Deposits and how much interest has been earned and if any TDS has been deducted, the amount deducted.

9 Rejoinder, if any to be filed and copy served by 12th September 2024.

10 Mr. Chandrashekhar says that he has instructions only to appear on behalf of respondent nos.1 to 3. Mr. Shah states respondent no.4 has been served on 9th August 2024 and undertakes to file affidavit of service during the course of this week. Respondent no.4 is directed to file an affidavit

complying with the above directions and it is made clear that no extension will be granted to respondent no.4 to file the affidavit in reply. Copy of this order shall be served on respondent no.4 by petitioner within a day of this order being uploaded.

11 Stand over to 18th September 2024.

(JITENDRA JAIN, J.) **(K. R. SHRIRAM, J.)**