BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.1790 of 2021 & 2061 of 2023

W.A.(MD)No.593 of 2021

Dalmia Cement (Bharat) Ltd.,
Represented by its Deputy Executive Director,
Mr.R.Gururajan,
Dalmiapuram,
Trichy-621 651. ... Appellant / Petitioner

Vs.

1.The Commissioner of Central Excise,
Office of the Commissioner of Central Excise &
Service Tax No.1, Williams Road,
Cantonment, Trichy-620 001.

2.The Assistant Commissioner of Central Excise,
Office of the Commissioner of Central Excise &
Service Tax, Division-II, No.1, Williams Road,
Cantonment, Trichy-620 001. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the portion of the order dated 21.01.2021 passed by this Court in W.P.(MD)No. 18012 of 2016 to the extent which is against the appellant on the file of this Court and allow this writ appeal.

For Appellant : Mr.Raghavan Ramabadran
for Mr.Lakshmi Kumaran & Sridharan

For Respondents : Mr.AR.L.Sundaresan
Assistant Solicitor General
assisted by Mr.S.Gurumoorthy
for R1 & R2

W.A.(MD)No.2061 of 2023

1.The Commissioner of Central Excise,
Office of the Commissioner of Central Excise &
Service Tax No.1, Williams Road,
Cantonment, Trichy-620 001.

2.The Assistant Commissioner of Central Excise,
Office of the Commissioner of Central Excise &
Service Tax, Division-II, No.1, Williams Road,
Cantonment, Trichy-620 001. ... Appellants / Respondents

Vs.

Dalmia Cement (Bharat) Ltd.,
Represented by its Senior General Manager Legal,
Mr.T.A.Srinivasan. ... Respondent /Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 21.01.2020 passed in W.P.(MD)No.18012 of 2016.

For Appellants : Mr.AR.L.Sundaresan
Assistant Solicitor General
assisted by Mrs.S.Ragaventhre

For Respondent : Mr.Raghavan Ramabadran
for Mr.Lakshmi Kumaran & Sridharan

COMMON JUDGMENT

(Judgement of the Court was delivered by G.R.SWAMINATHAN, J.)

Dalmia Cement (Bharat) Limited is a company manufacturing cements of different grades and varieties. It is an assessee registered under the Central Excise Act, 1944. The case on hand pertains to the period from 01.06.1972 to 15.03.1976. During this period, the assessee had paid excise duty on what was known as equalised freight charges. According to the assessee, this component was not includable while computing excise duty. Hence, excise duty was paid under protest. Subsequently, the assessee filed an application for refund of the same. This request was rejected by the original authority. But the appellate tribunal, New Delhi, CEGAT vide order dated 06.06.1989 held that the equalised freight charges were not includable in the assessable value and upheld the plea for refund and allowed the appeal. Even though the tribunal had upheld the plea of the assessee, refund was not made. In the meanwhile, Section 11(B) of the Central Excise Act, 1944 was amended introducing the concept of unjust enrichment in the matters of refund. Invoking the amended Section 11(B) of the Act, refund was denied. The matter went right upto to the Hon'ble Supreme Court. Following the dismissal of the appeal filed by the revenue on 09.01.2004 by the Hon'ble Supreme Court, refund to the tune of Rs.2,63,69,322/- was sanctioned on 23.02.2004. Since there was delay in paying interest, there was an another round of proceedings and finally, a sum of Rs.2,84,83,203/- was paid on 09.06.2016 as per Section 11 BB of the Excise Act for the period from 26.08.1995 to 23.02.2004.

2.The stand of the assessee was that the interest amount due and payable to them as well as the compensatory interest have not been paid in full and hence, they filed W.P.(MD)No.18012 of 2016. The learned single Judge allowed the writ petition in the following terms:-

> "41. The entitlement of the petitioner, though termed 'interest', would really fall within the realm of 'compensation' as it cannot be denied that the petitioner has been deprived of a substantial amount of capital from 1989 onwards till date and till date of payment. I am thus of the view that the petitioner in this case is clearly entitled to compensation for the loss of capital from the date of success in its appeal before the CEGAT, being 06.06.1989 as well as compensation on the delay on payment of interest as claimed, and I order accordingly.
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> 42. The petitioner is entitled to interest at the rate of 9% from 06.06.1989 till 25.08.1995 on the amount of refund and thereafter at the rates specified in Notifications of the Central Board of Excise and Customs in i) Notification No. 41/2000-(N.T.), ii) Notification No.24/2001- Central Excise (N.T.) Dt. 11/05/2001 (F.No.B-10/1/2001-TRU), iii) Notification No.

> 17/2002- CE(N.T.) Dt.13/05/2002 (F.No.B-10/3/2002-TRU) and iv) Notification No.67/2003- CE (N.T.) Dt. 12/09/2003 (F.No.04/07/2003 CX.I) and interest at the rate of 6% till date of payment, to be paid over to it within a period of six (6) weeks from date of receipt of a copy of this order."

Aggrieved by the same, the department filed W.A.(MD)No.2061 of 2023, while the assessee filed W.A.(MD)No.1790 of 2021.

3.The learned counsel for the assessee reiterated all the grounds set out in the memorandum of grounds of writ appeal. The learned Additional Solicitor General also reiterated the stand set out in the grounds of appeal. The counsel on either side filed detailed written statements and also relied on a catena of case laws in support of the respective propositions advanced by them.

4.We carefully considered the rival contentions and went through the materials on record.

5.As already pointed out, the disputed excise duty was paid during the period from 1973 to 1976. The refund was ordered by the Tribunal on 05.06.1989. During the relevant period, there was no provision for payment of interest. The provision to pay interest in cases of delayed refund was inserted under Act 33 of 1996 with effect from 26.05.1995. The principal refund amount was paid on 24.02.2004. In these circumstances, the claim for payment of interest could be divided under three categories. Interest for the period from 20.09.1973 to 05.06.1989 when the tribunal passed an order for refund; Interest for the period from 06.06.1989 to 25.05.1995 and from 26.05.1995 to 25.08.1995, when Section 11 BB was introduced. It is relevant to note that the payment for interest under Section 11 BB of the Act from 26.08.1995 to 23.02.2004 has not been contested by the revenue. The learned single Judge by the impugned order dated 21.07.2020 rejected the claim for the payment of interest from 20.09.1973 to 05.06.1989. However, the interest for the period from 06.06.1989 to 25.08.1995 was granted at the rate of 9% per annum. The assessee is aggrieved by the rejection of their request for payment of interest from 20.09.1973 to 05.06.1989. They are also aggrieved by the award of interest at the rate of 9% per annum. They demand enhancement to the tune of 15% per annum. The revenue on the other hand questions the very grant of interest for the period from 06.06.1989 to 25.08.1995. The assessee had also made one more demand. Since the interest payable to them was belatedly paid, they seek what is known as compensation for delayed payment of interest. It is loosely called as interest on interest. Since the learned single Judge had granted compensation for the delayed payment of interest for the period from 06.06.1989 to 25.08.1995 at the rate of 6% per annum, as in the earlier case, the assessee seeks payment of compensatory interest at the rate of 9% per annum instead of 6% per annum. The learned single Judge had granted compensatory interest at the rate of 6% per annum as in the earlier claim, while the assessee seeks enhancement of the compensatory interest at the rate of 9% for the period from 26.08.1995 to 24.02.2004. The learned single Judge had granted compensatory interest at the rate of 6% per annum. The assessee seeks enhancement which is upto 9%, while the revenue questions the very grant of compensatory interest. The learned counsel for the assessee has captured all these aspects in a tabulated form. It is as follows:-

Table 1: Matrix for details of interest (under appeal)

Sl	Period	Interest on delayed refund			Compensatory Interest on delay in grant of interest on delayed refund		
		Impugned Order	Assessee Appeal	Revenue Appeal	Impugned Order	Assessee Appeal	Revenue Appeal
1.	20.09.1973-05.06.1989	Rejected	Prays for Interest at 15%	No Challenge	Rejected	Prays for compensatory interest at 9%.	Not challenged.
2.	06.06.1989-25.05.1995	Granted at 9%	Prays for Interest at 15%	Revenue challenged grant of interest.	Granted at 6%	Prays for compensatory interest at 9%.	Revenue challenged grant of compensatory interest.
3.	26.05.1995-25.08.1995						
4.	26.08.1995-23.02.2004	Interest granted under Section 11BB. Not contested by Revenue.			Granted at 6%	Prays for compensatory interest at 9%.	Revenue challenged grant of compensatory interest.
5.	24.02.2004-till date	--	--	--	Granted at 6%	Prays for compensatory interest at 9%.	Revenue challenged grant of compensatory interest.

6.Let us examine the rival claims under each category. The first question that calls for consideration is whether the assessee is entitled to claim interest for the period from 20.09.1972 to 05.06.1989. The learned single Judge upheld the claim of the assessee for the payment of interest only with effect from 06.06.1989 and not for the earlier period. 06.06.1989 became the cutoff date because on that date, the appellate tribunal (CEGAT, New Delhi) allowed the assessee's claim for refund. It is true that Section 11 BB was inserted into the Central Excise Act, 1944 providing for payment of interest on the delayed refund only with effect from 26.05.1995. The assessee had relied heavily on the decision of the Hon'ble Supreme Court in the decision reported in ***(2006) 2 SCC 508 (Sandvik Asia Ltd vs CIT – I, Pune)*** for the proposition that when excess amounts are wrongly witheld from an assessee without authority of law, the Revenue must compensate the assessee even if the statute did not mandate interest to be paid on refunds. The revenue heavily relied on the decision of the Hon'ble Division Bench reported in ***2011 SCC OnLine Mad 2646 (Commissioner of Customs (Exports), Chennai vs VBC Industries).***

7.We are of the view that the recent decision of the Hon'ble Supreme Court in ***Union of India Vs. Willowood Chemicals Pvt Ltd*** reported in (***2022) 9 SCC 341*** concludes the issue both on the matter of awarding interest in the absence of statutory provision and also awarding of compensatory interest (interest on interest). Paragraphs Nos.17 to 21 of the said decision read as follows:-

> **17.3.** In ***Godavari Sugar Mills Ltd. v. State of Maharashtra, (2011) 2 SCC 439***, a Bench of two Judges of this Court considered the question whether interest on the compensation amount @ 9% p.a. could be awarded when the terms of Section 6 of the Maharashtra Agriculture Lands (Ceiling of Holdings) Act, 1961 prescribed payment of interest only @ 3% p.a. The discussion on the point was : (SCC pp. 444-46, paras 11-15)
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> "...*12*. The question as to when and in what circumstances, interest could be awarded on belated payment of compensation, was considered by this Court in ***Union of India v. Parmal Singh, (2009) 1 SCC 618***. This Court first referred to the general principle and then the exceptions thereto, as under : (SCC pp. 624-25, paras 12-13)
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> '*12*. When a property is acquired, and law provides for payment of compensation to be determined in the manner specified, ordinarily compensation shall have to be paid at the time of taking possession in pursuance of acquisition. By applying equitable principles, the courts have always awarded interest on the delayed payment of compensation in regard to acquisition of any property. …
>
> *13*. … The said general principle will not apply in two circumstances. ***One is where a statute specifies or regulates the interest. In that event, interest will be payable in terms of the provisions of the statute. The second is where a statute or contract dealing with the acquisition specifically bars or prohibits payment of interest on the compensation amount. In that event, interest will not be awarded. Where the statute is***

silent about interest, and there is no express bar about payment of interest, any delay in paying the compensation or enhanced compensation for acquisition would require award of interest at a reasonable rate on equitable grounds.'

...

17.4. In ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508***, a Bench of two Judges of this Court was called upon to consider whether the inordinate delay of about 12 to 17 years in making a refund would entitle grant of interest. In the facts of that case, interest @ 9% p.a. from 31-3-1986 to 27-3-1998 was granted. Even while doing so this Court observed : (SCC p. 540, para 48)

"*48*. There cannot be any doubt that the award of interest on the refunded amount is as per the statutory provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation."

17.5. In ***CIT v. Gujarat Fluoro Chemicals, (2014) 1 SCC 126***, the correctness of the decision in ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508*** came up for consideration before a Bench of three Judges of this Court, and the matter was considered thus :

"*3*. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508*** and the order of reference. We have also considered the submissions made by the parties to the lis.

4. We would first throw light on the reasoning and the decision of this Court on the core issue in ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508.*** The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax

Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision, etc. Since there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in para 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely, for Assessment Years 1977-1978, 1978-1979, 1981-1982, 1982-1983 in a sum of Rs 40,84,906 and interest @ 9% from 31-3-1986 to 27-3-1998 and in default, to pay the penal interest @ 15% p.a. for the aforesaid period.

5. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and also by the Revenue. They are of the view that in ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508,*** this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

6. As we have already noticed, in ***Sandvik Asia Ltd.* v. *CIT*, (2006) 2 SCC 508** this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest."

....

20. Coming back to the present cases, the relevant provision has prescribed rate of interest at 6% where the case for refund is governed by the principal provision of Section 56 of the CGST Act. As has been clarified by this Court in ***Modi Industries Ltd. v. CIT, (1995) 6 SCC 396*** and ***Godavari Sugar Mills Ltd. v. State of Maharashtra, (2011) 2 SCC 439*** that ***wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. Wherever a statute, on the other hand, is silent about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds***. It is precisely for this reason that para 9 of the decision in *Godavari Sugar Mills* [*Godavari Sugar Mills Ltd.* v. *State of Maharashtra*, (2011) 2 SCC 439 : (2011) 1 SCC (Civ) 467] accepted the submission made by the learned counsel for the respondents and confined the rate of interest to the prescription made in the statute. The award of interest at a rate in excess of what was prescribed by the statute was only for a period beyond 20 years where the matter was not strictly covered by the statute and as such it would be in the realm of discretion of the Court.

> **21.** It must also be noted here that the inordinate delay of up to 17 years in making refunds was a special circumstance when this Court was persuaded to accept grant of interest @ 9% p.a. In ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508***. Even while doing so, the observations made by this Court in para 48 of the decision are quite clear that "the award of interest in refund and amount must be as per the statutory provisions of law and whenever a specific provision has been made under the statute such provision has to govern the field". The subsequent decision of the Bench of three Judges in ***CIT v. Gujarat Fluoro Chemicals, (2014) 1 SCC 126*** noticed that the grant of interest @ 9% was in the facts of the case in ***Sandvik Asia Ltd. v. CIT, (2006) 2 SCC 508***.

8.In the above case, the Hon'ble Supreme Court held that in the statute, when there is no express bar on payment of interest, any delay in paying compensation or the amount due would attract the award of interest at a reasonable rate on equitable grounds. The Hon'ble Supreme Court had laid stress on the aspect of equity. The claim of interest for delayed refund for the period from 20.09.1973 to 05.06.1989 should be approached from this perspective. It is true that Section 11 BB of the Act, incorporating the concept of unjust enrichment in the matter of refund, was introduced only subsequently. The assessee had succeeded right upto the Hon'ble Supreme Court which had held that the said Section cannot be applied retrospectively. But then, the concept of unjust enrichment cannot be lost sight of when the applicant is also pressing for payment of interest on delayed refund. We posed a specific question to the learned counsel appearing for the assessee as to whether the assessee would be prepared to file an affidavit before us that the incident of excise duty in this case was not passed on to the purchaser. Though some interesting technical arguments were advanced by the learned counsel for the assessee, they did not file any affidavit as sought for by us. It is for this reason that we uphold the order of the learned single Judge rejecting the claim for interest on delayed refund for the period from 20.09.1973 to 05.06.1989. Likewise, the award of interest as well as the compensatory interest at the rate of 9% per annum and 6% per annum respectively for the period from 06.06.1989 to 25.08.1995 is also sustained. We endorse the reasons assigned by the learned single Judge in this regard as correct. The award of compensatory interest at the rate of 6% for the delayed refund with effect from 24.02.2004 is also sustained for the very same reasons. We reject the writ appeal filed by the assessee. For the very same reasons, the appeal filed by the revenue is also dismissed. Both the writ appeals are dismissed. No costs.

[G.R.S., J.] [M.J.R., J.]

29.04.2025

Internet : Yes / No
Index : Yes / No

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To

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Service Tax No.1, Williams Road,
Cantonment, Trichy-620 001.

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G.R.SWAMINATHAN, J

and

M.JOTHIRAMAN, J.

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