(1997) 04 BOM CK 0003

In the Bombay High Court

Case No : Notice of Motion No. 400 of 1992 in Miscellaneous Petition No. 394 of 1979 along with Notice of Motion No. 503 of 1992 in Writ Petition No. 395 of 1979

Dilkush Dyeing and Printing Works APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-04-1997

Acts Referred:

Citation : (1998) 97 ELT 237

Hon'ble Judges : M.B. Shah, J;J.N. Patel, J

Bench : Division Bench

Advocate : Shri J.M. Patel, for the Appellant; Shri M.I. Sethna, R.V. Desai, H.V. Mehta and Ashokan, for the Respondent

Judgement

1. In these notices of Motion which have been taken out by the Respondents, the Court is vexed with the only question whether the Petitioners M/s. Dilkhush Dyeing and Printing Works and M/s. Premier Textile Processors or the Respondents are entitled to the interest which has accrued on the amounts deposited in the Court with the Prothonotary & Senior Master pursuant to the directions of the Supreme Court, and can be disposed of by a common order.

2. For consideration of the issue in controversy a brief resume of the facts leading to the controversy can be stated as under.

3. The Petitioners preferred Writ Petition No. 394 of 1979 and Writ Petition No. 395 of 1979 respectively inter alia challenging the imposition of duty on the value of grey fabrics in addition to the value of the processing charges etc. By way of interim relief vide order dated 19th April, 1979, the Petitioners were directed to furnish a Bank Guarantee for the full amount as claimed by the Respondent-Department. Thereafter, the said writ petitions came to be finally heard and vide order dated 16/17th June, 1983, the petitioners came to be dismissed. Result was that the Petitioners were required to pay the said amount of excise duty to the department atleast in the year 1983.

4. However, against the said order, the Petitioners preferred SLP before the Supreme Court. At the time of admitting the S.L.P., the Supreme Court granted interim relief to the Petitioners to the effect that they should pay 50% of the last dues i.e. the dues accumulated till the date of filing of the SLP and that for the balance of 50% of such dues, the Petitioners were directed to furnish Bank Guarantee. The relevant part of the order is as under :-

"If the Bank Guarantees have already been furnished in the High Court, the Petitioners will deposit 50 per cent of the past dues in cash or by Bank draft of a nationalised Bank in the High Court and furnish fresh Bank Guarantees for the remaining 50 per cent. The 100 per cent Bank Guarantee already furnished will be returned for cancellation as and when the Petitioners deposit the amount provided they give fresh Bank Guarantees for the remaining amount."

5. Finally the SLP filed by the Petitioners came to be dismissed by order dated 4th November, 1988 by the Supreme Court and consequently, the Court directed the enforcement of the Bank Guarantees which were to the tune of 50% of the past dues and as far as balance 50% was concerned, no directions were given in the final order, because pursuant to the interim order itself 50% of the past dues was required to be paid by the Petitioners in cash before the end of March, 1984.

6. In Notice of Motion No. 400 of 1992 in W.P. No. 394 of 1979, the Petitioners were admittedly liable to pay Rs. 3,34,42,118.52 ps. which the Petitioners M/s. Dilkhush Dyeing and Printing Works, paid and deposited as per the following table :

Petitioners Ms/. Premier Textile Processors (in Notice of Motion No. 503 of 1992 in Writ Petition No. 395 of 1979) paid and deposited the amount against their Central Excise dues of Rs. 1,37,51,958.28 ps. per the following table :

7. [Paragraph number as per certified copy.] It is the contention of Respondent-Department that subsequent to the issue of the order dated 19th February, 1992 passed by the Asstt. Collector of Central Excise, the Petitioners instead of permitting the Department by appropriate orders to receive in cash along with the interest accumulated thereon, quietly tendered through a challan the said amount of Rs. 82,59,317.61 ps. in the Government Treasury. No prior information in respect of such tendering to the Government Treasury was given to the Respondent-Department, and in doing so, the obvious mala fide intention of the Petitioners was to deprive the Department of the interest that had accumulated on the said amount which was undisputably the property of the Department with effect from 9th September, 1983/ March, 1984. It is further contended by the Respondent, that in order to deprive the Department of its legitimate interest, the Petitioners adopted this strange method of tendering only the balance amount as if they were tendering the same in March, 1984 forgetting that this amount was tendered by the Petitioners not in March, as was the direction of the Hon''ble Supreme Court. According to the Respondent, it was not necessary for them to do this because the amount already stood deposited with

the Prothonotary, as the Department had confirmed the demand, and therefore, the amount deposited with the Court along with interest accrued should automatically go to the Department. It is the contention of the Respondent that the Petitioners are trying to deprive the Department of its legitimate dues by adopting such strange methods. It is therefore prayed that this Court may direct the Prothonotary & Senior Master to pay to the Respondent the amount of interest that has accrued on the deposit amounts of Rs. 82,59,317.61 ps. and Rs. 23,52,048.93 ps. which the Petitioners had made in compliance with the interim order of the Supreme Court.

8. It was submitted on behalf of the Petitioners that in the facts and circumstances of the case, the amounts deposited by the Petitioners in the year 1984 were security amounts and that the said principal amount was paid to their clients, the interest amount also be paid to the Petitioners. It is on this request of the Petitioners that the Prothonotary & Senior Master passed an order that the amount of interest accrued on Rs. 82,59,317.61 ps. and Rs. 23,52,048.93 ps. respectively be paid to the Petitioners in view of their application made through their Advocates by precept dated 6th July, 1992 unless the Respondent obtained Court''s order for not paying the said amount to the Petitioners on or before 31st August, 1992, which according to the Respondent was not proper.

9. It is further contended by the learned Advocate appearing for the Respondents that the amounts of Rs. 82,59,317.61 ps. an Rs. 23,52,048.93 ps. deposited in this Court after encashment of the Bank Guarantee was part of the past dues and the same was deposited by the Petitioners in terms of the interim order of the Supreme Court and can never be construed as security for excise duty as alleged by the Petitioners, because the Supreme Court has specifically directed payment of the said amount in cash and not directed the same to remain as security with the Court as alleged by the Petitioners in their letter under reference. The security was only and specifically directed to be executed in the form of Bank Guarantee for the remaining 50% of the past dues and the said amount of Rs. 82,59,317.61 ps. and Rs. 23,52,048.93 ps. being the past dues, the amount of interest accrued thereon is the property of the Government and the same is therefore required to be credited to the Government account and that the Petitioners are not entitled to withdraw the same.

10. The Petitioner on the other hand contended that the deposit of amount in this Court was a security pursuant to the interim relief for payment of amount that they may be ordered at the final disposal of the petition. The interim relief did not include a condition of payment of interest nor in the final decision any order for payment of interest is made and the order dated 19th February, 1992, relied upon by the Respondent to confirm liability also do not order payment of interest and that there is no provision in the Excise Act for payment of interest on the arrears of duty liability. It is in these circumstances that the Petitioners are entitled to the interest which has accrued on the investment of the amount of Rs. 82,59,317.61 ps. and Rs. 23,52,048.93 ps. by the Prothonotary & Senior Master.

It is submitted on behalf of the Petitioners that the Petitioners are entitled to the interest amount as the amount deposited by the Petitioners was by way of security towards the dues and that as the liability towards the dues came to be finally ascertained by passing of the order dated 19th February, 1992, subject however to the decision in appeal filed by the Petitioners against the said order. It is submitted that on the Petitioners paying the duty to the Respondent, the Petitioners were entitled to withdraw the sum of Rs. 82,59,317.61 ps. and Rs. 23,52,048.93 ps. from the Court to which consent was given by the Respondent and that dispute as to interest is wrongly raised by the Respondent. It is contended that if the department really thought of mala fide design on the part of the Petitioner to get the interest, the Respondent could have immediately refunded the amount paid to them and directly claimed the amount deposited in Court. The department has not adopted any such procedure and consented to the Petitioners withdrawing the amounts lying in the Court. In the circumstance, the Petitioners are entitled to the interest. It is further contended that past dues of excise duty in any event do not attract interest, if not paid or disputed and that the Supreme Court has not directed payment with interest and the Respondents are wrongly relying on the order of the Supreme Court to get the interest amount. In the circumstances, the Petitioner prays that they should be permitted to withdraw the interest amount lying with the Prothonotary & Senior Master.

11. It is further contended that the Respondents in Notice of Motion No. 503 of 1992 in Writ Petition No. 395 of 1979 claimed identical relief of payment of interest amount accrued on the amount deposited in this Court pursuant to the order of the Supreme Court which is relied upon in this Notice of Motion also, and that this Court has expressed view that there was no order in favour of the Respondents for payment of interest and the amount, deposited in this Court was security for payment to the Respondent of amount, if any, order to be paid as result of decision in the petition and as such the Respondents are not entitled to interest accrued on the amount deposited in this Court. It is brought to our notice by the Petitioners that the Respondent submitted that they would move the Supreme Court for necessary clarification with regard to the interest and for appropriate orders, for which necessary liberty was given by this Court by order dated 12th November, 1994. It is contended by the Petitioner that the claim of the Respondent to be said amount has been finally decided by the Supreme Court by order dated 10th May, 1996 on an application made by the Respondent for an order to allow them to collect the said amount lying in this Court and in the circumstances, this Court has no power or jurisdiction to adjudicate on the point as to the entitlement of the amount by either of the parties. Further, the Notice of Motion bearing No. 400 of 1992 taken out by the Respondent claiming the said interest amount and payment to them came to be dismissed on 25th June, 1993 and thereafter the Respondents approached the Supreme Court by filing an Interim Application bearing No. 1 of 1993, praying that they may be permitted to collect the interest amount accrued on 82,59,317.61 ps. deposited

by the Petitioners in Notice of Motion No. 400 of 1992 in this Court and subsequently invested in the nationalised Bank by the Prothonotary & Senior Master, as the principal amount has become payable to the department which also came to be dismissed by the Supreme Court on 10th May, 1996. In the circumstances, the Petitioners are entitled to the amount of interest lying with Prothonotary & Senior Master of this Court.

We do not agree with the contention of the Petitioners that the High Court did not grant the relief sought for by the Respondent and that the Respondent thereafter moved the Hon''ble Supreme Court for necessary clarification with regard to the claim of interest and that the Supreme Court rejected their interim Application No. 1 of 1993, which was filed for claiming interest on the amounts deposited by the Petitioners in this Court and therefore, we cannot examine the matter from this stand point. We find that the High Court or the Supreme Court has not decided the issue of payment of interest either in favour of the Petitioners or the Respondent, nor it is held that the Respondents are not entitled to the interest which has accrued on the amount deposited by the Petitioners in this Court.

On the basis of the interim order passed by the Supreme Court, the Petitioners were required to pay half of the amount of excise duty to the Department. The said order was passed in a group matter. Number of Petitioners have paid the said amount while in the case of the Petitioners the amount remained deposited in the Court. For those persons who have paid the amount to the Department there is no question of asking them to recover interest. Same would be the position with regard to those persons who have deposited the amount in Court. They cannot get benefit of accrued interest. Accrued interest is on the amount which was required to be paid to the Department in 1993. Hence, on the face of it, the demand by the Petitioners to get accrued interest is unreasonable.

12. In our view of the matter, one thing is clear that the Petitioners M/s. Dilkhush Dyeing and Printing Works had deposited in Court a sum of Rs. 82,59,317,61 ps. on 13th August, 1984 after encashment of the Bank Guarantee after the Supreme Court''s order dated 19th October, 1983 and the Petitioners M/s. Premier Textile Processors deposited a sum of Rs. 23,52,048.93 ps. and admittedly these amounts were towards the assessment of central excise dues for the period from 18th May, 1979 to 22nd June, 1983 in the case of M/s. Dilkush Dyeing and Printing Works and for the period 1st January, 1980 to 16th June, 1983 in the case of M/s. Premier Textile Processors, which were admittedly the past dues which they were liable to pay to Respondents. The writ petitions filed by the Petitioners were dismissed by this Court by order dated 16/17th June, 1983. Hence, the Petitioners were required to pay the amount of excise duty.

13. However, the said payment came to be deferred by the order of the Supreme Court and the Petitioners were required to pay 50% cash and furnish Bank Guarantee for remaining 50%. In the Civil Applications filed by the Petitioners in

their SLP before the Supreme Court, the Court has passed order dated 9th September, 1993, which reads as under :

"Pending the hearing and final disposal of the appeals we in modification of orders of stay direct that in all these matters insofar as past dues are concerned, the appellants shall pay 50 per cent of these dues in cash and shall furnish Bank Guarantees to the satisfaction of the authorities concerned in respect of the remaining 50 per cent. If the Bank Guarantees have already been furnished in the High Court, these Bank Guarantees will be kept alive from time to time the extent of 50 per cent provided that in pursuance of the order, which we are passing today, the remaining 50 per cent has been paid in cash. 50 per cent of half of the amount which is require to be paid in cash will be paid within three months from today and the remaining 50 per cent within three months thereafter. In SLP (C) 11424/83, we further direct that goods will not be put to sale in the meanwhile. Insofar as future payment is concerned, the appellants shall furnish Bank Guarantee to the satisfaction of the authorities concerned is respect of the disputed portion of duty within 50 days of the date which it is demanded."

Subsequently, further order was passed by the Supreme Court on 19th October, 1983, which reads as follows :-

"If the Bank Guarantees have already been furnished in the High Court, the Petitioners will deposit 50 per cent of the past dues in cash or by Bank draft of a nationalised Bank in the High Court and furnish fresh Bank Guarantees for the remaining 50 per cent. The 100 per cent Bank Guarantees already furnished will be returned for cancellation as and when the Petitioners deposit the amounts provided they give fresh Bank Guarantees for the remaining amount."

14. After the SLP filed by the Petitioners came to be dismissed by an order dated 4th November, 1988, the Respondents were entitled to collect this amount from the Court, but instead the Petitioners i.e. M/s. Dilkhush Dyeing and Printing Works, on 8th April, 1992 paid a sum of Rs. 82,59,317.61 ps. to the Respondents by depositing it in Government Treasury and on 30th April, 1992 they represented to the Collector of Central Excise, Mumbai, that as they had deposited Rs. 82,59,317.61 ps. towards their excise dues, they may be permitted to withdraw the amount, which is lying in deposit in Court and it is for this reason that the Respondents did not object to the payment of Rs. 82,59,317.61 ps. to the Petitioners.

15. It is the contention of the Petitioners that these amounts deposited in Court were security amounts and that as the Petitioners (M/s. Dilkhush Dyeing and Printing Works) are permitted to withdraw the principal amount of Rs. 82,59,317.61 ps. they are also entitled to the amount of interest accrued on the said sum of Rs. 82,59,317.61 ps. The Petitioners M/s. Premier Textile Processors also claim to be entitled to the amount of interest accrued on the deposit of Rs. 23,52,048.93 ps. In our opinion, the amounts deposited by the Petitioners in

Court in pursuance of the Supreme Court''s order dated 19th October, 1983 was not by way of security deposit as claimed by the Petitioners, but were towards the payment of past dues of central excise duty. These amounts deposited with the Court were invested by the Prothonotary & Senior Master and whatever interest is accrued thereon due to such investment will have to be paid to the Respondents. We have no hesitation in granting the prayer of the Respondents that they are entitled for the interest amount which has accrued on the amount of Rs. 82,59,317.61 ps. in the case of M/s. Dilkhush Dyeing and Printing Works and also on the sum of Rs. 23,52,048.93 ps. in case of M/s. Premier Textile Processors being the past dues as finally adjudicated in the matter and accordingly the Respondents are entitled to collect the same from the Petitioners. Further by order dated 19th October, 1983 the Petitioners were directed to pay 50% per cent of the past excise duty to the Excise Department. The subsequent modification is only with regard to those cases wherein Bank guarantees were furnished. The Supreme Court has permitted the Petitioners to deposit 50 per cent of the past dues in cash or by Bank draft of a nationalised Bank in the High Court. This would clearly mean that the amount was to be paid to the Respondents. It was not to be kept in the Court as security. This is not the case where the Respondents are claiming that they are entitled for the interest from the Petitioners for non-payment of the excise duty, but what the Respondents are claiming is that this interest has accrued on the amounts deposited by the Petitioners against the central excise dues of the relevant period and what was otherwise due and payable in the year 1983 itself, but came to be deposited in the Court in pursuance of the Supreme Court''s order dated 19th October, 1983. In the usual course the interest would follow the principal and the Respondents are actually claiming the interest which has accrued on the investment of excise duty which was due and payable by the Petitioners. The Petitioners M/s. Dilkhush Dyeing and Printing Works cannot take advantage of the fact that just because they deposited the sum of Rs. 82,59,317.61 ps. in Government Treasury, and could withdraw the amount from the Court on obtaining the ''non-objection'' from the Respondents, they are entitled to the interest which has accrued on the said amount as even otherwise if the amount of Rs. 82,59,317.61 ps. was not deposited by them, the Respondents would not have consented to its withdrawal and this amount along with interest would have gone to the Respondents. We therefore find that the Respondents are entitled to withdraw the amount lying with the Prothonotary & Senior Master and pass the following order :

ORDER

Notice of Motion No. 400/92

Notice of Motion is made absolute in terms of prayer clauses (a) and (b) which read as under :

(a) That the order dated 20-7-1992 passed by the Prothonotary & Senior Master of this Court in Misc. Writ Petition No. 394 of 1979 be set aside.

(b) That the amount of interest accrued on Rs. 82,59,317.61 ps. deposited by the Petitioners in respect of past dues in cash be paid to the Respondents.

Notice of Motion No. 503/92

Notice of Motion is made absolute in terms of prayer clauses (a) and (b), which read as under :

(a) That this Hon''ble Court be pleased to direct the Prothonotary & Senior Master, High Court of Bombay, to enforce the Bank Guarantees furnished by the Petitioners and hand over the said amount to the Respondents, in the light of the adjudication order passed on 25-5-1992, and issued on 2-7-1992.

(b) That this Hon''ble Court be pleased to direct the Prothonotary & Senior Master, High Court of Bombay, to pay to the Respondents the sum of Rs. 23,52,048.93 ps. deposited by the Petitioners in this Hon''ble Court together with the interest accrued thereon, if any.

There will be no order for costs in both the Motions.

