

(1992) 04 KAR CK 0024
In the Karnataka High Court
Case No : Writ Appeal No. 1275 of 1991

Bangalore Wire Rod Mills

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-04-1992

Acts Referred:

Customs Act, 1962 — Section 12, 15, 17, 18, 2 (38)

Citation : (1992) 61 ELT 37 : (1992) ILR (Kar) 1609

Hon'ble Judges : M. Rama Jois, J;B.N. Krishnan, J

Bench : Division Bench

Advocate : Smt. Nalini Chidambaram and Mr. S. N. Murthy, for the Appellant;
Shri Ashok Haranahalli, C.G.S.C., for the Respondent

Judgement

Rama Jois, J.—In these two writ appeals presented against the judgment of the learned Judge partly allowing the writ petition presented by M/s. Bangalore Wire Rod Mills, one by the petitioner and the other by Union of India, the following two questions of law arise for consideration.

1. Whether the petitioner is liable to pay interest on the amount of customs duty claimable in respect of the goods left in the warehouse on 11-11-1982 for the period in excess of the period during which it was permitted to be left in the warehouse u/s 61(1) of the Act (as it stood prior to its amendment by Act 11 of 1983) or from the date specified in the demand notice served on the petitioner in terms of Section 59 of the Act, or in terms of Section 61(2) of the Act inserted with effect from 13-5-1983, by Amending Act 11 of 1983.

2. Whether the interest should be calculated on the basis of the amount of duty payable computed in accordance with the rate of duty which prevailed as on the date of deposit of goods in the warehouse or on the basis of the higher rate of duty which prevailed on the date from which the petitioner became liable to pay interest or on the basis of still higher rate of duty, which was prevailing as on the date of clearing the goods from the warehouse ?

2. In order to bring forth the precise dispute between the parties, in the first instance it is necessary to make a brief survey of the relevant provisions of the Customs Act under which the liability of the petitioner to pay interest to the respondent arose and the circumstances in which the liability arose.

(i) The Customs Act, 1962, (for short "the Act") is an Act to consolidate and amend the law relating to customs, enacted by the Parliament. Section 12 is the charging section. The said Section provides that the duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into or exported from India. In this case, we are concerned with the levy of customs duty on imported goods. Section 15 of the Act prescribes the date for determination of rate of duty and tariff valuation of imported goods. It reads :

"15. Date of determination of rate of duty and tariff valuation of imported goods.

- (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force -

(a) in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented under that Section;

(b) in the case of goods cleared from a warehouse u/s 68, on the date on which the goods are actually removed from the warehouse;

(c) in the case of any other goods, on the date of payment of duty :

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards."

Section 17 provides for assessment of duty. Section 47 provides that importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form. Section 49 provides for storage of imported goods in a warehouse pending clearance, in cases in which the goods cannot be cleared within a reasonable time. Section 59 of the Act provides that an importer of any dutiable goods which have been entered for warehousing and assessed to duty u/s 17 or subject to the provisional assessment u/s 18, shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods, to observe the provisions of the Act and the Rules and Regulations in respect of such goods. Section 59(1)(b) makes it obligatory to the importer who has left his goods in a warehouse, to pay the amount of customs duty before a date specified in the demand notice and also to pay interest on the customs duty claimable on the goods from the date specified in the demand notice at the rate of 6 per cent per annum or at such rate as prescribed. Section 61 of the Act prescribes the period during which goods may remain in a warehouse. Section 72 of the Act provides for demand and collection of customs duty together with interest and other charges in cases

where the importer fails to clear the goods from the warehouse within the time allowed.

(ii) In the present case, the writ petitioner - M/s. Bangalore Wire Rod Mills, imported goods on which customs duty is leviable under the Act and left them in a warehouse in terms of Section 46 of the Act on 11-11-1982 and cleared the goods from the warehouse on 9-9-1988. According to the writ petitioner, the demand notice calling upon the writ petitioner to pay customs duty was issued on 7-3-1985 and 15 days' time was given for making payment of customs duty and on failure to pay the customs duty to pay interest on the said amount in terms of Section 59 of the Act. It so happened that the rate of customs duty as on the date on which the goods were kept in the warehouse was 40%, whereas on 9-9-1988, on which date the goods were cleared from the warehouse, the rate of customs duty had been increased to 90 per cent. The increase to 90% was with effect from 1-3-1988. Even so, the respondent demanded interest on the amount of customs duty computed at 90% of the value of the goods from 11-11-1983 to 9-8-1988 for nearly five years and compelled the writ petitioner to pay the said amount, which the petitioner had paid. According to the petitioner, the interest could have been collected only with effect from 22-3-1985, the date specified in the notice issued u/s 59 and on the amount of customs duty payable at the rate which was prevailing on the said date, in view of Section 59 of the Act, whereas according to the respondents the interest became payable with effect from 11-11-1983, the date on which the period of one year from the date of depositing the goods in the warehouse expired and that the writ petitioner was also liable to pay interest on the amount of duty computed at 90% of the value of the goods which was the rate prevailing on the date on which the goods were cleared from the warehouse for the entire period i.e., even for the period during which rate of excise duty was lower.

4. We shall now set out the relevant facts, which are necessary for deciding the controversy between the parties. They are : The appellant in W.A. No. 1275 of 1991 - M/s. Bangalore Wire Rods Mills is a unit of Transport Corporation of India. It is engaged in the business of rolling of iron and steel. For the purpose of its business, the petitioner had secured licence from the Controller of Imports and Exports for importing one 2 High Reversible Rolling Mill for manufacture of M.S. Bars, Angles, Channels etc., at their factory as "project import" for which import duty was lower, that is, 40% of the value of the goods plus 10%. Licence was granted by the Controller of Imports and Exports on 20-2-1982. Pursuant to the said licence, the goods were imported by the petitioner. On 7-9-1982 the petitioner requested the Assistant Collector of Customs and Excise to bond the imported equipments in their own premises. On 25-10-1982 the petitioner executed the necessary bond for Rs. 1,58,730.00 as required, for warehousing the goods. On 2-12-1982 the Customs Bonded Warehouse licence 10/82 was issued to the petitioner by the Assistant Collector of Customs. The value of the goods imported was assessed in terms of Section 14 of the Act at Rs. 1,55,69,773.00 and the customs duty payable at the rate prevailing on the said

date, was computed at Rs. 77,32,886.00. Warehousing bond, as required u/s 59 of the Act, was executed by the petitioner binding itself in a sum equal to twice the amount of duty assessed on the goods and for observing all the provisions of the Act, Rules and Regulations in respect of the goods. On 13-5-1983 Government of India issued notification prescribing that the rate of interest payable in respect of the goods kept in a warehouse was 12% per annum on the amount of duties of customs claimable by the Union of India. According to the provisions of Section 61(1) of the Act, as it stood at the relevant point of time, the maximum period during which the imported goods could be kept in the warehouse was three years in the case of non-consumable stores and one year in respect of other goods. The petitioner failed to pay the duties of customs and clear the goods from the warehouse within or at the end of the prescribed period. Section 61(b)(ii) of the Act, both before and after its amendment, empowered the Collector and the Board to extend the period of bonding in respect of any goods which are not likely to deteriorate for a limited period and by the Board for such further period as it may deem fit. No maximum period beyond which the bonding period could be extended by the Board was prescribed. It appears that on account of certain practical difficulties, in particular the shortage of electric power in other States, the petitioner was unable to get the goods cleared and therefore had been making application for extension of bonding period from time to time. The latest application made was on 7-1-1988. The relevant portion of that letter reads :

"The said consignment was kept in the bonded warehouse from 1982 onwards and due to the severe power cuts imposed in our State, we were unable to clear the consignment from bonded warehouse. As a result, we had no other alternative except to extend the bond period to a further date. In this connection after certain discussions with your office in 1983, we had filed the necessary applications periodically in order to enable your office to consider for extending the bond period. We had received intimation from your office in June, 1986 to send once again an application addressed to Principal Collector of Customs, Madras, through your office, which we had forwarded on 27th Aug., 1986. Subsequently at the request of your office, we have extended the bank guarantee No. 194/82 upto 31-12-1988. Further, we would like to state that although your department were kind enough in transferring the bond from Madras Customs to bond the same in a private bonded warehouse in Bangalore and also have allowed us in keeping the said consignment since 1982, still we inform you that as the reasons are beyond the control of us, we are unable to clear the cargo. The increase in customs duty for project import has gone upto 85% in March, 1987 which has resulted in overall increase in cost of equipment. Due to the financial constraints we are unable to clear the cargo for some more days hence we once again request you to kindly accord the necessary approval to extend the above bond period upto 31-12-1988. We enclose one full set of our applications etc. for your perusal and necessary action. In case you are in need of any other documents, we shall arrange to furnish the same as early as

possible."

No orders granting or rejecting the request was made either by the Collector or by the Board. In the meanwhile, a notice dated 7-3-1985 has been issued to the petitioner in terms of Section 59 of the Act. It reads :

"Office of the Assistant Collector of Customs, Customs Division No. 41, Millers Road, Vasanthanagar, Bangalore - 560 052 No. 70/85. By RPAD Dated 7-3-1985 M/s. Bangalore Wire Rod Mills, Whitefield Road, Bangalore - 560 048. Sub : Audit of Bill of Entry - HM/AE No. Shipping Bill No. 1366 dt. 12-11-82 Short collection of customs duty - Reg. Ref : Your Bond No. 1/82. Whereas it appears the customs duty amount to Rs. 2,95,97,549.80 (Rupees two crores ninety five lakhs ninety seven thousand five hundred forty nine and paise eighty only) was not levied/short levied/erroneously refunded in respect of the above consignment for reasons stated below :

The warehousing period of the above bond has expired on 11-11-1983. And whereas you are chargeable with the aforesaid duty, you are requested to show cause within 15 days of the receipt of this notice to the Assistant Collector of Customs, Customs Division, No. 41, Miller Road, Bangalore - 560 052, why the amount specified above should not be paid by you.

Any representation oral or in writing made by you should be accompanied by supporting documentary evidence. You are also requested to state if you would like to be heard in person. If no representation is received within the aforesaid period or if you fail to turn up on the date on which the case may be posted for hearing order will be passed in accordance with the provision of Section 28(2) of the Customs Act, without further reference to you.

Value of goods Duty Payable Rs. 1,55,69,773.00 2,55,34,427.72 + interest at 12% PA from 11-11-83 to 7-3-85 40,63,122.08 ----- Total : 2,95,97,549.80 ----- Sd/- Superintendent of Customs (Bonded Warehouses & DBK) Miller Road, Bangalore-52."

Receipt of the notice was acknowledged by the petitioner in its letter dated 14-3-1985. It reads :

BANGALORE WIRE ROD MILL Whitefield Road, Bangalore - 560 048. 14th March 1985. The Superintendent of Customs, Bonded Warehouse & DBK, Miller Road, Bangalore - 560 052. Dear Sir,

Sub : Your Demand No. 70/85/RPAD/7307 dt. 7-3-1985.

We are in receipt of your above demand notice and have noted the contents. We would like to bring to your kind attention that the import of 2 Hi Reversing Mill was done by us on "Project Import" under tariff 84.66 and duty applicable is only 40% Basic and 20% Aux. Hence duty amount indicated by you is not correct and the same will be applicable as to the Project Import.

Regarding clearance of the Cargo, you are aware the severe power situation

prevailing in Karnataka State and the extent of mini steel plants/rolling mills being affected. We expect, there will be an improvement of power position during this year and we would be clearing this consignment by 1985-86.

Kindly bear with us and allow us to keep the consignment in our bonded warehouse.

Thanking you, Yours faithfully

As pointed out in the reply the amount of duty specified was patently wrong and exceedingly high. Though it was a "Project Import" under Tariff 84.66, the amount specified in the demand notice was the rate applicable to normal import. The records disclose that the say of the petitioners that the import was done as "Project Import" is correct. This is not disputed by the learned counsel for the respondent. Further the interest was calculated from 11-11-1983, though according to Section 59 interest becomes payable only from the specified date in the demand notice for paying the amount of duty. Whatever that may be, the fact remains that owing to certain practical difficulties faced by the petitioner-industry, set out in the reply, even after the receipt of the above notice the petitioner failed to pay the duty and to get the goods cleared from the warehouse. On 2-3-1988, a final notice was issued by the Assistant Collector calling upon the petitioner to clear the goods on payment of duty at the rate of 90% that was in force in March, 1988 and also interest at the rate of 12% on the amount of duty computed on the basis of the said higher rate of duty for the entire period commencing from 11-11-1983 and also informing the petitioner that if the petitioner failed to clear the goods by making the necessary payment, the goods would be disposed of. Thereafter the goods were cleared from the warehouse by the petitioner only on 9-9-1988 by paying the amount of duty and interest as demanded.

The total amount of interest which the petitioner was compelled to pay by the respondents was as follows :

(1) For the period commencing from 10-11-1983 to Rs. 81,08,021.70
31-8-1988, 1752 days at 12% per annum (2) For the period commencing from
1-9-1988 to 9-9-1988 Rs. 11,603.30

The petitioner in all paid the sum of Rs. 2,24,99,998/- and got the goods released. As far as the rate of excise duty is concerned which had more than doubled, compared to the rate of excise duty prevailing on the date on which the goods were left in the warehouse and the date on which they were cleared i.e., from 40% to 90%, the petitioner could not have any legitimate grievance, for the reason in view of Section 15, it is the rate of duty which was prevailing as on the date of clearing the goods from bonded warehouse that is applicable and therefore the petitioner has also rightly made no grievance about the quantum of exercise duty demanded and collected from the petitioner. The grievance of the petitioner, however, has been that the interest ought to have been computed on the amount of duty which was payable by the petitioner as on the date with

effect from which the interest became payable in terms of Section 59 of the Act.

6. At this stage, it is appropriate to read the provisions of Section 59, Section 61(1) prior to its amendment and sub-section (2) of Section 61 inserted with effect from 13-5-1983 by the amending Act 11 of 1983 i.e. after the petitioner imported the goods and kept them in the warehouse. They read :

"59. Warehousing bond. - (1) The Importer of any dutiable goods which have been entered for warehousing and assessed to duty u/s 17 or Section 18 shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods :

(a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;

(b) to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at the rate of six per cent per annum or such other rate as is for the time being fixed by the Board; and

(c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

X X X X X X X X X Section 61(1) (prior to amendment after 13-5-83)

61. Period for which goods may remain warehoused. - (1) Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, -

(a) in the case of -

(i) non-consumable stores; or

(ii) goods intended for supply to a foreign diplomatic mission; or

(iii) goods intended for use in any manufacturing process or other operations in accordance with the provisions of Section 65; or

(iv) goods intended for use in any hundred per cent export-oriented undertaking; or

(v) goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification in the Official Gazette, specify for the purposes of this clause, till the expiry of three years.

Explanation. - For the purposes of sub-clause (iv), "hundred per cent export-oriented undertaking" has the same meaning as in Explanation 2 to sub-section (1) of Section 3 of the Central Excises and Salt Act, 1944 (1 of 1944).

(b) in the case of any other goods, till the expiry of One Year, after the date on which the proper officer made an order u/s 60 permitting the deposit of the goods in a warehouse."

The only change brought about in S. 61(1) by the amendment was, the period during which goods may remain warehoused were changed. the period of "three years" and "one year" underlined above was changed to "one year" and "three months", respectively.

Sub-section (2) of Section 61 inserted by Act 11 of 1983 reads :

"(2) Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in clause (a) or clause (b) of sub-section (1) by reason of the aforesaid period or otherwise, interest at such rate, not exceeding eighteen per cent per annum as is for the time being fixed by the Board, shall be payable on the amount of duty on the warehoused goods for the period from the expiry of the period of one year or, as the case may be, three months, till the date of the clearance of the goods from the warehouse :

Provided that the Board may, if it considers it necessary so to do in the public interest, waive, by special order and under circumstances of an exceptional nature to be specified in such order, to whole or part of any interest payable under this sub-section in respect of any warehoused goods."

As can be seen from the language of Section 59, an importer of durable goods which have been entered for warehousing and assessed to tax u/s 17 and 18 of the Act, is required to execute a bond binding himself in a sum equal to twice the amount of duty assessed on such goods. According to clause (b) of Section 59 he is also required to pay on or before a date specified in a notice of demand, the duties, rents and charges claimable on the goods together with interest on the same from the date so specified, at the rate of 6% per annum or such other rate as is for the time being fixed by the Board. According to sub-section (1) of Section 61, as it stood prior to its amendment the period during which goods could be left in the warehouse was 3 years in the case of non-consumable stores and in the case of other goods it was 1 year. After its amendment with effect from 13-5-1983 the period of warehousing was reduced to 1 year in respect of non-consumable stores and 3 months in respect of other goods. It is common ground that as far as the present case is concerned, the amended sub-section (1) of Section 61 is not applicable, for the reason the goods were entered for warehousing prior to the amendment of sub-section (1) of Section 61.

7. The only controversy, however, has been whether the goods in question are non-consumable stores as contended for the petitioner and therefore the period during which the goods could be left in the warehouse was 3 years or they are not non-consumable stores and therefore the maximum period during which the goods could be left in the warehouse was only 1 year.

8. We shall therefore, dispose of this controversy, in the first instance. The learned counsel for the petitioner contended that the goods in question come under the category of non-consumable stores and therefore the period during which the goods could be kept in the warehouse was 3 years. The learned counsel for the Central Government, however, pointed out that according to the

definition of the "stores" contained in Section 2(38) of the Act, the contention of petitioner is untenable. The said definition reads :

"2(38) - "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;"

As can be seen from the language of the definition of the word "stores" it means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. Admittedly the goods concerned in the case are not those meant for use in a vessel or aircraft. Therefore there is no substance in the contention of the petitioner that the goods in question though non-consumable, in that they are machinery for manufacturing certain items of steel product, constituted non-consumable stores. From this it follows that the period during which the petitioner could leave the goods in the warehouse was one year in accordance with sub-section (1) of Section 61 of the Act prior to its amendment. From this it follows that the respondents were empowered to issue notice in terms of Section 59 of the Act calling upon the petitioner to pay all duties, rent and charges claimable on account of such goods together with interest at 12% per annum which was the rate prescribed by the Board. It is also not in dispute that though the respondents were entitled to issue notice of demand in terms of Section 59 of the Act immediately after the expiry of the period specified in Section 61(1) which one year as pointed out earlier, on 11-11-1983 a notice of demand was issued only on 7-3-1985 giving 15 days" time to the petitioner to pay the excise duty and other amounts due to the Central Government. From a combined reading of sub-section (1) of Section 61, as it stood prior to 13-5-1983 and Section 59 of the Act, though the period during which goods could be left in the warehouse has been specified in the sub-section (1) of Section 61, the liability to pay interest on the part of the importer would arise only after a notice of demand is served in terms of Section 59 of the Act and in the event of the importer failing to pay the duty within the time specified and he would become liable to pay interest from the date so specified until the payment on realisation of duty.

8. Obviously, in order to avoid loss to the Central Government on account of delay in issuing notice u/s 59 of the Act by the Officers concerned, the Parliament inserted sub-section (2) of Section 61. According to this sub-section even if the goods were allowed to remain in the warehouse beyond the period specified in Section 61(1), by virtue of the permission granted by the competent authority or otherwise, as far as the interest is concerned, the importer would become liable to pay interest at the prescribed rate with effect from the date of expiry of the period specified in sub-section (1) of Section 61 i.e., for a period of one year in the case of non-consumable stores and be expiry of 3 months in the case of other goods. The proviso to Section 61(2) however confers the power on the competent authority to waive the interest. As the petitioner had been compelled to pay interest on the excise duty levied at 90%, as that was the

enhanced rate of excise duty as on the date on which the goods were cleared from the warehouse, the petitioner made a representation to the Central Board of Excise and Customs, under the proviso to Section 61 of the Act requesting for waiving the interest and for direction to refund the amount collected. In this context, the Board examined as to whether the provisions of Section 59 was applicable to the case of the petitioner or sub-section (2) of Section 61. The Board was of the view that, as the goods were left in the warehouse when sub-section (1) of section 61 before its amendment was in force and bond had been executed in terms of the provisions of Section 59, the latter alone was attracted to this case and consequently the provisions of sub-section (2) of Section 61 was also not applicable. In order to confirm its view, the Board also referred the aforesaid questions of law to the Law Department of Union of India for its opinion. The Law Department, for detailed reasons recorded, gave the opinion that the view taken by the Board was correct, vide Annexure A. 10. In view of the stand of the Board that only Section 59 is applicable to this case, which was confirmed by the Law Department, the Board issued an endorsement dated 8-2-1989 (Annexure A. 41) to the petitioner rejecting its request for waiving the interest. The endorsement reads :

"ANNEXURE - A. 41 F. No. 475/46/BB-Cus. VII GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NEW DELHI, the 8th February, 1989. To M/s. Bangalore Wire Rod Mill, Whitefield Road Bangalore - 560 048. Subject : Permission for waiving of interest u/s 61 of Customs Act, 1962 for De-bonding 2 - Hi Reserving Mill.

Sir,

I am directed to refer to your letter dated the 3rd December, 1988 addressed to the Minister of State for Finance, on the above-mentioned subject and to say that the request has been carefully considered in this Ministry. It is considered that the interest on the warehoused goods have been correctly levied u/s 59 of the Customs Act for the period 12-11-1983 to 9-9-1988 at the rate of specified by the Central Board of Excise and Customs under Notification No. 143/83-Cus., dated 13th May, 1983.

2. In the circumstances it has not been possible to accede to your request.

Yours faithfully, Sd/- (Miss M. Michael) Under Secretary to the Government of India"

It is thereafter, the petitioner presented the writ petition contending that the interest was payable by the petitioner on the amount of excise duty, which was payable at the rate in force as on the date specified in the notice of demand issued u/s 59 and from that date only and not on the basis of the rate of excise duty which was prevailing as on the date of actual payment of excise duty and clearing the goods from the warehouse and not from 11-11-1983 on which date the period of one year of warehousing expired.

9. In the statement of objections filed in the writ petition, the respondents took the stand that it was Section 59 of the Act which was applicable and in accordance with the provisions of the said Section, the petitioner was liable to pay interest on the amount of duty which was payable on the basis of the rate in force as on the date on which the goods were cleared from the warehouse and that u/s 59 also the interest was payable from 11-11-1983 i.e., the date on which period of one year specified in Section 61(1) expired.

10. The learned Judge accepted the stand taken by the respondents to the effect that Section 59 of the Act was attracted to the present case. He, however, was of the view that sub-section (1) of Section 61 as it stood earlier to amendment, no interest could be levied for a period of 3 years from the date on which the goods were kept in the warehouse and therefore the interest should be recomputed from the date on which the period of 3 years from the date on which the goods were left in the warehouse expired and the excess of interest recovered should be refunded to the petitioner. The learned Judge did not accept the contention of the petitioner that the interest was payable only on the amount of duty calculated at the rate of duty which was payable as on the date specified in the demand notice issued u/s 59 of the Act and not on the amount of duty which was payable and actually paid on the date of clearing the goods.

11. The petitioner has therefore presented this writ appeal aggrieved by the Judgment of the learned Judge. Respondents have also presented the writ petition contending that the petitioner was liable to pay interest immediately after the expiry of one year from the date on which the goods were left in the warehouse and therefore the direction issued by the learned Judge for refund even to the extent granted should not have been granted.

12. In this appeal Smt. Nalini Chidambaram the learned counsel appearing for the petitioner/appellant urged the following contentions :-

1. In view of Section 59 of the Act, the petitioner became liable to pay interest only from the date specified in the notice of demand issued to the petitioner u/s 59 of the Act.

2. The petitioner was liable to pay interest on the total amount of duty payable at the rate of duty which was prevailing at the time when the demand notice was issued, which was 45% and not on the amount of excise duty computed at 90%, which was the rate of excise duty prevailing as on the date on which the goods were not cleared from the bonded warehouse.

13. Elaborating the contention, the learned counsel submitted as follows :

The clear meaning of Section 59 of the Act was that an importer who had failed to clear the goods even after the expiry of the maximum period allowed under sub-section (1) of Section 61, should pay interest at the prescribed rate on the amount of duty which was claimable as on the date specified in the demand notice issued u/s 59 of the Act. Interest being compensatory in character should

be computed with reference to the liability to pay duty as on the date specified in the demand notice payment of which was withheld and importer has to pay interest with effect from the said specified date till the actual payment of customs duty and taking delivery of the goods.

14. As against the above contention, Sri Ashok Harnahalli, Central Government Standing Counsel, strenuously contended that according to Section 59 of the Act an importer as liable to pay interest on the amount of duty computed at the rate prevailing as on the date of actual payment of duty and getting the goods cleared from the bonded warehouse. In order to meet the contention of the petitioner that the interest becomes payable only from the date specified in the demand notice issued u/s 59, which is fully supported by the language of the section, the learned Counsel for the Central Government took a stand contrary to the one taken in the statement of objections and submitted that even in respect of cases in which bond had been executed u/s 59 of the Act earlier to the coming into force of sub-section (2) of Section 61 of the Act, the said sub-section gets attracted and therefore the petitioner became liable to pay interest immediately after the expiry of one year and not from the date specified in the demand notice.

15. Though, it is a some result from the view taken by the Board and got confirmed the law department, and the stand taken in the statement of objections, we proceed to consider the above contention urged by the Central Government Standing as it was urged with vehemence. In this behalf, it should be pointed out that the Board has itself considered this aspect and he was of the view that sub-section (2) of Section 61 was not at all applicable to the case of the petitioner. According to the Board, as on the date on which the goods were left in the warehouse, sub-section (2) of Section 61 had not come into force and the period during which the goods could be kept in the warehouse was regulated by sub-section (1) of Section 61 of the Act, as it stood prior to amendment and as the petitioner was called upon to execute the bond as required under 59 of the Act and the bond had been executed, the demand of interest has been made by the respondents only u/s 59 of the Act and not under sub-section (2) Section 61. As stated earlier, the Board had also taken the opinion of the Law Department in support of its view. In that view of the matter while rejecting the application made by the petitioner invoking the proviso to sub-section (2) of Section 61 of the Act, for the purpose of seeking waiver of interest, the Board clearly stated that the interest has been computed u/s 59 of the Act, and therefore question of waiver of interest did not arise. In fact, as stated above, in the statement of objections filed in the writ petition also, the stand taken by the respondents has been that Section 59 of the Act alone applies to the case of the petitioner.

16. After giving careful consideration to the submission made by the learned Counsel for the respondent, we are of the view that sub-section (2) of Section 61 has no application to cases in which the bonds had been executed in terms of Section 59 of the Act and the period during which the goods could be left in the

warehouse was regulated by sub-section (1) of Section 61 prior to its amendment. As pointed out earlier, according to sub-section (1) of Section 61, as it stood prior to its amendment on 13-5-1983, on which date sub-section (2) of Section 61 was also inserted into the Section, the statutory period during which the non-consumable stores could be left in the warehouse was 3 years and in respect of other goods they could be left for a period of one year. These periods were substituted by one year and three months respectively by the Amending Act 11/83, which came force from 13-5-1983. Sub-section (2) of Section 61 which was inserted to fix the date from which the liability to pay interest would automatically start, expressly refers to provisions of Section 61(1) of the Act. The opening words of sub-section (2) of Section 61 are very significant for answering the point arising for our consideration. The opening words of sub-section (2) of Section 61 are : "Where any warehoused goods remain in a warehouse beyond the period of one year or three months specified in clause (a) or clause (b) of sub-section (1) by reason of the extension of the aforesaid period or otherwise." From these words its clear, sub-section (2) expressly refers to sub-section (1) of Section 61 as amended by Act 11/83. If the intention of the Legislature was that the provisions relating to computation of interest immediately after the expiry of the period specified in sub-section (1) of Section 61 as it stood prior to the amendment of that sub-section, sub-section (2) would have simply referred to the period referred to in sub-section (1) of Section 61. Instead, the opening words of sub-section (2) expressly refers to the period of one year and 3 months in sub-section (1) of Section 61 i.e. as it stands after its amendment. Therefore, in our opinion, there can be no doubt that section (2) of Section 61 gets attracted only to cases to which sub-section (1) of Section 61 as it stood after its amendment gets attracted. It is not even the case of the respondent that sub-section (1) of Section 61 as amended with effect from 13-5-1983 applies to cases where goods were deposited in a warehouse when the unamended sub-section (1) of Section 61 was in force. In our opinion, when even according to the respondents sub-section (1) of Section 61 as amended has no application to present case. Correct view to take as to the scope of sub-section (2) of Section 61 is it does not apply to the case of the petitioner. The resultant position is that the liability of the petitioner to pay interest arises u/s 59 of the Act, i.e., from the date specified in the demand notice. In fact it is because of this, the Legislature inserted Section 61(2) which created the liability to pay interest from the date of expiry of the period specified in Section 61(1). If even according to Section 59, the liability to pay interest arises from the date of expiry of the prescribed period of warehousing as specified in Section 61(1), it was unnecessary for the Legislature to insert sub-section (2) in Section 61. Therefore we find no merit in the stand taken by the learned Central Government Standing Counsel contrary to the stand taken by the respondents in the statement of objections.

17. Now, the two crucial questions for our consideration are those set out in the first paragraph of this order. The first question is whether interest is payable for

the entire period on the basis of the amount of excise duty payable at the rate prevailing as on the date of actual date of payment and getting the goods cleared from the bonded warehouse, or whether the interest is payable on the amount of duty payable at the rate which was prevailing on the date on which the demand notice was issued.

18. The answer to the question depends upon the true meaning of Section 59(b). It speaks of the liability of the importer to pay interest on the amount of excise duty claimable. It is well-settled position in law that the interest is compensatory in character and it has to be paid by a party, who has withheld the payment of principal amount payable to the person to whom he has to pay the same. This basic concept about "interest" should be borne in mind in order to understand the true meaning of Section 59 of the Act. The difference between "tax", "interest" and "penalty" has been expounded by the Supreme Court in the case of Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others, the relevant portion is at para-23. It reads :

"23. We are concerned in this case with the liability of the assessee to pay interest on the amount of tax which had remained unpaid, Tax, interest and penalty are three different concepts, Tax becomes payable by the assessee by virtue of the charging provision in a taxing statute. Penalty ordinarily becomes payable when it is found that an assessee has wilfully violated any of the provisions of the taxing statute. Interest is ordinarily claimed from an assessee who has withheld payment of any tax payable by him and it is always calculated at the prescribed rate on the basis of the actual amount of tax withheld and the extent of delay in paying it. It may not be wrong to say that such interest is compensatory in character and not penal."

As could be seen from the above enunciation in tax law, interest is ordinarily claimed from a person who has withheld payment of any tax payable by him to the Government. Can it be said that the petitioner had withheld payment of duty computed at the rate of 90% for the entire period, prior to 1-3-1988 though the rate of duty at 90% came into force only on 1-3-1988. The answer must be in the negative ? From this it follows, the interest could be calculated only on the amount of duty withheld from time to time. In order to understand what has been and what should have been done regarding computation of interest u/s 59 it is necessary to set out rate of duty in force from time to time. The particulars of the same as given by the learned Counsel at the time of the arguments are as below :

-----		DATE	RATE	OF
EXCISE	DUTY	-----		
As on 22-3-1985	40%	From 1-3-1986	45% plus 25%	From 1-3-1987
40%	From	1-3-1988	45%	plus
-----				45%

As on the date of payment of excise duty and clearing the goods from the

warehouse, there is no controversy that the rate of excise duty payable was 90% though it was actually 40% as on the date of demand notice. In other words, there has been more than cent percent increase in the rate of excise duty. In view of the charging Section 12 read with Section 15, which provides computation of customs duty it is clear that the rate of excise duty applicable in the case of goods cleared from the warehouse is, the rate which was prevailing as on the date on which the goods are actually cleared from of the warehouse. Therefore, whatever was the difficulty with which the petitioner was faced, in view of which the goods were not cleared from the warehouse for nearly five years, the petitioner was liable to pay duty at the rate of 90% of the value of the goods, is beyond doubt and in fact the petitioner is not contesting the quantum of duty payable and has paid it.

19. The contention of the petitioner however, is when the rate of excise duty became 90% only from 1-3-1988, the petitioner could not have been compelled to pay interest on the amount of excise duty computed at the rate of 90%, for the entire back period during which lower rates of excise duty were prevailing, for it could not be said that so much amount of duty was payable, and was withheld during the entire period for which interest is chargeable. Whereas the contention of the learned counsel for the respondents is, having regard to the language of Section 59 of the Act, there is no escapes from the conclusion that the liability to pay interest was only on the total amount of excise duty computed at the rate namely 90% which was prevailing on 1-3-1988 for the entire back period.

20. After giving our careful and anxious consideration to the submission made by the learned Counsel for the Central Government, we are of the view that the language of Section 59 which provides for levy of interest is not such as would permit the taking of the view that the interest payable pursuant to a notice of demand issued u/s 59 of the Act is on the total amount of excise duty computed at the rate which might prevail on a future date on which the goods might be cleared from the warehouse even if the rate of excise duty for the entire back period including as on the date specified in the notice, was lesser. On the other hand when Section 59(b) requires payment of customs duty claimable on or before the date specified in the notice, it clearly means that the party to whom the notice is given should pay customs duty claimable, if the goods are cleared from the warehouse on or before the date specified and if he failed to do so he should pay interest on the said amount of duty. Therefore, the demand notice dated 7-3-1988 served on the petitioner in terms of Section 59(1)(b) of the Act which called upon it to pay the amount of customs duty within 15 days, from the date of service of a notice, clearly meant :

(1) The petitioner should pay customs duty claimable, on or before 22nd March, 1985.

(2) The amount of customs duty would therefore be, the amount computed on the basis of the rate prevailing at that time.

(3) On failure to pay duty the interest also had to be paid from 22-3-1985, on the amount of customs duty claimable, and withheld by the petitioner till the date of actual payment.

As held by the Supreme Court in the case of ACC Ltd., the very concept of the word interest used in a tax law is that it is compensatory in character and therefore has to be computed on the amount payable by the petitioner concerned and was withheld. Therefore, when Section 59 requires that the petitioner should pay interest in addition to customs duty, it follows that the interest is chargeable on the amount of duty payable, as on the date on which the customs duty is required to be paid in terms of the demand notice and it should also be borne in mind that the interest accrues day by day and in order to compute the quantum of interest accrued day by day, it is necessary also to know what was the principal amount on which the interest accrued. The submission made by the learned Counsel for the respondents would lead to anomalous results, in that though rate of excise duty at 90% came into force only on 1-3-1988, interest on the customs duty computed on that basis, has to be paid for the last five years though it was not the amount, withheld by the petitioner. In our opinion, when the language used in Section 59 is that the interest is payable on the amount of duty claimable, is not intended to bring about such an unjust result. In our opinion when Section 59 says that the interest is payable from the specified date it means that the interest should be computed on the amount of duty which would be claimable by the respondents if the importer got the goods cleared within the time within which the payment of customs duty is demanded. In the present case, on facts there is no controversy. It was open to the respondents to reject the application of the petitioner for extending the period of bonding on and after 11-11-1983 and to issue demand notice in terms of Section 59. The respondents neither rejected the application for extending the period of bonding nor issued the demand notice till 7-3-1985. The demand notice was issued only on 7-3-1985 and the time given to the petitioner to pay customs duty and get the goods cleared was 15 days. Therefore, having regard to the language of Section 59, the interest began to run only from 22-3-1985. It is true that the authorities could have issued demand notice immediately after the expiry of one year from the date on which the goods were left in the warehouse, in which event interest would have accrued from the date specified in such notice. But the fact remains that the notice was issued only on 7-3-1985 and in the notice 15 days" time was given : No doubt, as pointed out by the learned counsel for the petitioners, in the demand notice huge amount of Rs. 2,95,97,549.80 was specified as the customs duty payable by the petitioner to the respondents for getting that it was project import and the rate of duty applicable was lower. It is difficult to appreciate as to how and why such amount was specified in the notice as customs duty. Whatever be the mistake in specifying the amount of duty in the notice, the petitioner was liable to pay only the actual amount payable computed on the basis of the then prevailing rate of duty in respect of "project import" which fact is not disputed by the respondents, and became liable to pay

interest from 22-3-1985 on that amount. However, in the said notice interest was charged from 11-11-1983 to 7-3-1985 and the whole amount of interest claimed was Rs. 40,63,122.08. But in view of language of Section 59 which says that interest on the amount of duty demanded has to be paid from the date so specified, the petitioner had to pay customs duty within the period of 15 days from the date of service of notice, as specified in the demand notice and as the petitioner failed to pay customs duty on or before 22-3-1985 the petitioner became liable to pay interest from the said date. Having regard to the fact that the interest is compensatory in character, the only reasonable way of interpretation of Section 59 of the Act is that the interest which accrues day by day has to be computed having due regard to the rate of customs duty prevailing. If there were to be no change in the rate of duty from the date specified in the demand notice issued u/s 59 upto the date of actual payment of duty there would have been no difficulty at all. But there has been increase in the rate of duty more than once and finally by the time the petitioner cleared the goods, it became 90%. Hence, the only reasonable way of interpreting Section 59 of the Act is that the interest should be charged on the amount of duty payable, computed on the basis of rate of excise duty existing during the relevant period as that would be the amount which the petitioner was liable to pay to the Government and withheld by the petitioner even after demand. Therefore, in our opinion, the respondents were not authorised and/or justified in computing the interest on the basis of excise duty computed at the rate of 90% on the value of the goods though the rate came into force on 1-3-1988 for the entire period commencing from 11-11-1983 as if the petitioner had withheld so much of excise duty right from the said date, which is factually incorrect.

21. In the light of the discussion as above our answers to the questions arising for consideration in the case are as follows :

(1) For the purpose of computing the liability of the petitioner to pay interest it is Section 59 of the Act that is applicable;

(2) According to Section 59 of the Act, the petitioner became liable to pay interest only with effect from 22-3-1985, i.e., after the expiry of 15 days given, for making payment of customs duty by the issue of demand notice dated 7-3-1985;

(3) The amount of interest payable by the petitioner to the respondents should be computed on the basis of the rates of duty which were prevailing at the relevant point of time i.e., on the amount of customs duty which was claimable by the Central Government if the goods in question were cleared by the petitioner in terms of the demand notice and also on the basis of rates of duty which came into force from time to time during subsequent period.

22. In the result, we make the following order :-

I. Writ Appeal No. 1275/1991

(i) The Writ Appeal is allowed;

(ii) In modification of the order made by the learned Judge, a writ shall issue to the respondents as follows :-

(a) The Respondents are directed to re-compute the amount of interest payable by the petitioner at the prescribed rate with effect from 22-3-1985 upto 9-9-1988 on the basis of the amount of customs duty which the petitioner would have been liable to pay to the Central Government at the rate, which was prevailing during the different periods between 22-3-1985 to 9-9-1988;

(b) After computing the total amount of interest payable for the entire period as directed above, the respondents shall refund the balance of the amount of interest collected from the petitioner.

II. Writ Appeal No. 2419/1991 :-

23. The Writ Appeal is dismissed.