IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 10-03-2026**

CORAM

**THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ**

**WP No.27354 of 2024**

M/s.Rajam Steel Trader,
IEC 0415013887,
0/10/59, Manali Express Road,
Kamaraj Nagar, Ernavoor,
Chennai-600 057,
Represented by its Proprietor,
Mr.K.S.Kothandaraman.

..Petitioner

Vs

The Assistant Commissioner
Office Of Commissioner Of Customs,
Chennai-II (Import),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 11.01.2024 passed by respondent in F.No.CUS/AG/MISC/112/2024-A/M and quash the same and further direct the respondent to sanction interest at the rate of 12 percent p.a. on the amount of Rs.35,61,455/- wrongly collected from petitioner.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents: Mr.Sai Srujan Tayi
Senior Panel Counsel

**ORDER**

The present writ petition is filed challenging impugned order dated 11.01.2024 passed by respondent in F.No.CUS/AG/ MISC/112/2024-A/M and and for a further direction to respondent to sanction interest at the rate of 12 percent p.a. on the amount of Rs.35,61,455/- wrongly collected from petitioner.

2. The short question that arises for consideration is whether petitioner is entitled to claim interest on sums collected by SIIB during the course of inspection/investigation of petitioner's place of business.

**3. Brief facts:**

3.1. Petitioner is a proprietor concern and engaged in business of import and trading of steel. Petitioner purchased goods described as 'hot rolled painted steel plates', during September 2016, without discharging anti-dumping duty. There was an investigation on 25.05.2018, SIIB visited petitioner's place of business. During the course of investigation, SIIB collected a sum of Rs.35,61,455/- from petitioner. Petitioner filed an application for refund on 17.09.2021 on the premise that amounts so collected during the course of investigation has not been validated/translated into lawful collection by issuance of a show cause notice or adjudication.

3.2. It is the case of petitioner that in the absence of the collection made by SIIB during the course of investigation being made lawful, the same would be without authority of law and would not bear colour/ character of duty.

4. It may be relevant to note that there was a show cause notice 05.10.2021, which was issued wherein certain penalties were proposed. Interestingly, even in that show cause notice, no attempt was made to turn the collections made by SIIB during the course of investigation, lawful.

5. Aggrieved, petitioner preferred writ petitions in W.P.Nos.24705 and 24706 of 2021 before this Court, which was disposed of vide order dated 26.11.2021, directing respondent authorities to pass appropriate orders with regard to proposal on penalty and also to consider the petitioner's request for refund made earlier. An order came to be passed on 12.12.2022, wherein proposal to levy penalty was dropped. However, there is no discussion nor is the request of refund made by petitioner on 17.09.2021, even considered in the order dated 12.12.2022.

6. Petitioner took out yet another application seeking refund on 23.01.2023. Petitioner was granted refund of the principal amount of Rs.35,61,455/-, collected by SIIB during the course of investigation on 25.05.2018. Petitioner's request for interest was rejected on the premise that

provisions of Section 27 of the Customs Act may have no applicability inasmuch as what was collected by SIIB would not bear the character of duty nor a pre-deposit before an appellate authority and thus in the absence of any express provision, which provides for levy of interest, no interest could be awarded to petitioner. Aggrieved by the same, petitioner has filed present writ petition.

7. Learned counsel for petitioner would submit that once collection of duty is found to be without authority of law, they would be entitled to interest on the monies retained even in the absence of any express provision.

8. Learned Senior Panel Counsel for respondent on the other hand would submit that it does not constitute duty nor a pre-deposit, which are the two circumstances under which interest is provided under the Act. Petitioner may not be entitled to interest merely because certain sums have been collected by SIIB during the course of investigation. He would submit that any levy of interest ought to be only on the basis of express provisions under the Act. In the absence of provision for levy of interest, petitioner would not be entitled to claim any interest.

9. Heard the counsels and perused the materials available on record.

10. The question that arises for consideration is whether interest is due on collection made without authority of law and retained by the Revenue in the absence of express provisions providing for interest. The above issue is no-longer *res-integra*. It has been found by the Supreme Court that State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. In this regard, it may be relevant to refer to the following judgments:

i) <u>*Union of India through Director of Income Tax vs Tata Chemicals Limited*</u> <u>reported in (2014) 6 SCC 335:</u>

> *"38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, therebeing no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.*
>
> *39. In the present case, it is not in doubt that the payment of tax made by resident/ depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held the interest requires to be paid on such refunds. The catechize is from*

*what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to "as in any other case", the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only the refund of tax deposited under Section 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax."*

*ii) Union of India v. Willowood Chemicals (P) Ltd., (2022) 9 SCC 341 :*

*"**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 [Modi Industries Ltd. v. CIT, (1995) 6 SCC 396] and Godavari Sugar Mills [Godavari Sugar Mills Ltd. v. State of Maharashtra, (2011) 2 SCC 439 : (2011) 1 SCC (Civ) 467] 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."*

iii) *Team HR Services Pvt. Ltd. v. Union of India* reported in 2020 (38) G.S.T.L.457 (Del.) :

> *"12. The respondents are reminded of Article 265 of the Constitution of India prohibiting any tax to be levied or collected except by authority of law. The respondents have also not pleaded a case of the petitioner being not entitled to refund, on the ground of the petitioner having passed of the liability to another as illustrated in the Nine Judge Bench"s judgment of the Supreme Court in Mafatlal Industries Ltd. Vs. Union of India (1997) 5 SCC 536. Allowing the respondents to retain the said amount, would also be in violation of Section 72 of the Contract Act, 1872, obliging a person to whom money has been paid by mistake or under coercion, repay the same. The said provision enshrines the principle of unjust enrichment and restitution and the respondents State, by refusing to refund the sum of Rs.2,38,00,000/-, are purporting to unduly enrich themselves.*
>
> *13. We may however mention that the counsel for the petitioner also, perhaps to bring the case of the petitioner within the Circular relied upon, has sought refund of the amount by calling it "pre-deposit", when it was not deposited by way of pre-deposit but under protest, even before any demand was raised and while the petitioner was still being investigated against. Such deposits under protest, to ease the rigors which the Tax Authorities otherwise are entitled to impose, are not unknown and judicial notice has been taken thereof. However as long as the amount deposited is under protest and in which protest, as held in Mafatlal Industries Ltd. supra no grounds are required to be stated, no right thereto accrues in favour of the depositee till the depositee is held entitled in law thereto. Thus, the wrong nomenclature given by the petitioner to the deposit would not be a ground for allowing the respondents State to unduly enrich themselves. A Division Bench of this Court in Indglonal Investment and Finance Ltd. Vs. Income Tax Officer (2012) 343 ITR 44 has held that refund provisions should be interpreted in a reasonable and practical manner and when warranted, liberally in favour of the assessee.*
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> *14. To be fair to the counsel for the respondents, he has only placed before us what is recorded in the final rejection refund order but reasoning wherein is illogical and contrary to the expected conduct from the State and unjustifiable. The said order does not disclose any ground or statutory provision whereunder the*

*respondents State are entitled to retain the said amount of Rs.2,38,00,000/-.*

*15. No statutory mechanism whereunder the petitioner is entitled to seek refund in such circumstances also has been disclosed. It is thus not as if, we ought not to exercise our implicit discretion in exercising writ jurisdiction for the reason of any statutory remedy being available to the petitioner. When it is so and when the reasons disclosed in the order refusing refund are found to be illogical and de hors the statutory provision and further when it is found that the respondents State are illegally withholding money, a case for issuing a mandamus as sought is made out.*

*16. It is perhaps for this reason only that even while issuing notice of the petition, directions for refund were made and which remain uncomplied with.*

*17. We are unable to find any justification for the respondents to retain the said amount of Rs.2,38,00,000/-. We have thus enquired from the counsel for the respondents, what should be the rate of interest for which the respondents should be held liable.*

*18. The counsel for the respondents states that as per the statute, the respondents are liable for interest @ 6% per annum only.*

19. Per contra, the counsel for the petitioner has drawn attention to:

> *(A) Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune (2006) 2 SCC 508 where interest @ 9% per annum was awarded;*
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> *(B) Surinder Singh Vs. Union of India 2006 SCC OnLine Del 1863 (DB) where interest @ 12% per annum was granted on delayed refund;*
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> *(C) Hello Minerals Water (P) Ltd. Vs. Union of India 2004 SCC OnLine All 2187 (DB) where interest @ 10% per annum was granted;*
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> *(D) Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. Union of India 2013 SCC OnLine Guj 1487 (DB) where interest @ 9% per annum and future interest @ 6% per annum was granted; and, (E) Ebiz.com Pvt. Ltd. Vs. Commissioner of Central Excise, Customs & S.T. 2017 (49) S.T.R. 389 (All.) where costs of Rs.50,000/- were imposed on the Department.*

*20. In the present case, as aforesaid, the amount of Rs.2,38,00,000/- was deposited by the petitioner of its own volition, during the audit/investigation, though under protest and the petitioner has not chosen to detail the circumstances in which the petitioner felt compelled to make the deposit. The petitioner for the first time sought refund of the said amount vide letter dated 2nd May, 2018.*

*21. Considering the said facts, we do not find the petitioner entitled to interest at any higher rate than @ 6% per annum from the date of deposit i.e. 27th October, 2006 till the end of May, 2018 i.e. 31st May, 2018."*

iv) *Calcutta iron & Steel Company v CESCAT Chennai 2017 reported in 206(360) E.L.T.A257 (S.C) Calcutta:*

*"Whether the Tribunal is correct in holding that the appellants are not entitled to interest on the differential duty paid by them during investigation when as per the law laid down by the Hon'ble Supreme Court in the case of 2006 (196) E.L.T. 257 (S.C), interest is payable in such cases*

*11. Before we conclude, we may also indicate that Mrs.Hemalatha had, while emphasizing of the point, advanced the argument that when DRI collected the amount, there was no assessment and that by itself would show that the amounts paid at that point in time by the assessee were voluntary in nature. According to us, this is an argument, which is, in a sense, self-destructive. To say that payments were made voluntarily when DRI officials descended on the premises of the assessee when wedding celebrations were on would amount to turning a blind eye to the harsh realities obtaining on ground. As a matter of fact, in our view, the officers of DRI had clearly no jurisdiction to demand and collect any amounts from the assessee, in view of the fact that they are not vested with powers of an Assessing Officer. Furthermore, if we were to accept this argument of the learned counsel, then it would tantamount to allowing the Revenue to take advantage of its own wrong.*

*11.1. This apart, the Revenue has enjoyed the benefits of the money collected from the assessee on account of purported liability to pay duty, which was ultimately proved to have been wrongly foisted. Therefore, in our opinion, it only be right that the Revenue be called upon to pay interest to the* *assessee because, by its nature, any such collection of money by Revenue can only be termed as exaction under ostensible authority of law.*

*11.2. Fortunately, for the assessee, there is a provision in the Act for payment of statutory interest and therefore, we do not need to resort to any other principle of law for directing payment of interest. "*

11. In view of the above judgments, respondent department shall pay interest from the date on which the monies were collected i.e. 28.05.2018 till the date on which the interest is paid at the rate of 6% inasmuch as there is no quarrel over the fact that the very collection was without authority of law thereby falling foul of Article 265 of the Constitution of India.

12. Accordingly, this writ petition stands disposed of. There will be no order as to costs. No costs.

**10-03-2026**

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

To
The Assistant Commissioner
Office Of Commissioner of Customs,
Chennai-II (Import), Custom House,
No.60, Rajaji Salai,
Chennai-600 001.

**MOHAMMED SHAFFIQ, J.**

**MRN**

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