



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2423 OF 2024

B.V. Jewels,]
3rd & 4th Floor,]
Plot No. 55, SEEPZ SEZ,]
Andheri (E),]
Mumbai 400096] ...Petitioner

VERSUS

1. **Union of India,**]
Through the Secretary]
(Revenue),]
Ministry of Finance,]
Department of Revenue,]
Room No. 46, North Block,]
New Delhi- 110 001]
2. **Commissioner of Custom**]
(Airport),]
Avas Corporate Point,]
Makhwana Lane, Andheri Kurla]
Road, Andheri (E),]
Mumbai 400 059]
3. **Deputy Commissioner of Custom**]
(Airport), Tax Recovery Cell,]
Avas Corporate Point,]
Makhwana Lane, Andheri Kurla]
Road, Andheri (E),]
Mumbai 400 059]
4. **Commissioner of Customs**]
(General) Air Cargo Complex,]
Sahar, Andheri (E),]

Mumbai 400 099	]	
5. Assistant Commissioner of	]	
Customs, SEEPZ-Gen, Air Cargo	]	
Complex, Sahar, Andheri (E),	]	
Mumbai 400 099	]	...Respondents

APPEARANCES-

Mr Aspi Chinoy, Senior Advocate, a/w Mr Chirag Shetty and Ms Ayushi Agrawal i/b Economic Laws Practice, for the Petitioner.

Ms Ruju Thakker (Through V.C.), a/w Adv Poushali and Adv Priyanshu Doshi, for the Respondents.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 12 November 2024

PRONOUNCED ON : 14 November 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. By order dated 10 September 2024, this court notified the parties that it would endeavour to dispose of this petition on the next date finally.
3. Accordingly, Rule. The Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.
4. The petitioner, who is a partnership firm, seeks the following substantive reliefs by instituting this petition:-

“(i) this Hon ble Court be pleased to issue a writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature, setting aside the

Impugned Order dated 18.01.2013 (Exhibit-J) and Impugned letters dated 12.02.2014, 21.03.2014 and 08.02.2018 (Exhibit T, Exhibit-V and Exhibit-DD respectively) as being contrary to and in violation of the categorical direction of the Honble Supreme Court in its Order dated 18.03.2013 (Exhibit-H).;

(ii) this Hon'ble Court be pleased to issue a writ, order or directions in the nature of mandamus or any other writ, order or direction of like nature, directing the Respondents to (a) withdraw the Impugned order dated 18.01.2013 (Exhibit-T) and Impugned Letters dated 12.04.2014 and 08.02.2018 (Exhibit-V & Exhibit-DD) as the same are in contempt of Hon'ble Supreme Court's Order dated 18.03.2013 (Exhibit-H);(b) direct the Respondents to implement the Order of the Hon'ble Supreme Court dated 18.03.2013 (Exhibit-H) and accordingly, lift the attachment and seal of Petitioner's factory premises and (c) if necessary and required to auction the balance seized diamonds;

(iii) this Hon'ble Court be pleased to issue a writ, order or directions in the nature of mandamus or any other writ, order or direction of like nature, directing the Respondents to auction the balance seized diamonds and appropriate the proceeds thereof in terms of the Order of the Hon'ble Supreme Court dated 18.03.2013 (Exhibit-H);

(iv) this Hon'ble Court be pleased to issue a writ, order or directions in the nature of mandamus or any other writ, order or direction of like nature, directing the Respondents to refund the excess proceeds from the auction of the seized diamonds, over and above the dues adjudicated and confirmed in terms of the Order of the Hon'ble Supreme Court dated 18.03.2013 (Exhibit-H) to the Petitioner;

(v) this Hon'ble Court be pleased to issue a writ, order or directions in the nature of mandamus or any other writ, order or direction of like nature, directing the Respondents to issue NOC to SEEPZ SEZ that customs have no objection in Petitioners carrying out their business/ exports from their factory premises;"

5. Mr Chinoy learned senior advocate for the petitioner, referred to the order dated 18 March 2013 made by the Hon'ble Supreme Court against CESTAT's final order dated 21

December 2006 confirming demands and penalties against the petitioner. He submitted that though the petitioner's Civil Appeal was dismissed, the Hon'ble Supreme Court granted the petitioner time up to 22 August 2013 to pay the demanded amounts under the CESTAT's impugned order up to 22 August 2013 through instalments. He submitted that the petitioner duly made payments in terms of this order. Mr Chinoy submitted that the Hon'ble Supreme Court, in its order dated 18 March 2013 clarified that upon the discharge of the entire liability under the CESTAT's impugned order dated 21 December 2006, the sealed and attached factory premises of the petitioner shall be released to the petitioner.

6. Mr Chinoy submitted that despite the petitioner discharging the entire liability under the CESTAT's order dated 21 December 2006, the respondents are refusing to de-seal and release the petitioner's factory on the ground the petitioner is liable to pay an additional amount of approximately Rs. 31 Crores towards interest liability. He submits that the CESTAT's final order dated 21 December 2006, or for that matter, no other orders ever required the petitioner to pay any interest. Therefore, this demand for interest and refusal to release the sealed and attached factory premises on the grounds of non-payment of such interest amounts to disobedience to the Hon'ble Supreme Court's order dated 18 March 2013. He, therefore, submitted that an appropriate writ is liable to be issued to the respondents to de-seal and release the petitioner's factory premises without insisting upon payment of any interest of Rs. 31 Crores or thereabouts.

7. Without prejudice to the above contention, Mr Chinoy submitted that in the present case, no interest was ever demanded in the original adjudication order or, for that matter, any subsequent orders, including CESTAT's final order dated 21 December 2006. He submitted that even though interest may become automatically payable on the outstanding amounts, interest must still be demanded within a reasonable period. He submitted that the demand for interest in 2014 was both unfair and unreasonable. He submitted that such a demand contradicts the law the Hon'ble Supreme Court laid down in the case of **Commissioner of Trade Tax, Lucknow Vs M/S Kanhai Ram Thekedar**¹. Accordingly, he submitted the insistence on payment of interest at such a belated stage and a consequent refusal to release the sealed and attached factory premises is arbitrary, unreasonable, and unfair.

8. Mr Chinoy finally submitted that the respondents had no power to seal or attach the factory premises. Therefore, sealing and securing the petitioner's factory premises was *void ab initio*. Based upon this, Mr Chinoy submitted that suitable directions must be issued to the respondents to de-seal and release the petitioner's factory premises.

9. Ms Thakker, learned counsel for the respondents, submitted that the petitioner breached the directions in clause (4) of the Hon'ble Supreme Court's order dated 18 March 2013 because, by 22 August 2013, the entire liability under the CESTAT's final order dated 21 December 2006 was not cleared. She, therefore, submitted that under clause (5) of the

¹ 2005 (185) ELT 3 (SC)

Hon'ble Supreme Court's order, the respondents were given the liberty to recover outstanding dues from the petitioner forthwith in accordance with the law, including an auction of the factory premises. She, therefore, submitted that the entire substratum of this petition collapses, and this petition may be dismissed.

10. Ms Thakkar submitted that the respondents had not breached the Hon'ble Supreme Court's order dated 18 March 2013, and therefore, the allegations of contempt or willful disobedience are misconceived. She submitted that similar allegations were made in an Interim Application before the Hon'ble Supreme Court, but the same was withdrawn without seeking any liberty to re-agitate this issue. She submitted that after that, a Writ Petition was filed before the Hon'ble Supreme Court, making similar allegations. However, even the said Writ Petition was withdrawn by stating that the petitioner would file the Writ Petition before the High Court. She submitted that the Hon'ble Supreme Court granted no liberty for filing any such petition though the withdrawal of the Writ Petition was permitted. She submitted the allegation of breach of the Hon'ble Supreme Court's order cannot be made before this Court, particularly in such circumstances. She submitted that the allegations, in any event, are entirely misconceived.

11. Ms Thakkar submitted that the interest is demanded in terms of provisions of Section 18(3) read with Section 28AA of the Customs Act, 1962 ("**Customs Act**"). She submitted that the demand for interest is statutory and operates automatically. She submitted that there is no necessity of any show cause notice or a formal demand in such matters. She also relied on *Kanhai Ram Thekedar* (supra) in support of this

contention. In addition, she relied on the **Commissioner of Customs, Bangalore Vs. Pierre Colsun Inc.**², to support such a proposition.

12. Ms Thakkar submitted that arguments about the respondents lacking the power to seal or attach the factory premises were also misconceived. She submitted that such an argument could not be raised belatedly, particularly after no such argument had been raised or pressed before the Hon'ble Supreme Court in the two earlier rounds of litigation. She submitted that this petition was instituted after considerable delay, and such a delay has not even been explained in the petition. She submitted that since the Hon'ble Supreme Court granted no liberties, this petition should not be entertained.

13. For all the above reasons, Ms Thakkar submitted that this petition may be dismissed.

14. The rival contentions now fall for our determination.

15. The petitioner is a partnership firm engaged in the manufacturing and exporting of gold and jewellery studded with diamonds and precious stones. The petitioner operates an export processing unit in SEEPZ SCZ since 1988. The petitioner, in the course of their business, imported goods by availing the benefit of notification No. 177/94-Cus dated 21 October 1994 and, in terms thereof, executed a bond dated 02 November 1995 to ensure the compliance of the terms and conditions to which such exemption was subject.

16. The respondents issued a show cause notice dated 05 June 2000 to the petitioner and B V Star (another firm having

² 2011 SCC OnLine Kar 4465

the same partners) under Sections 28 and 124 of the Customs Act alleging a shortage of stock of diamonds imported after taking into account the exports effected, resulting evasion in customs duty to substantial extent. The respondents seized diamonds and capital goods on the grounds that they were liable for confiscation. The show cause notice required the petitioner to show cause as to why the evaded customs duty and penalty be not recovered and the diamonds and other capital goods confiscated. After giving the petitioner full opportunity, the show cause notice dated 05 June 2000 was adjudicated vide order in original dated 13 June 2001, wherein the demands in the show cause notice were confirmed.

17. The petitioner challenged the order in original dated 13 June 2001 by instituting an appeal before the CESTAT. This appeal was allowed by order dated 14 February 2003, and the CESTAT set aside the order in original dated 13 June 2001. The respondents appealed against the CESTAT's order dated 14 February 2003 before the Hon'ble Supreme Court. By order dated 14 September 2004, the Hon'ble Supreme Court allowed the respondents' appeal and set aside the CESTAT's order dated 14 February 2003. The matter was then remanded for reconsideration to the CESTAT.

18. By order dated 21 December 2006, the CESTAT confirmed the demanded duty of Rs. 12,31,86,708/- and penalty equivalent of Rs. 12,31,86,708/-. The confiscation of 10,631 cts of diamonds with an option to redeem the same on payment of a redemption fine of Rs. 43,00,000/- was also confirmed. This Court dismissed the petitioner's appeal against this order vide order dated 09 May 2012. Thus, the

demand confirmed by CESTAT's order dated 21 December 2006 attained finality.

19. On 18 October 2012, the respondents issued a demand notice to the petitioner, requiring the petitioner to pay the duty of Rs. 12,31,86,708/-, the penalty of Rs. 12,31,86,708/- and a redemption fine of Rs. 43,00,000/-. On 18 January 2013, the respondents also sealed the petitioner's factory premises. The petitioner aggrieved inter alia by the CESTAT's final order dated 21 December 2006 and sealing of its factory premises, appealed to the Hon'ble Supreme Court. This appeal was disposed of by order dated 18 March 2013. No argument about the sealing being without jurisdiction or ultra vires was raised or pressed before the Hon'ble Supreme Court. Instead, payment relief through an instalment facility was obtained. The Hon'ble Supreme Court clarified that upon discharge of entire liability within the timelines prescribed, the sealed factory should be restored to the Petitioner.

20. Since the petitioner's case mainly focuses on the Hon'ble Supreme Court's order dated 18 March 2013, the same is transcribed below for the convenience of reference: -

"Delay condoned.

2. After arguing the matter for some time, Mr. V. Sridharan, learned senior counsel for the appellant, submits that the appellant accepts the judgment of the Customs, Excise and Service Tax Appellate Tribunal dated December 21, 2006 which has not been interfered with by the High Court. He, however, submits that the appellant may be granted some indulgence in discharging its liability under the impugned order in instalments.

3. Having regard to the above, Civil Appeal is dismissed.

4. *However, we direct that the entire liability under the impugned order may be discharged by the appellant in six instalments. The first instalment shall be of Rs. 5 Crores which shall be paid by the appellant on or before March 22, 2013. The remaining liability shall be discharged in five equal monthly instalments payable on or before 22nd of each successive month. The last of such instalments (sixth instalment) shall be paid on or before August 22, 2013.*

5. *In case of default in payment of any one of the instalments, the respondent shall be free to recover the outstanding dues from the appellant forthwith in accordance with law including auction of the factory premises.*

6. *Needless to say that any amount already paid by the appellant shall be adjusted against the outstanding demand. It is also observed that in case an application is made by the appellant for disposal of the seized diamonds, the same shall be disposed of in accordance with law and the proceeds thereof shall be adjusted against the outstanding dues.*

7. *Subject to the deposit of each instalment as directed above, auction of the factory premises shall remain stayed. Upon discharge of the entire liability by the appellant as permitted above, the factory premises shall be released to the appellant."*

21. The petitioner is claiming to have complied with the directions in clauses (4), (5), and (6) of the Hon'ble Supreme Court's order dated 18 March 2013 by its letter dated 03 February 2014, requesting the respondents to de-seal the petitioner's factory premises and release the same to the petitioner. The petitioner's case is that the respondents, for the first time, vide communication dated 12 February 2014, contended that applicable interest under Section 28AA of the Customs Act remains unpaid and called upon the petitioner to pay the same immediately.

22. The petitioner pleaded that the respondents attached several immovable properties that the petitioner's partners did not even own. Therefore, the owners/co-owners instituted eleven Writ Petitions challenging such attachments. By an order dated 09 February 2015, this Court directed the Commissioner of Customs to hear those petitioners and pass appropriate orders regarding the attachment of the properties. Ms Thakkar pointed out that one of the petitioners was Mr. Bharat Shah, the present petitioner's partner.

23. After hearing the eleven petitioners, including the present petitioner's partner, Mr. Bharat Shah, the Commissioner of Customs, made an order dated 26 March 2015 upholding the orders of attachment. The Commissioner of Customs also held that there was no disproportionality involved because the demand for Rs. 31 Crores in interest was still outstanding.

24. Mr Chinoy submitted that neither the petitioner nor its partners were parties to the proceedings before the Commissioner of Customs. This submission cannot, at least prima facie, be accepted because the record shows that one of the petitioners was the partner of the present petitioner. In any event, even if Mr. Chinoy's contention is accepted, nothing much will turn on the same in the context of the reliefs claimed by the present petitioner in the present petition.

25. The petitioner, once again claiming to have made payments in terms of the Hon'ble Supreme Court's order dated 18 March 2013, filed Interim Application No. 3 of 2016 in Civil Appeal No. 2644 of 2013 before the Hon'ble Supreme Court inter alia seeking for de-sealing of the factory premises.

The contention in this Interim Application was that the respondents were in contempt because, despite the petitioner making payments in terms of the Hon'ble Supreme Court's order dated 18 March 2013, the responders were not de-sealing and releasing the factory premises.

26. By order dated 30 January 2017, the Hon'ble Supreme Court dismissed Interim Application No. 3 of 2016 in Civil Appeal No. 2644 of 2003 "*as withdrawn in terms of the signed order*". Though the signed order was never shown to us, it is apparent that the Interim Application No. 3 of 2016, in which the petitioner had asserted having made payments in terms of the Hon'ble Supreme Court's order dated 18 March 2013 or in which the petitioner had alleged contempt against the respondents, was unconditionally withdrawn or withdrawn without any liberty to take out any further proceedings on such issue. The copy of the order dated 31 January 2017 is in Exhibit FF on page 842 of the petition paper book.

27. After about a year, the petitioner filed Writ Petition (C) No. 130 of 2018 before the Hon'ble Supreme Court again, asserting compliance with the payments under the Hon'ble Supreme Court's order dated 18 March 2013 and challenging the respondents' alleged failure to de-seal and release the petitioner's factory premises despite such compliance. The petitioner, in fact, sought a Writ of Mandamus to direct the respondents to de-seal the factory premises and lift the attachment.

28. The order dated 23 February 2018, made by the Hon'ble Supreme Court in Writ Petition (C) No. 130 of 2018, records

that the learned counsel for the petitioner sought leave to withdraw the petition, and he wants to approach the High Court. That Writ Petition was dismissed as withdrawn. This order is at Exhibit GG on page 843 of the petition paper book. Again, this order also does not refer to any liberty the Hon'ble Supreme Court granted to institute any petition before this court on the issues raised in Writ Petition (C) No. 130 of 2018.

29. For almost four years since the petitioner's Writ Petition (C) No. 130 of 2018 was dismissed, the petitioner appears to have done nothing in the matter. There is no explanation for this delay. However, this petition was filed on 06 July 2022 and extensively amended on 29 July 2024. This petition seeks substantially the same reliefs sought in Interim Application No. 3 of 2016 in Civil Appeal No. 2644 of 2013 and Writ Petition (C) No. 130 of 2018 filed by the petitioner before the Hon'ble Supreme Court. The dismissal of this Interim Application as withdrawn unconditionally and the Writ Petition, again, without any specific liberty, were sought to be downplayed by the petitioner.

30. The petitioner seeks relief in this petition, mainly on the grounds that the respondents allegedly defied the Hon'ble Supreme Court's order dated 18 March 2013 and thereby committed contempt of the Hon'ble Supreme Court. We are unsure whether we are the proper forum to decide such an issue and whether such contention found no favour with the Hon'ble Supreme Court when it was raised in Interim Application No. 3 of 2016 and Writ Petition (C) No. 130 of 2018 before the Hon'ble Supreme Court. However, the Counsel for the petitioner submitted that this Court should go

into the issue of compliance as otherwise, the Petitioner would be without remedy. This is not very convincing. The petitioner, having taken its chance before the Hon'ble Supreme Court, cannot re-agitate the same issues before this Court. Still, without prejudice, we examined the contention about compliance by the Petitioner.

31. Ms Thakkar referred to the communication dated 12 February 2014 in which it was made clear that the petitioner had paid only a portion of the demanded duty, and the balance portion, redemption fine and applicable interest in terms of Section 28 AA of the Customs Act remained unpaid. Ms Thakkar also referred to the communication dated 25 July 2024 (on page 952 of the paper book), which records that, according to the Hon'ble Supreme Court's order dated 18 March 2013, the petitioner was supposed to pay the entire dues of Rs. 24.63 Crores (approx.) in six instalments up to 22 August 2013. However, the petitioner paid only Rs. 17.7 Crores (approx.) by 22 August 2013.

32. All this, at least prima facie, indicates that the petitioner's principal contention of having cleared the entire liability under the CESTAT's impugned order dated 21 December 2006 by 22 August 2013 is incorrect, even if the interest aspect is not considered. There is no ambiguity in clause (4) of the Hon'ble Supreme Court's order dated 18 March 2013, by which the petitioner was indulged with the facility of paying the demanded amount of Rs. 24.63 Crores (approx.) in six instalments, the last of which was payable on 22 August 2013.

33. Clause (5) of the Hon'ble Supreme Court's order dated 18 March 2013 provides that in case of default in payment of any one of the instalments, the respondent shall be free to recover the outstanding dues from the petitioner forthwith in accordance with the law, including the auction of the factory premises. Thus, since only Rs. 17.7 Crores out of rupees 24.63 Crores was paid up to 22 August 2013, the petitioner was not entitled to insist upon de-sealing and releasing the factory premises.

34. Mr Chinoy, by relying upon clause (6) of the Hon'ble Supreme Court's order dated 18 March 2013, contended that the petitioner had applied for disposal of the seized diamonds in accordance with law and for adjustment of the proceeds against the outstanding dues. He submitted that for a delay on the part of the respondents in disposing of such diamonds, the petitioner cannot be held responsible.

35. Mr Chinoy's above contention does not commend to us. The obligation to clear the entire liability of Rs. 24.63 Crores (approx.) by 22 August 2013 was almost absolute. The consequences for default were provided in clause (5) of the order. The directions regarding adjustments or the sale of diamonds would apply in the context of recoveries that the respondents would have to effect if the petitioner failed to clear the entire liability under the impugned order.

36. In any event, based on the materials on the record, we find it difficult to accept the petitioner's contention that the petitioner had cleared the entire liability in terms of clause (4) of the Hon'ble Supreme Court's order dated 18 March 2013 or that there was no default in such compliance. Therefore, the

petitioner's main contention cannot be accepted based on the materials on record.

37. The petitioner failed to explain why Interim Application No. 3 of 2016 or Writ Petition (C) No. 130 of 2018 were withdrawn almost unconditionally when identical allegations were made in the Interim Application and Writ Petition before the Hon'ble Supreme Court. The possibility of the petitioner merely taking chances with Court proceedings or lodging multiple proceedings for the same relief cannot be ruled out in such circumstances. The correspondence between the petitioner and the respondents after the institution of this petition is not entirely relevant. Based upon such correspondence, no case is made out for granting any relief to the petitioner.

38. We must note at the outset that the demand for interest is not being challenged in a formal way. The petition proceeds on the premise that it is vulnerable. Apart from the fact that the petitioner has not established payments in terms of clause (4) of the Hon'ble Supreme Court's order dated 18 March 2013, the petitioner cannot presume that the interest demand is vulnerable on the alleged ground that the same is belated or not made within a reasonable period. The demand for interest in such matters is statutory. The decisions the petitioner and the respondents relied upon referred to the automatic liability to pay interest.

39. Section 18(3) of the Customs Act provides that the importer or exporter shall be liable to pay interest on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-

section (2), at the rate fixed by the Central Government under Section 28AA from the first day of the month in which the duty is provisionally assessed in the date of payment thereof. Section 28AA of the Customs Act makes provisions for interest on the delayed payment of duty.

40. *Kanhai Ram Thekedar* (supra) was in the context of the peculiar provisions in Section 8 of the Uttar Pradesh Sales Tax Act, 1948. Section 8 (1-C) had provided that the amount of interest payable under sub-sections 1, 1-B, 1-BB and 2 shall be without prejudice to any other liability or penalty that either may incur under the said act or under any other law of the time being in force and shall be added to the amount of tax and be also deemed for all purposes to be part of the tax. Considering the statutory provision by which the amount of interest payable was deemed for all purposes to be a part of the tax, observations were made about the demand of interest within the statutorily prescribed period of limitation or otherwise within a reasonable period.

41. The position with Sections 18(3) and 28AA of the Customs Act differs from that under Section 8 of the Uttar Pradesh Sales Tax Act, 1948. The observations, therefore, cannot construe de hors the context and the statutory provisions. In any event, *Kanhai Ram Thekedar* (supra) has accepted the position that the assessee is liable to pay interest on the unpaid amount of tax and that such liability arises automatically by operation of law. The Court held that a fresh notice of demand is unnecessary where the amount of tax or other dues is reduced due to the appeal, revision or other proceedings.

42. The Court, relying upon its earlier precedents in **Sales Tax Officer, Sector I, Kanpur & Anr. Vs. M/s. Dwarika Prasad Sheo Karan Dass.**³ and **Haji Lal Mohd. Biri Works Vs. State of U.P.**⁴ held that the liability to pay interest is automatic and arises by operation of law. It was further observed that the Sales Tax officer did not need to specify the amount of interest in the recovery certificate. The Court held that the assessing authority was not even required to serve a fresh notice upon the dealer. The Court also referred to **Prahlad Rai & Ors. Vs. Sales Tax Officer Meerut & Ors.**⁵ rejected the assessee's contention that he had admittedly paid all sales tax arrears voluntarily; therefore, they did not become defaulters and were not liable for the interest. The Court held that the accrual of interest is automatic, and no separate notice of demand was required to be served.

43. In any event, Ms Thakkar pointed up that by notice dated 18 January 2013, issued even before the Hon'ble Supreme Court's order dated 18 March 2013, the respondents had already demanded a sum of Rs. 23.07 Crores towards duty and interest payable under Section 28AA and other Sections of the Customs Act for the period commencing immediately after the demand notice dated 18 October 2012. The inordinate delay in resisting the demand for interest in 2013 is not even attempted to be explained. Instead, the Petitioner has not chosen to challenge this demand directly but only indirectly or collaterally.

³ (1977) 1 SCC 22

⁴ (1974) 3 SCC 137

⁵ 1991 Supp. (2) SCC 612

44. *Kanhai Ram Thekedar* (supra) is distinguishable and will not apply in the fact of the present case for the following broad reasons: -

(i) The petitioner has not challenged the communication demanding interest under Section 28AA of the Customs Act before the authorities constituted under the Act. After almost 10 years from the demand dated 18 October 2012, the petitioner cannot raise the issue, especially when the petitioner travelled before the Supreme Court and before the authorities under the Act in the interregnum.

(ii) The U.P. Sales Tax Act's provisions materially differ from the Customs Act's provisions. Section 28(10) of the Customs Act provides that where the proper officer passes an order determining the duty under Section 28, the persons liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately. There is no such provision in the U.P. Sales Tax Act, which was the subject matter before the Supreme Court.

(iii) Section 28AA of the Customs Act provides that notwithstanding anything contained in any judgment, decree, order or direction of any Court, Appellate Tribunal or any authority or in any other provision of the said Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under Section 28.

45. Based on a reading of Section 28AA (1) and 28(10) of the Customs Act, there is no requirement of any demand being made in the original assessment order for interest under Section 28AA. Suppose the demand raised under Section 28 is not paid within the specified time. In that case, interest starts running against the assesses on the expiry of the said date, and, therefore, the question of raising any demand of interest in the assessment order would not arise. The liability of the interest would arise only on default of payment of duty within the time specified under Section 28. Therefore, there cannot be any question of interest being demanded in the Order-in-Original.

46. Given the above, we cannot accept the learned senior counsel's submission that the petitioner is not liable to pay interest under Section 28AA when there is a default or delay in payment of duty. The learned senior counsel also fairly accepts that the interest is automatic, but only the contention that there must be a demand in the order, which, in our opinion, is not correct.

47. It is also important to note that the respondents raised the demand on 16th October 2012, calling upon the petitioner to pay for the demand so raised. However, since the payment was not made within the time specified in the said demand notice, an order of attachment dated 18th January 2013 was passed for failure to make the payment demanded on 18th October 2012 and interest payable under Section 28AA for the period commencing after that date, i.e. after 18th October 2012 was demanded. In our view, the demand for interest was raised on 18th January 2013 for non-payment of demand made on 18th October 2012, which is within three months of

raising the demand. Therefore, the petitioner's contention that the demand of interest has been made after more than 10 years from the date of Order-in-Original is misconceived.

48. For all the above reasons, we see no merit in this petition and consequently dismiss it. The Rule is discharged. The interim order, if any, is vacated. There shall be no orders for costs.

(Jitendra Jain, J)

(M. S. Sonak, J)