IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 7640 of 2006
and
WMP.No.8405 of 2006

M/s.The Dharmapuri District
Co-operative Spinning Mills Ltd.,
Rep.By The Administrator,
Uthangarai, Dharmapuri Dist-635 207

Petitioner(s)

.Vs.

1. The Commissioner Of Central Excise,
No.1, Foulks Compound, Anai Road,
Salem-636 001.

2.The Deputy Commissioner Of Central Excise,
Office Of The Commissioner Of Central Excise,
No.1, Foulks Compound, Anai Road,
Salem-636 001.

3.The Assistant Commissioner Of Central Excise,
Salem I Division, 2, Valmiki Street,
Subramaniam Nagar, Salem-636 005.

4.The Superintendent Of Central Excise,
Dharmapuri Range
Dharmapuri-636 701.

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in C.No.IV/16/36/2005 - CK.POL dated 24.2.2006 quash the same as illegal and consequentially forbearing the respondents from levy and collection of penal interest Rs.3,57,000/- for the delay in payment of Excise Duty for the month of June 2004.

For Petitioner(s) : Mr.S.Rajesh

For Respondent(s): Mr.Meganathan
Standing Counsel

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 24.02.2006 and for a consequential direction to the respondents not to levy and collect penal interest for the delay in payment of excise duty for the month of June 2004.

2.The case of the petitioner is that they are running the Mill and for the duty liability for the month of June 2004, the petitioner filed the returns on 07.07.2004 by admitting the liability of excise duty at Rs.10,32,506/-. The petitioner did not pay the liability for the month of June 2004 along with the returns that were filed in June 2004.

3.Out of the total liability, the petitioner was able to pay around Rs.6,00,000/- with three months delay and the balance in nine monthly installments. The delay in payment of duty was due to the fact that the petitioner merely had accumulated losses and they were also not able to pay the wages on time.

4.The petitioner is aggrieved by the impugned proceedings of the 2nd respondent dated 24.2.2006, wherein the request made by the petitioner seeking for reduction of the rate of interest for the delayed payment of duty was came to be rejected.

5.The 2nd respondent has filed a counter affidavit and has taken a stand that the interest has been levied in line with the mandate prescribed under Rule 8(3) of Central Excise Rules 2002 and no discretion is available for the respondents to waive the interest prescribed under the Rule. It is further stated that the petitioner cannot question the demand of interest since it neither suffers from lack of jurisdiction nor it does suffers from perversity. In view of the same, the respondents have justified the rejection of the claim made by the petitioner seeking for reduction in the rate of interest.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The learned counsel for the petitioner mainly raised two grounds while assailing the proceedings of the 2nd respondent. The first ground is that if in case there is any duty not paid and recovery is initiated, Section 11(A) of the Central Excise Act, 1944 has prescribed one year period as the limitation for the recovery of the duty not paid. In the case in hand, the duty was payable for the month of June 2004 and the due date fell on 05.7.2004. However, the notice has been served only on 06.7.2004 and the same is beyond the period of limitation.

8.The other ground that was raised by the learned counsel for the petitioner is that penalty can be imposed against the petitioner only if the petitioner had intentionally failed to pay the duty and whereas in the case in hand, the petitioner had volunteered to pay the simple interest and the duty was due only for one month and there were reasonable grounds for the petitioner for not being able to pay the duty on time. Therefore, it was contended that the 2nd respondent ought to have considered this issue and received the simple interest as was offered by the petitioner.

9.Per contra, the learned Standing Counsel for the respondents submitted that there is no discretion available to the 2nd respondent in this case since sub rule (3) of rule 8 of Central Excise Rules, 2002 makes it mandatory to demand interest at the rate of 2% p.m., or Rs.1,000/- per day, whichever is higher, for the period starting from the first day after due date, till the date of actual payment of the outstanding amount. The learned Standing Counsel further submitted that the notice under Section 11 of the Central Excise Act, 1944 was already served on the petitioner as early as on 08.12.2004 and interest was also calculated as per the relevant rules. It was submitted that the petitioner had paid a sum of Rs.82,506/- only after 24.09.2005 and the Assistant Commissioner does not have the power to withdraw the levy of interest for the defaulted payment of duty. Therefore, the learned counsel supported the proceedings of the 2nd respondent and sought for the dismissal of the present writ petition.

10.The sum and substance of the dispute involved in the present case is as to whether the 2nd respondent was right in refusing to accept the simple interest for the delayed payment of central excise duty for the month of June 2004 and whether the 2nd respondent was right in insisting for the payment of penalty.

11.The specific case of the petitioner is that the delay in payment of the central excise for the month of June 2004 is not intentional and it does not involve any suppression or evasion of the penal provisions. Therefore, the 2nd respondent ought to have considered the request made by the petitioner for payment of simple interest. According to the petitioner, the levy of interest under sub rule (3) of rule 8 of the Central Excise Rules, 2002, is in the nature of penalty and the same can be imposed only in a case where there has been suppression or evasion of duty and that is not the case in hand.

12.In order to appreciate the above submission made by the learned counsel for the petitioner, it is necessary for this Court to take note of the relevant rule. Sub Rule (3) of Rule 8 of the Central Excise Rules, 2002 is extracted hereunder:

8.Manner of Payment:-

(3) If the assessee fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with an interest at the rate of two per cent. per month or rupees one thousand per day, whichever is higher, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:

Provided that the total amount of interest payable in terms of this sub-rule shall not exceed the amount of duty which has not been paid by due date:

Provided further that till such time the amount of duty outstanding and the interest payable thereon are not paid, it shall be deemed that the goods in question in respect of which the duty and interest are outstanding, have been cleared without payment of duty and the consequences and the penalties as provided in these rules shall follow.

13.On carefully reading the above sub rule, it is seen that where an assessee fails to pay the amount of duty by due date (i.e) by 05.7.2004 in the case in hand, they shall be liable to pay the outstanding amount along with interest at the rate of 2% of amount or Rs.1000/- per day whichever is higher for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

14.On a careful reading of the above rule, it is seen that the concerned authority *viz*., the Assistant Commissioner did not have any discretion in accepting the request made by the petitioner for payment of simple interest. The authority was bound by this rule and the authority has applied the rule and sought for the collection of interest.

15.The petitioner has termed sub rule (3) of rule 8 to be penal in nature and therefore has raised a contention that there was no suppression or evasion of duty and there are only delay in payment of the duty.

16.In the considered view of this Court, the said sub rule is not in the nature of a penalty. It only deals with a case where the assessee fails to pay the duty before the due date and it only provides for the collection of interest for the delay in the payment of the duty from the date after the due date till the date of actual payment. Therefore, the mere non-payment of the duty before the due date, will trigger the operation of this sub rule.

17.Insofar as the ground taken by the learned counsel for the petitioner to the effect that the very levy is barred under Section 11A of the Central Excise Act, 1944, no such ground has been raised in the affidavit filed in support of the writ petition. During the course of arguments, the learned counsel has raised this ground. The issue of limitation is a mixed question of fact and law. If this issue is not raised in the affidavit, the respondents will not have an opportunity to defend the same and the respondents cannot be taken by surprise. In view of the same, this Court finds that the ground raised by the petitioner cannot be sustained.

18.In the light of the above discussion, this Court does not find any error apparent on the face of the proceedings of the 2nd respondent dated 24.2.2006 and it does not warrant the interference of this Court.

19.In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26-09-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
KP

To

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N.ANAND VENKATESH J.
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